

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

ANTICIPATORY BAIL APPLICATION NO.559 OF 2021

1] SACHIN EKNATH LAKADE

2] BHIMRAO VIKRAM KELE

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SUPERINTENDENT OF
POLICE OSMANABAD

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Advocate for Applicant : Mr. Vikram S. Undre
APP for Respondent/State : Mr. S.B. Narwade

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CORAM : MANGESH S. PATIL, J.

DATE : 03.07.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure as the applicants are apprehending arrest in connection with Crime No.95/2021 of Washi Police Station, District Osmanabad for the offence punishable under Sections 307, 395, 326, 147, 148, 149, 324, 323, 504 and 506 (2) of the Indian Penal Code.

2. The FIR has been lodged on 11.03.2021 alleging that on 12.02.2021 the applicants and the other accused assaulted the informant. They were carrying weapons like sword, sticks and had arrived at the spot on different vehicles. The applicant No.1 was carrying a sword, the applicant No.2 was carrying an iron rod. The applicant No.1 tried to give a blow of sword on the informant's head but witness Krushna pulled back the applicant No.1 avoiding any impact. In the meanwhile, the applicant No.2

hit the informant on head with the iron rod. After he fell down he was assaulted causing fracture to the little finger. The applicant No.1 thereafter tried to throttled him and removed a gold chain from around his neck. The applicant No.2 also removed cash of Rs.1,900/- from his pocket. Krushna took him to Washi Police Station where from he was referred to the Rural Hospital from where he was referred to Civil Hospital, Osmanabad. He received treatment in the Civil Hospital till 16.02.2021. A C.T. scan was done. He was ultimately discharged on 16.02.2021. Thereafter he took treatment in a private hospital. He then alleges that since 28.02.2021 he was attempting to register a crime but the Police did not cooperate him.

3. It is necessary to note that the informant preferred a private complaint on 06.03.2021. The learned Magistrate by the order dated 09.03.2021 directed the Police to investigate the matter under Section 156 (3) of the Code of Criminal Procedure. That is how the FIR was lodged and the offence has been registered.

4. The learned advocate for the applicants would submit that the whole case is riddled with concoction. In fact the incident was other way round. The informant and his associates had severely assaulted the applicant No.1. The applicant No.1 was suffering from injuries and was being treated. Though he was trying to register a crime the Police were not obliging him and he had to file a private complaint on 20.02.2021. By the order dated 23.02.2021 a direction was issued under Section 156(3) of the Code of Criminal Procedure to carry out the investigation into his complaint.

The learned advocate would point out that it is thereafter that a false and fabricated private complaint was filed by the informant on 06.03.2021 pursuant to which the present crime has been registered. He would submit that though the informant alleges that the incident has taken place on 12.02.2021 he has not come out with any plausible explanation as to why he could not approach the police or the court of Magistrate promptly. This enormous delay is sufficient to raise a reasonable doubt about veracity of the contents of the FIR. In any event there is every room to believe that the informant must have had sufficient opportunity to think over the matter and come with some improvised version. The applicants are ready to cooperate the Investigating Officer and they may be granted bail.

5. The learned APP opposes the Application. He submits that though there is some delay in lodging the FIR, one cannot brush it aside particularly when there is an injury certificate issued by the Rural Hospital Washi certifying that the informant was treated there on the self same day i.e. 12.02.2021. He would further submit that there is an eye witness Krushna Shivaji Thorat who was accompanying the informant when he was assaulted. He has specifically attributed specific role to each of the applicants. The weapon and the gold ornament as well as cash is to be recovered, which cannot happen unless an opportunity is extended to the Investigating Officer to resort to applicants' custodial interrogation. The offence being serious and punishable up to life imprisonment the application be rejected.

6. I have carefully gone through the papers of the investigation and have considered the rival submissions. Without intending to express any thing so as to influence either the investigation or the trial court, one cannot but emphasize the fact that there has been enormous delay in lodging the FIR. Coupled with the delay if one looks into the fact that the applicant No.1 had lodged a complaint on the basis of which Crime No.57/2021 was registered and it is thereafter that the present FIR has been lodged, in my considered view, is a clinching circumstance which creates a grave suspicion and requires the Court to scrutinize the allegations in the FIR threadbare.

7. Conspicuously, except a bald statement that the police were not taking cognizance there is no plausible explanation coming forth in the FIR for the enormous delay. If really it was an incident of formation of an unlawful assembly with the object of assaulting the informant and may be to kill him which incident had taken place in a broad day light, it must have been witnessed by several persons. However, except the persons who are co-accused in a crime registered at the instance of the applicant No.1 there is no statement of any independent witness.

8. Though a deadly weapon like a sword is stated to have been carried by the applicant, since no injury compatible with the use of such a sharp weapon was sustained by the informant, perhaps the FIR alleges that witness Krushna has pulled back the applicant while the latter was trying to hit the informant with the sword. It is also being now asserted that even the

applicant No.1 tried to throttled the informant.

9. True it is that the very fact of lodging of a complaint and registration of a crime at the instance of the applicant in respect of an incident which had taken place at the same time and place is indicative of presence of the applicants at the scene of the crime. But then aforementioned facts and circumstances at the backdrop of the alarming delay in lodging the FIR creates a serious doubt about the veracity of the contents of the FIR.

10. It is now being informed that the bail applications of the informant and couple of other accused persons in the crime registered at the instance of the applicant No.1 and who are some of the witnesses in the present crime, have been rejected by this Court. Considering all the aforementioned facts and circumstances in my view the applicants deserve to be granted anticipatory bail subject to usual terms and conditions.

11. The Application is allowed. In the event of arrest of the Applicants in connection with Crime No.95/2021 of Washi Police Station, District Osmanabad for the offence punishable under Sections 307, 395, 326, 147, 148, 149, 324, 323, 504 and 506 (2) of the Indian Penal Code, they shall be released on bail on their executing personal recognizance for an amount of Rs.25,000/- (Rs. Twenty Five Thousand only) each and furnishing solvent surety each in the like amount subject to following conditions :

a) They shall attend the concerned Police Station on every

Tuesday starting from 06.07.2021 between 11:00 am to
1:00 pm till filing of the charge sheet.

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

(MANGESH S. PATIL, J.)

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