

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

ANTICIPATORY BAIL APPLICATION NO.1002 OF 2020

**SHAIKH IRFAN S/O ABDUL KHADAR
VERSUS**

**1] THE STATE OF MAHARASHTRA THROUGH
THE OFFICER INCHARGE KANDHAR POLICE STATION
2] THE SUPERINTENDENT OF POLICE NANDED**

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**Advocate for Applicant : Mr.R.S.Deshmukh,Sr.Adv. i/b Mr.D.R.Deshmukh
APP for Respondents: Mrs.PV.Diggikar**

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**CORAM : MANGESH S. PATIL, J.
DATE : 26/11/2020**

ORAL ORDER :-

The applicant who is cited as an accused no.2 in the charge sheet filed pursuant to the registration of Crime No.351/2019 with Kandhar Police Station,Dist.Nanded for the offences punishable under Sections 307, 143, 147,148,149,341,504,506 of the I.P.C. and under Section 25 read with Section 4 of the Arms Act is seeking bail under Section 438 of the Cr.P.C.

2] In sum and substance the allegations are to the effect that due to a political rivalry all the accused persons including the present applicant formed an unlawful assembly with intention to cause bodily injury to the informant and assaulted him on 23/12/2019. It is alleged that the applicant was carrying a sword and caused injury on the head of the informant.

3] The learned Senior Advocate Mr.R.S.Deshmukh for the applicant

submits that it is a matter of political rivalry. Two groups were involved. Separate F.I.Rs. have been registered by both the groups one after the other. The informant and his associates were the aggressors who had carried out the assault. The F.I.R. lodged by the group of the applicant was first in point of time. The informant and his associates have been granted anticipatory bail by this Court and even the applicant should be treated alike.

4] The learned Senior Advocate further submits that though the applicant is alleged to have used weapon like a sword, there are no circumstances to indicate that he was intending to kill the informant. Only a simple injury has been sustained which is not sufficient to draw any inference as to attempt to murder. He would cite a decision of this Court in the case of **Subhash Gopal Jadhav V/s The State of Maharashtra; 2017 All MR (Cri) 5006.**

5] The learned Senior Advocate then submits that though all the while attempt is being made to demonstrate that the applicant has been absconding and even charge sheet had to be filed resorting to Section 299 of the Cr.P.C., he runs a restaurant just at a distance of 65 meters from the concerned police station and it is difficult to believe that the Investigating Officer could not have traced the applicant. He therefore, submits that since the offence has been registered due to political rivalry the applicant would be put to disrepute if he is allowed to be arrested without assurance of bail. He is ready to cooperate the Investigating Officer and may be released on bail in the event of his arrest.

6] The learned A.P.P. opposes the application. She submits that the informant has sustained injury on the occipital region of head. Though it is a

lacerated wound and simple in nature, it has been caused by sharp object and the injury had to be sutured. She would submit that at this juncture no inference can be drawn to conclude simply going by nature of the injury to the effect that there was no intention to kill. She would then submit that in fact the applicant is misusing process of the Court. Already his application for anticipatory bail was rejected by this Court. Without surrendering after such rejection he is keeping himself away. He has waited for filing of the charge sheet and is now making the same request under the pretext of change in circumstances.

7] *Per contra*, the learned Senior Advocate Mr.R.S.Deshmukh submits that the nature of injury could not be ascertained when the matter was before this Court in the form of earlier application for bail. It is only after filing of the charge sheet that it transpired that the injury was simple and therefore, the applicant is entitled to make a fresh request for anticipatory bail.

8] I have carefully gone through the papers. It is a matter of record that though the injury sustained by the informant was found to be simple, it is important to note that it was caused by a sharp weapon and the injury had to be stitched. It is pertinent to note that the injury was sustained on the occipital region of head. At this juncture this much of material is enough to draw an inference that a sharp weapon was used for inflicting the injury on the vital part of the body. The applicant is attributed with authorship of the injury. Needless to state that inference as to what was the intention in causing such an assault and if really the applicant was intending to kill the informant, can only be ascertained after a fullfledged trial.

9] In my considered view the applicant is not entitled to derive any benefit from the decision in the case of Subhash Jadhav (*supra*) which was an Appeal challenging his conviction for the offence punishable under Section 307 of the I.P.C. As can be seen evidence was led and after appreciation of it, on the peculiar facts and circumstances it was found that it was a case falling under Section 324 of the I.P.C. and not under Section 307 of the I.P.C. On the contrary it was specifically observed therein in paragraph no.22 that for justifying conviction under Section 307 of the I.P.C. it is not necessary that the bodily injury should be capable of causing death and it would depend upon the intention coupled with the overtact established, that would matter. Precisely for this reason, the applicant is not entitled to simply point out that the injury sustained by the informant was simple in nature and derive any benefit. Going by all the aforementioned facts and circumstances, when the weapon is still to be recovered and custodial interrogation of the applicant is a must, the applicant is not entitled to be granted anticipatory bail.

10] Besides, this Court having noticed the injury certificate has already rejected a similar request of the applicant in Anticipatory Bail Application No.457/2020 on 7/7/2020. There is no material change in the circumstances since then.

11] The application is rejected.

[MANGESH S. PATIL, J.]