

MHCC020052832021



IN THE COURT OF SESSIONS FOR GR.BOMBAY AT MUMBAI

BAIL APPLICATION NO.1100 OF 2021

NAVED ABID QURESHI

...Applicant/Accused

V/s.

The State (at the instance of
Sir J.J. Marg Police Station,
C.R.No.81/2021)

...Respondent

Appearances:

Ld. Adv. Mr. M.A. Khan for the applicant/accused.

Ld. A.P.P. Mrs. Rashmi Tendulkar for the State.

CORAM : HIS HONOUR ADDL.SSESSIONS
JUDGE SHRI ABHIJEET A.
NANDGAONKAR
(C.R.No.16)

DATED : 21st April,2021

ORDER

By way of this application under Section 439 of Cr.P.C., applicant/accused has prayed for bail pertaining to C.R.No.81 of 2021 registered with Sir J.J. Marg Police Station for the offence punishable under Sections 353,332,333,143,147,188 of Indian Penal Code and under Section 51(B) of Disaster Management Act.

2. It is the case of the applicant that, he has nothing to do with the alleged offence and has not committed any alleged offence. On the contrary applicant has framed on the basis of concocted story. As per

case of the prosecution the accused and other boys were playing cricket in contravention of the guidelines issued by the State Government and such contravention attracts offences which are bailable in nature. The complainant has not attributed any overt act to the present applicant. Therefore, provisions of Section 353 of IPC cannot be attracted. The provisions of Section 143 and 147 of IPC are deliberately applied to arraign the present applicant. From the FIR it is evident that no assault on public office has been carried out to obstruct in carrying out his public duty. Hence, question of obstructing the public servant to discharge his lawful duty does not arise at all for alleged offence.

3. It is further submitted by the applicant that, prima-facie provisions of Section 353 of IPC is not attracted. While rejecting the bail application, learned Metropolitan Magistrate has committed error. Learned Metropolitan Magistrate overlooked to appreciate that there is no case of unlawful assembly to meet common object or to share a common intention. Merely because other accused are absconding cannot be the sole ground for denying the bail to the present applicant. All practical sort of investigation has been completed and applicant has cooperated with the investigating agency and nothing has to be recovered/investigated at the instance of the present applicant. The applicant is ready to attend the concerned police station as and when required and cooperate the investigating agency. On such grounds, applicant has prayed to release on bail on any such terms and conditions.

4. Say of the concerned police station was called. PI Kiran Pawar vide Exh.2 has filed say through learned A.P.P and strongly objected the application on the grounds that, the applicant has committed serious

type of offence. If he is released on bail, applicant would again commit such type of offence and will threaten or pressurize the informant and witnesses. The applicant will abscond if released on bail and he will not attend in the court proceedings. On such grounds they have prayed to reject the bail application.

5. Heard both the sides. Perused the record and submissions.

6. It is the case of the prosecution that, on 04.04.2021 at about 19.00 hours informant and PN No.4737 when on petrolling duty at Bara Imam Road, Kachwala Building, near U.P. Restaurant, Don Taki, Mumbai, they found some boys were playing cricket in middle of the road by putting one wooden table. On the said table two mobiles were also kept. On seeing police, the boys were trying to ran away from the spot. However, police personnel stopped them and asked them to face the action as they were playing without mask. However, the boys were able to run away. Therefore, the informant picked the phone kept on the table. Due to which all the boys again came close to the informant. At that time informant told them he would take action against them as they have not wearing the mask. At that time one of the boys twisted left hand of the informant and snatched the phone, which was taken by the informant, and thereafter, all the boys ran away. Thereafter, police inquired nearby and they came to know the names of the boys as Aasif Narpali, who twisted the hand of the informant and other boys names as Farman, Mujju Qureshi, Naved Qureshi, Mujahid Qureshi, Junaid Bacchi and Kamran Shaikh.

7. As informant's left hand was twisted, he has taken to Sir J.J. Hospital for treatment and it was reported that the informant has

suffered fracture. Thereafter, informant came to the police station and lodged report vide C.R.No.81/2021. Thereafter, police apprehended Mujahid Abid Qureshi. As he is found juvenile after completing formalities to be juvenile offender conflict with law, his custody was handed over to his father. Thereafter, accused Naved Abid Qureshi was arrested from Don Taki area and after inquiry with him, his participation in the offence has been appeared and came to be arrested.

8. On going through the case papers and copy of FIR, prima-facie, it appears the name of applicant/accused in the FIR being a member of an unlawful assembly. Considering the situation of COVID-19 in the State, particularly in Mumbai is spreading like mayhem. Therefore, the police authority have imposed Section 144 of Cr.P.C. in Mumbai city to control the situation. In such pandemic situation, the applicant/accused along with other boys were allegedly playing cricket that too without wearing mask, is prima-facie contravening the provisions of Disaster Management Act, is itself sufficient to hold that applicant/accused and other boys have formed an unlawful assembly with a common object to take law in hand and contravened the guidelines issued by the State Authority. Though the applicant is 20 years old, however, he must have to know the situation of pandemic in city and to follow the guidelines issued by the local authority and police.

9. As against what appears is that, the applicant along with other boys have not adhere or respect the guidelines issued by the Authority in amidst of pandemic to control spreading COVID-19 and they have taken law in hand. Therefore, even if the applicant/accused would be released on stringent conditions, it will be serious menace to the general public at large as applicant has not abide the guidelines issued

by the Authority in this pandemic situation, which is surging in the State and the country. Therefore, I do not find it necessary at this stage to release the applicant on bail.

10. The observations of the learned Metropolitan Magistrate while rejecting the application on 09.04.2021 is appreciable that, in this pandemic situation directions issued by the Government from time to time, in stead of following the directions, the accused alleged to deter the public servant from discharging his duty by applying criminal force, that too cause serious injury which is cause fracture to the police constable while discharging his duty as such public servant. Therefore, when applicant/accused was, prima-facie, found violating the guidelines of Authority in this pandemic situation and gathered together with other accused with an common intention and disobey the orders of police causing endangering the life of public at large, I do not find any substance in the application to release the applicant/accused even on stringent conditions.

11. In view of above discussion and considering the factual aspects of taking law in hand by forming the unlawful assembly with the common intention to assemble at public place without wearing mask, I do not find it proper to release the applicant/accused on bail at this stage. Hence, application is liable to be rejected by following order :-

ORDER

1. Bail Application No.1100 of 2021 moved by applicant/accused Naved Abid Qureshi pertaining to C.R.No.81 of 2021 registered with Sir J.J. Marg Police Station for the offence punishable under Sections 353,332,333,143,147,188 of Indian Penal Code and

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under Section 51(B) of Disaster Management Act, stands rejected.

2. Application stands disposed of accordingly.

(ABHIJEET A. NANDGAONKAR)
Additional Sessions Judge (C.R.No.16)
Gr.Bombay at Mumbai.

Dt.: 21/04/2021

Signed on

: 21.04.2021

kps/-

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER”	
21.04.2021 at 14.42 hours UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER
Name of the Judge	HHJ SHRI A.A. NANDGAONKAR (COURT ROOM NO.16)
Date of pronouncement of judgment/order	21.04.2021
Judgment/order signed by P.O. on	21.04.2021
Judgment/order uploaded on	21.04.2021