

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

922 ANTICIPATORY BAIL APPLICATION NO. 431 OF 2020

1. SHAIKH SAILANI S/O. SHAIKH DADAMIYA
(SHAIKH FERAZ S/O. SHAIKH DAD IN FIR)
 2. SHAIKH DADAMIYA S/O. SHAIKH CHINNU MIYA
- VERSUS
THE STATE OF MAHARASHTRA

Advocate for Applicant : Mr. Mohd. Aseem Sk. Salim.
APP for Respondent : Mr. S.W. Mundhe.

**CORAM : MANGESH S. PATIL, J.
DATED : 08.04.2021**

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure, seeking bail in the event of arrest of the applicants who are accused Nos. 2 and 4 respectively in Crime No. 42/2020, registered with Bhagyanagar Police Station, Nanded, for the offences punishable under Sections 307, 324, 504, 506 read with Section 34 of the Indian Penal Code.

2. Shortly stated the allegations are to the effect that on account of a trifle dispute wherein the bulls of the informant and that of the applicants and the other accused got into a tussle, when the informant's brother asked the applicant No. 2 to take away his bulls, all the accused persons arrived at the farm house of one Govind Kisan Mokale and the informant was assaulted. Even his brother Abed and

the nephew Juned were also assaulted in furtherance of their common intention and the FIR was lodged.

3. Learned Advocate for the applicants would submit that accepting the allegations at their face value, it is because of the trifle reason that the parties have involved in some fight. There is a counter FIR lodged immediately after registration of this crime. There was no premeditation. The allegations against the applicants are vague and omnibus. The applicant No. 2 is in fact aged 82 years and it is unlikely that he could have actually taken part in the fight. No grievous injuries have been sustained. The applicants were granted ad interim protection by the order dated 27.04.2020. They have not committed breach of the terms and conditions subject to which they were granted interim protection. Almost a year has lapsed thereafter. They are still ready to co-operate the Investigating Officer in the manner possible. Already the main accused has been arrested and the sickle (Katti) has been recovered. Therefore, considering the limited role attributed to the applicants the ad interim protection may be confirmed.

4. Learned APP strongly opposes the application. He submits that the allegations are quite precise and specific against both the applicants. In fact the applicant No. 1 has actually facilitated the

accused No. 3 in giving a blow of Katti on the head of the informant. It is a clear case of abatement. Even there are specific allegations against the applicant No. 2 about he having assaulted the brother of the informant. The offence being serious, custodial interrogation of the applicants is necessary and the application be rejected.

5. After hearing the parties when this Court expresses its disinclination to grant any relief to the applicant No. 1, his learned Advocate seeks leave to withdraw the application to his extent.

6. I have carefully gone through the FIR and the papers of investigation. The role attributed to the applicant No. 2 is to the effect that he along with the other accused arrived at the farm house of Govind Kisan Mokale. It is, thereafter, that the informant was abused and the applicants are stated to have assaulted Abed with stick. It is also alleged that they have also assaulted his nephew Juned with a stick. The serious allegations about attempt to murder the informant are only against the applicant No. 1 Shaikh Shailani Shaikh Dadamiya (Shaikh Feroz Shaikh Dad – as mentioned in FIR). As far as that episode is concerned, there are no allegations about applicant No. 2 having played any role, much less which would tantamount to abatement within the meaning of Section 107 of the IPC.

7. It is apparent that the incident had occurred on the spur of moment wherein both the sides have indulged in some fight and the FIR and the counter FIRs have been lodged in succession.

8. Considering the fact that only a limited role is attributed to applicant No. 2 coupled with the fact that he is an octogenarian when he has already been protected for last one year and there are no allegations about he having committed breach of the terms and conditions, the ad interim relief granted to him deserves to be confirmed with the same terms and conditions.

9. The application is partly allowed. The ad interim relief granted to the applicant No. 2 by order dated 27.04.2020 stands confirmed with the same terms and conditions.

10. The application to the extent of applicant No. 1 is dismissed as withdrawn.

(MANGESH S. PATIL, J.)