

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

ANTICIPATORY BAIL APPLICATION NO. 383 OF 2021

1. Khijar Khan Jafar Ali Khan,
Age 20 years, Occ. Education.
2. Avej Khan s/o Sher Mohammad Khan,
Age 26 years, Occ. Labour.
3. Faijan Khan s/o Sher Mohammad Khan,
Age 20 years, Occ. Education.
All R/o. Shahenshalwali, Dargah Road,
Beed, Tq. & Dist. Beed. ... **Applicants.**

VERSUS.

The State of Maharashtra,
Through Police Inspector,
Police Station Peth Beed,
Tq. & Dist. Beed. ... **Respondent.**

**WITH
ANTICIPATORY BAIL APPLICATION NO. 390 OF 2021**

Alamkhan Sher Mohamadkhan @
Mohamad Shahzeb Khan, Age 17 ½
years, Occ. Education, u/g of
Sher Mohammadkhan s/o Amirkhan
r/o. Shahenshalwali, Dargah Road,
Beed, Tq. & Dist. Beed. ... **Applicant.**

VERSUS.

The State of Maharashtra,
Through Police Inspector,
Police Station Peth Beed,
Tq. & Dist. Beed. ... **Respondent.**

...

Advocate for the Applicants : Mr. Shrikant G. Kawade.

APP for the Respondent/State : Mrs. G.P. Gaur.

CORAM : MANGESH S. PATIL, J.

DATE : 03.05.2021.

PER COURT :

These are the applications under Section 438 of the Code of Criminal Procedure as the applicants are apprehending arrest in connection with Crime no. 22/2021, registered with Peth Beed Police Station, District Beed, for the offences punishable under Section 307, 324, 323, 504, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/25 of the Arms Act.

2. The F.I.R. reads that after having heard some commotion out side his house when the informant came out he saw that all the applicants and one Juned Shaikh were hurling abuses. When he questioned applicant Alamkhan as to why the abuses were being hurled, it is alleged that Juned Shaikh, with an intention to kill the informant tried to stab him with a Kukri. Applicant Avej Khan is stated to have caught hold him with collar and pushed him back. Juned Shaikh thereafter tried to stab him with Kukri but was intercepted by informant's brother Faisal who sustained injury to the left hand fingers. When his another brother Akhil also tried to intervene applicant Alamkhan and Khijar Khan assaulted him with fists and kick and hit him with a brick on his head. When one Imran Shaikh tried to intervene Juned stabbed him with Kukri on the back. Applicant Alam Khan and Faijan Khan assaulted the informant with an iron rod. One Sayyad Rahim Sayyad Noor rescued the informant who went to the police station and was referred for medical treatment. He then lodged the F.I.R. and the offence was registered.

3. Learned advocate for the applicants would submit that there was no motive. The F.I.R. itself is false and concocted. There was no previous animosity. Main allegations about use of a deadly weapon like Kukri are against accused Juned who is not before this Court. There are no criminal antecedents. The applicants are ready to cooperate the Investigating Officer and they may be granted anticipatory bail.

4. The learned A.P.P opposes the applications. She submits that the

offence is serious. Deadly weapon like a Kukari has been used to cause injury to couple of persons. Juned is still absconding. The applicants are attributed with the use of iron rod which is to be recovered. Prima facie there is involvement of the applicants in commission of serious crime. There is every possibility of tampering of the evidence. Medical record is compatible with the allegations. The applications be rejected.

5. I have carefully gone through the papers of the investigation. Accepting the allegations in the F.I.R. and the statements of the injured and witnesses, it is quite apparent that the incident had taken place without any premeditation. For some reason the applicants were present at the spot and abuses were being hurled which were not addressed to any specific individual. The further episode seems to have occurred after the informant questioned applicant Avej the reason for all of them to hurl abuses. It appears that on the spur of moment accused Juned seems to have tried to stab the informant. It is stated that it was intercepted by Faisal who sustained injury to the left arm fingers. However, his injury certificate does not read about any injury having been sustained by a sharp weapon. Though he sustained a CLW admeasuring 3 x 3 cm on the second and third fingers, the injury is stated to have been sustained by a hard and blunt object and was simple in nature.

6. Similarly, though the other brother of the informant Akhil is stated to have sustained injury on the back with a Kukri, which is also attributed to accused Juned, his injury certificate does not read about any injury having been sustained on the back much less with a sharp weapon. He is stated to have sustained only simple injuries in the form of abrasion over the right elbow and the abdomen, caused by hard and blunt object. Even the informant himself does not seem to have sustained any grievous injury and had sustained only one simple injury on the neck and back caused by hard and blunt object.

7. Considering the fact that even according to the prosecution the incident had taken place without any premeditation and had ensued only after the informant tried to persuade the applicants from hurling abuses coupled with the fact that the injuries sustained by the informant and his brothers are *ex facie* not compatible with the allegations coupled with the fact that the use of deadly weapon like Kukri is attributed to accused Juned who is not before the Court, in my considered view, this is a fit case where custodial interrogation of the applicants do not seem to be imperative.

8. The apprehension being expressed by the prosecution about tampering would not survive in as much as the statements of injured persons and even the witnesses have also been recorded under Section 164 of the Code of Criminal Procedure.

9. The Applications are allowed. In the event of arrest of the applicants in connection with Crime no. 22/2021, registered with Peth Beed Police Station, District Beed, for the offences punishable under Section 307, 324, 323, 504, 143, 147, 148, 149 of the Indian Penal Code and under Section 4/25 of the Arms Act they shall be released on bail on their executing personal recognizable for an amount of Rs. 20,000/- (Rs. Twenty Thousand only) and furnishing a solvent surety in the like amount each, subject to following conditions.

(a) They shall attend the concerned police station as and when called and shall cooperate the Investigating Officer.

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

(MANGESH S. PATIL, J.)

mkd/-