

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

58 ANTICIPATORY BAIL APPLICATION NO. 874 OF 2020

- 1) Aslam Yunus Akbani,
Age 55 years, Occ. Business,
R/o. Dhamaka Collection and Sari
Sale, Main Line, Mahoor, Tq.
Mahoor, Dist. Nanded.
- 2) Ashfaq Yunus Akbani,
Age 50 years, Occ. Business,
R/o. As above. ... **Applicants.**

VERSUS.

The State of Maharashtra,
Through Police Inspector Police
Station, Mahur, Tq. Mahur,
Dist. Nanded. ... **Respondent.**

...
Advocate for the Applicants : Mr. Vinod P. Patil
APP for the Respondent : Mr. V. M. Kagne.
Advocate for Assist to APP : Mr. Dhananjay K. Thote.

CORAM : MANGESH S. PATIL, J.

DATE : 03/11/2020

PER COURT :

The applicants are the accused from Crime No. 134/2020, registered with Mahoor Police Station, District Nanded for the offences punishable under Sections 307, 323 read with Section 34 of the Indian Penal Code, seeking anticipatory bail under Section 438 of the Code of Criminal Procedure.

2. The allegations in the F.I.R. are to the effect that the applicants were intending to purchase the property in which their shop situates from its original owner Vilas Mungliwar and Rajjak Banani. Since the informant purchased it in January 2020, the applicants were annoyed and harbouring

a grudge. It is then alleged that on 29.08.2020 when the informant went to the premises wherein construction of upper floor was going on, the applicants picked up a quarrel and assaulted him with an intention to kill him by using a wooden log and iron rod. He sustained injury and was shifted to a hospital and then lodged the F.I.R. on the basis of which the crime is registered.

3. The learned advocate for the applicants submits that in fact the informant himself is the aggressor. On a previous day i.e. on 29.08.2020 he along with his brother had criminally trespassed into the shop of the applicants and had ransacked it. F.I.R. No. 133/2020 was promptly lodged by the applicants and the offence was registered against the informant and his brother. Only by way of a counter blast, as an after thought a story is concocted and the present F.I.R. has been lodged on the next day. The learned advocate submits that no custodial interrogation is necessary. The applicants are ready to cooperate the Investigating Officer. The offence under Section 307 of the Indian Penal Code cannot be made out. The applicants may be granted bail subject to usual conditions.

4. The learned A.P.P. duly assisted by the learned advocate Mr. Thote for the informant opposes the application. He submit that the matter is still under investigation. Releasing the applicants on bail is likely to prejudice the Investigating Officer since weapons are to be seized. There was sufficient motive for the applicants to assault the informant. The application may be rejected.

5. I have carefully gone through the papers. It is a matter of record that the present F.I.R. has been lodged on 30.08.2020, after the applicants lodged the F.I.R. in Crime No. 133/2020 on the previous day.

6. Though there are allegations about the applicants having used an iron rod and wooden log for carrying out the assault, the injury certificate of the informant reveals that he had sustained only one contusion on the right

side chest at lower 1/3rd admeasuring 2 cm x 2 cm, caused by hard object and stated to be simple in nature.

7. It is under these circumstances there is a serious doubt as to if the offence would constitute as an attempt to murder punishable under Section 307 of the Indian Penal Code.

8. Be that as it may, considering the fact that the present F.I.R. is lodged after the applicants had filed a complaint against the informant and his brother coupled with the nature of injury sustained by the informant, the applicants deserve to be granted anticipatory bail subject to usual conditions.

8. The application is allowed.

9. In the event of arrest of applicants in connection with Crime No. 134/2020, registered with Mahoor Police Station, District Nanded, for the offences punishable under Sections 307, 323 read with Section 34 of the Indian Penal Code they shall be released on bail on their executing personal recognizance for an amount of Rs. 15,000/- each and furnishing a solvent surety in the like amount each subject to following conditions :

(a) They shall attend the concerned police station on every Monday between 9 a.m. and 10 a.m. for a period of three weeks starting from 09.11.2020.

(b) They shall not tamper the evidence or influence the witnesses.

(MANGESH S. PATIL, J.)

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