

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

8 ANTICIPATORY BAIL APPLICATION NO.442 OF 2021

1. MOHAMMED SADDAM HUSSAIN S/O MOHAMMED
IMADUDDIN
2. MOHD.RAZA RAHMAN S/O. MOHAMMED IMADUDDIN
VERSUS
THE STATE OF MAHARASHTRA & ANOTHER

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Mr.S.S.Kazi, Advocate for the applicants.
Mr.S.P.Deshmukh, APP for the respondent-State.

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**CORAM: MANGESH S. PATIL, J.
DATE : 07.06.2021**

P.C.

This is an application under Section 438 of the Criminal Procedure Code as the applicants are apprehending arrest in connection with Crime No.85/2021, registered with City Chowk Police Station, Aurangabad, for the offences punishable under Sections 353, 332, 504 and 506 r/w. 34 of the IPC.

2] FIR has been lodged by a public servant holding the post of Supervisor in the Municipal Corporation alleging that, while he was passing by the building owned by the father of the applicants, the father accosted the informant and assaulted him questioning him as to why notice was served to him asking him to arrange for dustbin in front of the Restaurant being run by them. It is alleged that the father as

well as the present applicants then assaulted the informant. When a lady scavenger tried to intervene even she was assaulted. FIR was lodged and the offence was registered.

3] I have heard the learned Advocate for the applicants as also learned APP. Perused the papers of investigation.

4] True it is that the father who happens to be the main accused who had accosted the informant has been granted anticipatory bail by the Sessions Court. Pertinently, it is taking into account the fact that he is aged 74 years and has undergone heart surgery that the learned Additional Sessions Judge was pleased to grant him anticipatory bail subject to usual conditions. It is not that the father of the applicant was granted anticipatory bail by considering the merits of the case. Obviously, therefore, the applicants are not entitled to claim any parity.

5] At this stage, very fact that a public servant has lodged the FIR making several allegations regarding involvement of the applicants coupled with the fact that there is a medical record not only in respect of him but also in respect of the lady scavenger whose statement has also been recorded clearly shows that indeed, the informant and lady were assaulted for the reasons mentioned in the FIR.

6] It is being alleged that a handle of spade was used in the process which has already been recovered. The event discloses that the assault was carried out by sharing a common intention. It is necessary to remember that considering the rise in the cases of assault on public servants, offence punishable under Section 353 of IPC has now been made triable by Court of Sessions which was earlier triable by a Magistrate. Bearing in mind this fact and sufficient material revealing involvement of the applicants in commission of the crime, they are not entitled to anticipatory bail.

7] Application is rejected.

8] Interim protection granted to the applicant no.2 stands withdrawn.

[MANGESH S. PATIL, J.]

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