
(2017) 12 BOM CK 0064
In the Bombay High Court
Case No : 2135 of 2017

Nasir Husain Salimullah Ansari

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 07-12-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 438](#) - Direction for grant of bail to person apprehending arrest
[Indian Penal Code, 1860](#), [Section 302](#),
[Section 147](#)

Citation : (2017) 12 BOM CK 0064

Hon'ble Judges : A.M. Badar

Bench : SINGLE BENCH

Advocate : N.K. Sharma, J.S. Lohokare, Jaywant Pawar, Dhanaji Nalawade

Judgement

1. The applicant/accused in Crime No.527 of 2017 registered with Police Station Goregaon, District Mumbai, for offences punishable under Sections 302, 307, 323, 324, 326, 143, 147, 148, 149 of the Indian Penal Code (IPC) read with Sections 37 and 135 of the Maharashtra Police Act, by this application, is seeking pre-arrest bail. 2. Heard the learned advocate appearing for the applicant/accused. He drew my attention to the First Information Report (FIR) to point out that there is no iota of evidence to connect the applicant/accused to the offence punishable under Sections 302 read with 149 of the IPC. In his submissions, the applicant/accused being the owner of the concerned Hukka Parlour, had just driven out the members of both groups from his Hukka Parlour as both groups were indulged in quarreling and scuffle inside the parlour. 3. Upon being questioned on this aspect after examining the FIR, the learned APP vehemently argued, on instructions of the Officer present in the court, that the applicant/accused had committed the offence punishable under Section 302 read with 149 of the IPC. For that purpose, the learned APP is relying on statement of Vinay Naik, Mutthu, Ninad Surve etc. I have perused statement of all witnesses recorded by the Investigator in the case up till now, by taking the case diary

from the learned APP. 4. I have given my anxious thought to the FIR as well as the entire case diary comprising of the material collected by the Investigator to book several accused persons in the crime in question. 5. The case in hand reflects how Police Officers are over burdening the criminal courts by implicating as many persons as possible in offences registered at the Police Station. If Police Officers working in the field act honestly by keeping in mind the factual scenario emerging from the evidence collected as well as the legal position in the matter, pendency in criminal courts can be reduced to a large extent. The case in hand is a glaring example of high handedness of the Police Officer which warrants serious consideration by superior officers from the Police Department, in order to ensure smooth functioning of criminal justice system. Day in and day out this court is noticing several instances where the Police Officers unnecessarily implicates as many individuals they can in the criminal cases, which apart from burdening the system of administration of justice also affects the rate of conviction. That apart, illegal and erroneous investigation results into harassment to many. 6. The facts reflected from the Police Report as well as the case diary comprising of statement of witnesses recorded by the Investigating Officer reflects the following situation prevalent on the scene of occurrence : (a) There is a Hukka Parlour named Royal Smoke Hukka Parlour within jurisdiction of Police Station Goregaon in Mumbai. The FIR as well as statements of witnesses show that it is running under the nose of the concerned Police Station throughout night. (b) The FIR as well as statements of witnesses are crystal clear to show that two groups of young boys had visited the Royal Smoke Hukka Parlour in the night intervening 21st October 2017 and 22nd October 2017. The FIR lodged by Rasik Shaikh as well as statements of witnesses go to show that at about 5.45 a.m. of 22nd October 2017, those two groups of young boys were dancing on the dance floor of Royal Smoke Hukka Parlour at Goregaon, where the incident in question took place. (c) The FIR as well as statements of witnesses further show that during the course of dancing on the dance floor, at about 5.45 a.m., Mayur Panchal - a member of one group, which was relatively having less members (about 7) accidentally brushed another person from the another group. The FIR as well as statements of witnesses further show that then both groups started ruckus in the Hukka Parlour. Present applicant/accused Nasir Ansari is said to be owner of the said Hukka Parlour. The FIR shows that he had kept bouncers at his Hukka Parlour apart from other other employees named Salim and Sayyed. (d) Statements of witnesses as well as the FIR further show that upon noticing the ruckus in the Hukka Parlour, its owner i.e. present applicant/accused Nasir Ansari along with his bouncers and workers named Salim and Sayyed drove both groups - one comprising of seven young boys and another 15 young boys, out of the Hukka Parlour, and precisely on S.V.Road, in front of the said parlour. (e) The present applicant/accused, bouncers kept by him as well as his employees Salim and Sayyed then asked both the groups that they should do whatever they want but outside the Hukka Parlour. (f) The FIR as well as statements of witnesses further show that one group, which was comprising of about seven members including Mayur Panchal (since deceased) started quarreling with present

applicant/accused Nasir Ansari and his employees, and therefore, the present applicant/accused and his employees started beating boys of that group. The first episode ends here, as reflected from the FIR as well as statements of witnesses.

(g) Now comes the second episode in the matter. Outside the Hukka Parlour of the present applicant/accused, both groups - one comprising of seven young boys and another of fifteen to twenty young boys started quarreling with each other. First Informant Rasik Shaikh is an eye witness to the incident in question, he being a member of the smaller group of which deceased Mayur Panchal (since deceased) was a member. In unequivocal terms, Rasik Shaikh and other witnesses are stating about this second episode, which is independent of the first incident and in no way involving the owner of the said Parlour and his employees.

(h) The First Informant as well as other witnesses are stating that members of both groups started indulging in scuffle with each other. Then, as reflected from the case diary, all of a sudden, one young boy from the larger group emerged on the scene with a large knife in his hand and gave successive blows thereof on abdomen of Mayur Panchal. Another member from the group started assaulting Ninad (boy from the smaller group) by means of paver blocks. Third member of the larger group had assaulted by means of a waist belt. The case diary reflects that this second incident is totally independent of first incident in which the present applicant/accused, being the owner of the Hukka Parlour and his employees had driven out the warring groups out of the Hukka Parlour.

7. The learned APP, upon being asked, to justify how Section 302 read with 149 of the IPC can be invoked against the applicant/accused in such situation, submitted that a Police Inspector named Jaywant Pawar is investigating in this crime and she is arguing the matter on instructions of Mr. Nalawade, Senior Police Inspector, who is instructing her. She stated, on instructions, that still Section 302 read with 149 of the IPC is applicable to the owner of the Parlour and his staff. This court expects honest conduct on the part of the Investigating Officer as well as the Senior Police Inspector, who is instructing the learned APP. This court expects the Police Officer to be well conversant with the facts as well as law which needs to apply to the given facts. The prosecution is invoking provisions of Section 149 of the IPC in this crime to make several persons vicariously liable for the offence punishable under Section 302 of the IPC. The position of law in this regard is no more *res integra*. It is well settled that an object is entertained in the human mind and for this purpose no tangible evidence can be given. It is merely a mental attitude for which no direct evidence can be made available. Common object can be gathered from the acts which persons commit and result therefrom. Common object can reasonably be collected from the nature of the assembly, arms it carries, as well as behaviour at, before or after the incident. Similarly, it is well settled that, once membership of an unlawful assembly is established, the fact that specific overt act such as stabbing is done only by a particular accused, pales into insignificance. Mere membership of an unlawful assembly is sufficient and every member of unlawful assembly is vicariously liable for the acts done by other, either in prosecution of the common object of the unlawful assembly or such, which the member of the unlawful assembly

knew were likely to be committed. Thus, if an unlawful assembly is formed for the common object of murdering a particular person, the fact that a fatal blow is given only by a particular accused and not by other accused pales into insignificance and every member thereof becomes liable for punishment for the offence punishable under Section 302 read with 149 of the IPC. 8. In the case in hand, the FIR as well as the statements of eye witnesses indicate that owner of the Hukka Parlour as well as his staff had done the work of taking out both warring groups out of the Hukka Parlour. Outside the Hukka Parlour, the smaller group indulged in quarrel with the owner of the Hukka Parlour as well as his staff members. They were, in turn, assaulted by the owner of the Hukka Parlour as well as his staff. The episode ends here. There is no material in the case diary to prima facie infer that the owner of the Hukka Parlour and his staff were sharing the common object of murdering Mayur Panchal - a member of the small group comprising of seven young boys by acting in league with the other large group of fifteen to twenty young boys. After being driven out of the Hukka Parlour by the owner and the staff, both groups started indulging in free fight outside the Hukka Parlour in which the incident of murder of Mayur Panchal took place. The honest and prudent investigation in such situation, prima facie, ought not to have invoked provisions of Section 302 read with 149 of the IPC against the owner of the Hukka Parlour as well as his staff, unless and until there was some evidence to infer that they were sharing the common object with the members of the large group. Despite asking for such material by this court, the learned APP, on instructions of the Police Officer, who is present in the court, continued her arguments by contending that as the present applicant/accused as well as his staff members had taken out both the groups out of the parlour and as they were more acquainted with one group, they have committed the offence punishable under Section 302 read with 149 of the IPC. This is how, the criminal courts are burdened by imprudent acts of Investigators. This court, prima facie, is of the opinion that this is being done deliberately for the motive known to the Police Officer instructing the learned APP. It also appears that there is no proper supervision over the investigation of this crime in particular. 9. The matter needs a serious consideration at the level of the Higher Officers of the Officers Police Department and therefore, this court expects the Commissioner of Police to look into the matter and depute the concerned Joint Commissioner of Police to this court on the next date of hearing to explain to this court the stand of the Police Department in taking effective steps to ensure that the investigation of the crime is done honestly, so also, in order to eliminate overburdening of the criminal justice system by sensitising the Police Officers and by imparting proper training to them in this regard. It is expected of the Commissioner of Police to inquire into the entire episode, in the light of the observations made by this court in this order and to inform this court the measures taken to train the field officers in law, so that overburdening the criminal justice system is reduced and proper rate of conviction can be achieved. Upon being asked about the next convenient date, the learned APP states that the Joint Commissioner will attend this court on any date given by this court. Therefore, the order : ORDER i) Until further orders, in

the event of arrest in Crime No.527 of 2017 registered with Police Station Goregaon, District Mumbai, for offences punishable under Sections 302, 307, 323, 324, 326, 143, 147, 148, 149 of the IPC read with Sections 37 and 135 of the Maharashtra Police Act, the applicant / accused shall be released on bail on his executing P.R.Bond in the sum of Rs. 15,000/, and on furnishing surety in like amount. ii) The applicant / accused to attend the concerned Police Station as and when directed by the Investigating Officer for the purpose of investigation of this crime. iii) The Joint Commissioner of Police to attend this court on 20th December 2017 and to submit his report after perusal of the case diary of the crime in question. iv) The learned APP to furnish a copy of this order to the Commissioner of Police and the concerned officer who is summoned by this court for submitting his report for taking necessary steps. v) Stand over to 20th December 2017, at 3.00 p.m.