

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

ANTICIPATORY BAIL APPLICATION NO. 578 OF 2021

1. Babusing s/o Vitthalsing Khandade,
Age : 53 years, Occu. Agri.,
2. Bahadoorsing s/o Vitthalsing Khandade,
Age : 56 years, Occu. Agri.,

R/o. Pachanwadgaon, Tq. & Dist. Jalna.

...Applicants

Versus

The State of Maharashtra

...Respondent

.....
Mr. Abhaysinh K. Bhosle, Advocate for the applicants
Mr. A. V. Deshmukh, APP for respondent / State
.....

CORAM : V. G. BISHT, J.

RESERVED ON : 23rd August, 2021
PRONOUNCED ON : 01st September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0079 of 2021, registered with Maujpuri Police Station, District Jalna, for the offences punishable u/s 307, 326, 365, 143, 147, 148, 149, 506, 188, 269, 270 of the Indian Penal Code, u/s 4/25 of the Arms Act and u/s 51B of Disaster Management Act.

2. It is the case of the prosecution that on 29.04.2021 at about 03:00 pm, accused Udalsing Babusing Khandade, Babusing Khandade, Mardan, Rana, Nayansing, who are brother, father and cousins of the daughter-in-law of the informant, respectively, and others came in front of the house of the informant armed with sword and with a view to kill informant's son Dnyaneshwar, repeatedly stabbed him and when informant's nephew intervened, a person wearing saffron colour shirt stabbed him by means of sword. When informant's another son Rameshwar intervened, he was also assaulted on his head and accordingly, FIR came to be registered against the said accused.

3. Mr. Abhaysinh K. Bhosle, learned Counsel for the applicants, submits that the names of the applicants are nowhere mentioned in the FIR. There is no iota of evidence against them. Moreover, original assailants have already been apprehended by the police and weapons are also seized. Therefore, the present application deserves to be allowed, argued learned Counsel.

4. Mr. A. V. Deshmukh, learned APP, on the other hand, vehemently opposed the submissions by contending that this is a case

of honour killing. There are eye-witnesses to the incident. The accused have brutally assaulted the informant's son and nephew. There is sufficient evidence on record to prove the complicity of the applicants in the offence and in such circumstances, the application deserves to be rejected.

5. I have gone through the FIR as well as investigation papers submitted by the learned APP during the course of argument. Admittedly, at the time of lodging the FIR the names of the present applicants were not given. However, subsequently, during the course of investigation their names came to be added. There is no dispute to the fact that absolutely no overt act is attributed on the part of the present applicants.

6. I have also gone through the impugned order of the learned Additional Sessions Judge-4, Jalna. The learned Additional Sessions Judge has made some observations in para 6 of the impugned order and the learned Additional Sessions Judge found that the prosecution witness namely, Uma told Dnyaneshwar that at the time of incident present applicant no. 1, who is father of Uma, was present on the spot of incident and also participated in beating injured. Similarly,

one of the accused disclosed that applicant no. 2 herein was also present with sword on the spot of the incident.

7. As far as prosecution witness Uma is concerned, her statement is very much available on record. Interestingly, her statement nowhere attributes the presence of either of the applicants or any role played by them in the alleged incident. As far as other observation of learned Additional Sessions Judge that one of the co-accused revealed the name of applicant no. 2 is concerned, that being the statement of co-accused, in my considered opinion, that will not further the case of prosecution.

8. Except the above, *prima facie* there is absolutely nothing on record to connect the present applicants even remotely to the alleged offences. I have gone through the record and statements of the eye-witnesses which are made available for my perusal. I do not find the names of present applicants or any role played by them in the alleged incident.

9. In view of above, although it may be the case of honour killing as is canvassed by learned APP, fact remains that no such

material is forthcoming to *prima facie* show the involvement of the applicants in the alleged offences. Therefore, I am inclined to allow the present application. Hence the following order.

ORDER

- i] The application is allowed.
- ii] In the event of arrest of the applicants herein in connection with Crime No. 0079 of 2021, registered with Maujpuri Police Station, District Jalna, for the offences punishable u/s 307, 326, 365, 143, 147, 148, 149, 506, 188, 269, 270 of the Indian Penal Code, u/s 4/25 of Arms Act and u/s 51B of Disaster Management Act, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty Five thousand] each, with one or two solvent sureties in the like amount.
- iii] The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv] The applicants shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE