

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 943 OF 2020

Mohd. Sikandar Mohd. Maulana,
Age : 50 years, Occu. Business,
R/o Degloor Naka, Nanded

APPLICANT

VERSUS

The State of Maharashtra,
through Police Station Itwara,
Nanded

RESPONDENT

Mr. J.M. Murkute, Advocate for the applicant
Mr. S.B. Narwade, A.P.P. for the respondent/State
Mr. Kuldip S. Kahalekar, Advocate for the informant
to assist the A.P.P.

CORAM : MANGESH S. PATIL, J.

DATE : 03.11.2020

PER COURT :

The applicant, who is one of the accused from Crime No.294/2020, registered with Itwara Police Station, Nanded, for the offences punishable under Sections 307, 452, 147, 148 and 149 of the Indian Penal Code as also for the offence punishable under Section 25 read with Section 4 of the Arms Act, is seeking bail under Section 438 of the Code of Criminal Procedure.

2. Shortly stated, the allegations are to the effect that annoyed by the conduct of the informant in intervening in a dispute between the accused persons and a third person, entertaining a grudge against the informant, the applicant alongwith the other accused committed criminal trespass into the house of the informant having made preparation for carrying out assault. An unlawful assembly was formed with an intent of accomplishing the object on 04.09.2020 at 1.00 a.m. All the accused entered into the house and carried out the assault with an intention to kill the informant. The co-accused Juber and Illu are stated to have assaulted the informant with a sword over head, face and hand whereas Umer is alleged to have given a blow of sword and dagger to one Iliyas.

3. Mr. J.M. Murkute, learned Advocate for the applicant submits that accepting the allegations in the FIR at their face value, except a reference to his name, no overt-act is attributed to the applicant. The prime accused, who are alleged to have used weapons, have already been arrested. There are no criminal antecedents. Nothing is to be recovered from the applicant. He is ready to abide by all the terms and conditions. His custodial interrogation is not necessary and the application may be allowed.

4. The learned A.P.P, assisted by learned Advocate Mr. Kuldip S. Kahalekar for the informant, whose application is not listed with the present application, submits that there is a specific reference to the presence of the

applicant at the time and place of the incident. The incident has taken place in the middle of the night. Some of the assailants were carrying deadly weapons. There is enough material to infer that the assault was carried out with premeditation, having made preparation for killing the informant. The applicant can certainly be implicated by resorting to Section 149 of the IPC and would be equally liable to face consequences alongwith the prime accused. The learned A.P.P further points out that in the supplementary statement of the informant, a specific overt-act is attributed to the applicant of giving a blow of sword on the hand of the informant. They further point out that apart from the present crime, five other crimes over a period of one decade stand registered against the applicant. There is every possibility of the applicant tampering the evidence and the application may be rejected.

5. It is ex facie clear that the applicant has been specifically referred to by name in the FIR. Not only this, even in the supplementary statement, the informant has attributed overt-act to him, alleging about assaulting him with a sword. The fact that the incident has taken place in the mid of the night and some of the assailants were carrying deadly weapons, is sufficient to draw an inference at this juncture that the assault was carried out with an object and predetermination, having made preparation to carry out the assault.

6. Apart from the above state-of-affairs, even there are criminal antecedents. Several offences stand registered against the applicant right

from the year 2007. Considering these facts, custodial interrogation of the applicant is clearly imperative. The application is rejected.

[MANGESH S. PATIL]
JUDGE

npj/ABA943-2020