

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 473 OF 2021

1. Nigar Sultana d/o. Saleem Khan,
Age 39 years, Occu. Household
 2. Khawja Abdul Mukshid @ Mushu
s/o. Abdul Basit,
Age 19 years, Occu. Education,
 3. Ahmed Khan s/o. Saleem Khan,
Age 42 years, Occu. Business,
 4. Imran Khan s/o. Salim Khan,
Age 38 years, Occu. Business
All resident of Gaus Colony,
Dargah Road, Parbhani
- .. Applicants
(Original Accused)

Versus

The State of Maharashtra
Through Police Station Kotwali Parbhani .. Respondent

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Mr. Hamzakhan I. Pathan, Advocate for Applicants
Mr. V. M. Kangne, APP for respondent – State.

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CORAM : MANGESH S. PATIL, J.

DATE : 17.06.2021

PER COURT :-

1. This is an application under Section 438 of the Code of Criminal Procedure, as the applicants are apprehending their arrested in connection with Crime No. 49 of 2021 registered with Kotwali Police Station, Parbhani for the offences punishable under Sections 307, 326, 324, 323, 504, 506, 143, 147 and 148 read with Section 149 of the Indian Penal Code.

2. Briefly stated the allegations are to the effect that on account of some dispute amongst the children from two families, one that of the applicants and other of the informant, many family members of both sides indulged in a free fight on 30-01-2021. One Majidkhan from the family of the applicants, in fact, succumbed to the injuries, about which a separate crime has been registered. However, simultaneously, even several persons from the family of the informant were assaulted by applicants and co-accused, regarding which present crime is registered.

3. Learned Advocate for the applicants would submit that FIR is false and fabricated. There is inordinate delay in lodging the FIR. The incident had taken place on 30th January 2021, but the FIR has been lodged in the month of March 2021. No plausible explanation is coming forth. In fact, Majidkhan, who happened to be a member of the family of the applicants was murdered by the informant and his family members, regarding which crime was registered promptly. He would further submit that no plausible explanation is coming forth as to why the injured were not taken to the Government Hospital and criminal law was not set into motion promptly, if they were so taken. He would submit that custodial interrogation of the applicants is not necessary. The applicant No.1 is a *pardanashin* lady whereas applicant No. 2 is the student of 12th standard. Other two applicants are the only earning members of the family. They are not criminals. There are no antecedents. They are not likely to jump the bail. They are ready to co-operate the Investigating Officer and the application may be allowed.

4. Learned APP by referring the papers of investigation strongly opposes the application. He would submit that the contents in the FIR, which has been registered at the instance of the applicants should be sufficient to infer that they were actually present at the scene of crime at the material time. He would further point out that three persons from the informant's family had sustained injuries, which are specifically attributable to each of the applicants, who have used the weapons like an iron rod and a hoe. The injuries have been inflicted on the vital part of the body. In fact, one of the injured has sustained grievous injuries. The weapons are to be recovered. There is specific role attributed to each of the applicants and their custodial interrogation is necessary.

5. Learned APP would lastly submit that the FIR specifically makes an attempt to explain the delay. All the three injured persons were taking treatment in the hospital. An attempt was made to approach the Police after they were discharged, but still the Police machinery was reluctant to receive their complaints and all these circumstances have caused delay. He would, therefore, submit that it is a clear case where involvement of the accused in the incident is writ large. The offence being serious, the application be rejected.

6. I have carefully gone through the papers of investigation. True it is that there is some delay in lodging the FIR, but FIR itself contains a plausible explanation for the delay, which may now have to be taken into consideration by the Trial Court and no weight can be attached to this fact at this juncture.

7. The fact remains that even FIR lodged at the instance of family members of the applicants clearly mentions about their presence at the scene of the crime. There is clear indication that family members of both sides indulged in a free fight. The applicants and deceased Majidkhan were armed with iron rods and hoe. Though unfortunately Majidkhan succumbed to the injuries sustained, simultaneously one cannot ignore the fact that three members of the informant's family also sustained injuries, one of them being grievous one. At this juncture, this much of material is indeed sufficient to show complicity of each of the applicants in commission of the crime. The offence is serious and punishable upto life imprisonment. The weapons are to be recovered and therefore the applicants are not entitled to anticipatory bail, except applicant No. 1, who being lady deserves to be extended a special consideration, albeit she has also allegedly played some role in the incident.

8. The Anticipatory Bail Application is partly allowed. In the event of the arrest of applicant No. 1 - Nigar Sultana d/o. Saleem Khan in connection with Crime No. 49 of 2021 registered with Kotwali Police Station, Parbhani, District Parbhani for the offences punishable under Sections 307, 326, 324, 323, 504, 506, 143, 147 and 148 read with Section 149 of the Indian Penal Code, she shall be released on bail on her executing a personal recognizance for an amount of Rs. 25,000/- (Rupees Twenty Five Thousand only) and furnishing a solvent surety in the like amount subject to following conditions –

(a) she shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him.

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

9. The Anticipatory Bail Application to the extent of applicant Nos. 2 to 4 is rejected.

Sd/-

**(MANGESH S. PATIL)
JUDGE**

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