

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

924 ANTICIPATORY BAIL APPLICATION NO.422 OF 2021

**GAURAV @ DAU S/O DIPAK SAWAI AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA**

Mr. Mahesh P. Kale, Advocate for the applicants
Mr. A. R. Kale, APP for the respondent/State.

**CORAM : SHRIKANT D. KULKARNI, J.
(Vacation Court)**

DATED : 11-05-2021

PER COURT :-

1. It is an application for anticipatory bail moved by the applicants under Section 438 of the Code of Criminal Procedure in connection with Crime No. 30 of 2021 registered at Beed City Police Station, Beed for the offences punishable under Sections 307, 323, 504, 506, 147, 148, 149 of the Indian Penal Code read with Section 4/27 of the Arms Act.

2. Heard Mr. Mahesh Kale, learned Advocate for the applicants and learned APP for the respondent/State. Perused the papers produced by the applicants alongwith the list of documents including copy of FIR and copy of FIR in a counter case as well as copy of order passed by the Additional Sessions Judge, Beed. I have

also gone through the police papers made available by the learned APP showing the status of investigation.

3. Mr. Mahesh Kale, learned Advocate for the applicants invited my attention that in the instant case sword alleged to have been used in commission of the offences but if we look to the injury certificate we would notice injury of CLW. If sword would have been used there may not be CLW. He submitted that counter case has been filed by the opposite party and accordingly counter cases have been registered against the first informant and others. In fact the persons from the applicants side have sustained serious injury in the incident and one of them was admitted in the hospital because of the serious injury, in comparison with the injuries caused to the opposite side. He submitted that applicants are students, except applicant No. 2. They have no criminal antecedents. They are liable to be enlarged on anticipatory bail. They are ready to cooperate to the Investigation agency.

4. On the other hand, Mr. Kale, learned APP strongly opposed to grant anticipatory bail to the applicants on the ground that applicants alleged to have used deadly weapons in the commission of offences like sword etc. The deadly weapons used in

the commission of the offences are yet to be recovered. If we look to the FIR, it would find the specific role played by every applicant in the attack. Mr. Kale, learned APP invited my attention to the police papers and submitted that there are six eye witnesses supporting to the case of first informant. There are injured witnesses, who also supporting. Having regard to the serious nature of the crime, it may not be appropriate grant anticipatory bail.

5. Grant of anticipatory bail is an extra ordinary weapon provided under Section 438 of the Code of Criminal Procedure. There are various parameters to consider the prayer of anticipatory bail, nature of accusation, nature of offence alleged, weapons used in the commission of the offences, injuries caused to witness in the incident, tampering of witnesses and availability for investigation.

6. It is true that both the sides have filed counter cases against each other about the same incident which occurred on 05/02/2021 between 21.00 hrs. to 21.30 hrs. at DP road, Beed. On going through the investing papers, it is seen that two swords, two cookery and two iron rods alleged to have been used in the commission of alleged offences. Even though injury certificate reflects nature of injury as CLW, it can not be ruled out use of

sword. A sword has two sides, one is of sharp and one is of blunt. As such, it is difficult to accept the arguments advanced by Mr. Maesh Kale, learned Advocate for the applicants that injury of CLW cannot be caused by use of sword. Further it is evident from the police papers that there are eye witnesses, more than five in number, who have categorically stated about the role of each applicant in the commission of alleged offences. The investigation seems to have reached at crucial stage and the important task of recovery of weapons yet to be made.

7. Another important aspect is about tampering of witnesses. As pointed out earlier, there are two groups and there was riot between two groups and members of both groups have sustained injuries. In this background and in view of the fact that they are from the same town, the possibility of tampering of witnesses cannot be ruled out. In order to complete the investigation in a smooth way and to recover the weapons during course of investigation, it is not a fit case to grant anticipatory bail to the applicants. With this I conclude and proceed to pass the following order.

ORDER

. The application for anticipatory bail moved by the

applicants in connection with Crime No. 30 of 2021 registered at Beed City Police Station, Beed is hereby rejected.

. The observations made by this Court while deciding this application are prima facie to the extent of deciding this anticipatory bail application.

(SHRIKANT D. KULKARNI)
JUDGE