

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

[1] LD/VC/ANTICIPATORY BAIL APPLICATION NO. 355 OF 2020

Malang Mohiddin Qureshi Applicant
Versus
The State of Maharashtra Respondent

WITH

[2] ANTICIPATORY BAIL APPLICATION (ST) NO. 2622 OF 2020

Khwaja Malang Qureshi Applicant
Versus
The State of Maharashtra Respondent

Mr. Vijendra Kumar Rai a/w. Priti Jaiswal & Iran Sayed, for the Applicants.

Ms. Rutuja Ambekar, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st OCTOBER, 2020.

P.C. :

1. Both these Applications are disposed of by this common order as they arise out of the same offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.418/2020 registered at Goregaon Police

Station, Mumbai on 30.6.2020 under Sections 353, 332, 188, 269, 270, 504, 506 read with Section 34 of the Indian Penal Code.

3. Heard Shri Vijendra Kumar Rai, learned Counsel for the Applicants and Ms. Rutuja Ambekar, learned A.P.P. for the State.

4. The F.I.R. is lodged by Police Constable Dinkar Lilake. He has stated that the spread of corona was declared as a Pandemic worldwide. At the relevant time, the Police Commissioner, Mumbai had imposed the restraining orders. On 29.6.2020 at about 10:45 p.m., the first informant and others remained present on their duty. He was accompanied by Police Constable Padawi. While they were patrolling in the jurisdiction of Goregaon police station, it was observed that in room No.4, R/3, Samata-Mitha Nagar Co-operative Housing Society, Mitha Nagar, Goregaon (West), the grocery articles were sold from a residential premises. The informant went there and asked the owner to close the shop. At that time, the Applicant Khwaja was not wearing a mask. He was asked to wear a mask. Khwaja refused to wear the mask and refused to close the shop; and instead, abused the first

informant. Khwaja pushed the first informant. He snatched the wooden stick, which the informant was carrying and assaulted the informant himself. At that time, the other Applicant Malang, who is father of the Applicant Khwaja, abused him and beat him as well. The information was given to P.I. Jadhav. He came there. By that time, both the accused had left the place and thereafter this F.I.R. was lodged.

5. Learned Counsel for the Applicant submitted that the CCTV footage of the incident is available and none of the Applicants is seen assaulting the informant. He emphatically submitted that the Applicant Khwaja was not present at the spot and he is not seen in the CCTV footage. He submitted that a third person who was unknown to the Applicants assaulted the first informant. He submitted that the Applicant Malang came subsequently and he was trying to disperse the mob and he was in fact helping the first informant. He submitted that there was no shop and the allegations show that the grocery articles were sold from the residential premises. He submitted that the CCTV footage does not show that anybody was buying the articles. He

submitted that the Applicants have made statement on oath that Khwaja was not present at the spot and Malang has not assaulted the first informant. He submitted that the statements of alleged eye witnesses are manipulated and they have not seen the incident.

6. He further submitted that the person who is alleged to have identified the Applicant Khwaja in the CCTV footage is not telling truth.

7. The learned A.P.P. on the other hand relied on the affidavit filed by the Investigating Officer, which mentions that there are two independent eye witnesses, namely, Master Gaurav Anand Sawant and Usman Ismail Beg. Both of them narrated about the assault made by the Applicants. The CCTV footage was shown to one of the residents, namely, Tushar Satam. He has identified both the Applicants in the CCTV footage. She, therefore, submitted that the offence is serious and such acts have to be discouraged and should not be condoned. Considering the gravity of the offence and the assault mounted on a Public Servant

carrying out his duty should be dealt with sternly.

8. I have considered all these submissions. From the affidavit filed by the Investigating Officer, it can be seen that there are independent eye witnesses to the incident and they have identified both the accused as the assailants. The CCTV footage was shown to the witness Tushar Satam. He has also identified both the Applicants. Therefore, at this stage, the submission of the learned Counsel for the Applicant cannot be taken into account that the Applicant Khwaja was not present at the spot when the incident occurred. The offence is serious. A Public Servant carrying out his duty in the interest of society was assaulted and this fact cannot be tolerated. Therefore, Applicant Khwaja does not deserve any protection considering the gravity of the offence.

9. However, considering the much lesser role attributed to the Applicant Malang and also considering his advanced age of 70 years, I am inclined to grant protection only to him.

10. Hence, the following order :

ORDER

- (i) Anticipatory Bail Application (Stamp) No.2622/2020 of the Applicant Khwaja Malang Qureshi is rejected.
- (ii) LD/VC/Anticipatory Bail Application No.355/2020 of the Applicant Malang Mohiddin Qureshi is allowed. In the event of his arrest in connection with C.R. No.418/2020 registered with Goregaon Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
- (ii) The Applicant - Malang Mohiddin Qureshi shall not threaten the witnesses and shall not tamper with the investigation.
- (iii) The Applicant - Malang Mohiddin Qureshi shall attend the concerned Police Station once a month.
- (iv) Applications stands disposed of accordingly.

(SARANG V. KOTWAL, J.)