

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

ANTICIPATORY BAIL APPLICATION NO.30 OF 2021

ASIF S/O HUSSAIN SHAIKH
KADAR KHAN S/O ASAD KHAN
VERSUS

THE STATE OF MAHARASHTRA
WITH
ANTICIPATORY BAIL APPLICATION NO.29 OF 2021

MOHAMMAD AVES S/O MOHAMMAD ALEEM
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Pathan Hamzakhani I.
APP for Respondent/State : Mrs. R.P. Gaur

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CORAM : MANGESH S. PATIL, J.

DATE : 01.02.2021

PER COURT :

The applicants are three of the accused from Crime No.419/2019 registered with Kalamnuri Police Station, District Hingoli for the offences punishable under Section 307, 353, 143, 147, 148, 149, 427, 341, 323 of the Indian Penal Code and under Section 3 and 4 of Prevention of Damage to Public Property Act, 1984 seeking bail in the event of their arrest.

2. The FIR has been lodged by a Police Officer alleging that since the citizenry were bent upon to protest the decision of the Central Government to pass the Citizenship Act, the police force was deployed to maintain law and order. It is alleged that as was anticipated, a mob of 125

to 150 persons came out of a Masjid, indulged in sloganeering, obstructed traffic and then started pelting stones and petrol bombs towards police causing damage to the property and threatening public life. Even a car of one advocate Mr. Bhujang Balasaheb Deshmukh was damaged. The mob was dispersed by firing a tear gas shells. Couple of persons from the mob were accosted. Even the incident was video graphed by one Police Constable Urewar and resorting to all these material he could identified 49 persons who he specifically named in the FIR. Names of all the present applicants find place in the FIR. The learned advocate for the applicants submits that though the names of the applicants are appearing in the FIR no specific role is attributed to them. There are no criminal antecedence. They are being falsely implicated. They are ready to cooperate the Investigating Officer and may be granted anticipatory bail.

3. The learned APP strongly opposes the Applications. She submits that the persons named in the FIR have been identified by the co-accused who specifically named them and relying upon their statement and the video shooting the names of the applicants could be mentioned in the FIR. She would further point out that even there is a memorandum Panchnama of one of the co-accused, wherein, he has named few other members of the unlawful assembly including applicant Kadar Khan.

4. The learned APP would submit that the offence is serious. The mob was on a rampage and has damaged property. It had resorted to stone pelting and even petrol bombs were hurdled. It was indeed a serious crime

and anybody could have lost life. Custodial interrogation of the applicants is therefore imperative considering the enormity of the crime and number of assailants. Therefore no indulgence be shown to any of the applicants.

5. Having considered the rival submissions and perusal of the papers of the investigation when this Court expressed its disinclination to grant anticipatory bail to applicant Kadar Khan S/o Asad Khan who is Applicant No.2 in ABA No.30/2021, his learned advocate, on instructions, seeks leave to withdraw the Application to his extent.

6. Considering the allegations in the FIR, to enable me to ascertain as to if there is any material to identify the applicants Asif and Aves as the members of the unlawful assembly, the learned APP on instructions from the Investigating Officer informs that the name of applicant Kadar Khan was disclosed by a co-accused while recording his memorandum. However, the faces of the other two applicants are not identifiable in the video shooting.

7. Independently, there is also no other material to identify these applicants Asif and Aves as the members of the unlawful assembly. Though their names appear in the FIR and accepting the fact that those were revealed by two of the accused who were nabbed on the spot, there is not enough material to attribute a specific role to either of them.

8. There are no criminal antecedence. Already 61 out of 83 accused have been arrested. Considering all the aforementioned facts and circumstances, the Applications of applicants Asif and Aves deserve to be allowed.

9. The Criminal ABA No.29/2021 is allowed. The Criminal ABA No.30/2021 is partly allowed. In the event of arrest of MOHAMMAD AVES S/O MOHAMMAD ALEEM and ASIF S/O HUSSAIN SHAIKH, in connection with Crime No.419/2019 registered with Kalamboli Police Station, District Hingoli for the offences punishable under Section 307, 353, 143, 147, 148, 149, 427, 341, 323 of the Indian Penal Code and under Section 3 and 4 of Prevention of Damage to Public Property Act, 1984 and under Section 7 of Criminal Amendment Act, 1983, they shall be released on bail on their executing personal recognizance for an amount of Rs.20,000/- each and furnishing a solvent surety in the like amount each subject to following conditions:

- a) They shall attend the concerned Police Station on three consecutive Saturday starting from 06.02.2021 between 3:00 pm and 5:00 pm and shall cooperate the Investigating Officer.
- b) They shall not tamper the evidence or influence the witnesses.
- c) They shall not indulged in any criminal activity.

10. The Criminal ABA No.30/2021 to the extent of applicant Kadar Khan S/o Asad Khan is disposed of as withdrawn.

(MANGESH S. PATIL, J.)

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