

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

ANTICIPATORY BAIL APPLICATION NO. 828 OF 2021

1. Shaikh Nasir s/o Shaikh Habib,
Age : 36 years, Occu. Labour.
2. Shaikh Ejaz s/o Shaikh Habib,
Age : 23 years, Occu. Labour,
Both R/o. Sakhla Plot, Parbhani,
Tq. & Dist. Parbhani.
3. Lalkha s/o Hasansaheb Syed,
Age : 40 years, Occu. Labour.
4. Amtul s/o Khutub Syed,
Age : 32 years, Occu. Contractor,
Nos. 3 & 4 both R/o. Village Kodari,
Tq. Gangakhed, Dist. Parbhani.

...Applicants

(Orig. accused nos. 5, 6, 7 & 8 shown in FIR)

Versus

The State of Maharashtra

...Respondent

.....

Mr. S. J. Salunke, Advocate for the applicants
Mr. V. M. Kagne, APP for respondent / State

.....

AND
CRIMINAL APPLICATION NO. 1688 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 828 OF 2021

CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 10th AUGUST, 2021
DATE OF PRONOUNCING THE ORDER : 18th AUGUST, 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. 0120 of 2021, registered with Renapur Police Station, District Latur, for the offences punishable under Sections 143, 147, 148, 149, 325, 324, 323, 504 and 506 of the Indian Penal Code.

2. On 21.03.2021, at about 03:00 p.m., the informant's son namely Sharifkha informed him that Khayyum Rajjaq Shaikh had called him for measurement of land in the field and asked him to accompany. Accordingly, the informant and his son along with others went to the field at about 03:30 p.m. Khayyum Rajjaq Shaikh, Afzal Raheman Shaikh, Aslam Raheman Shaikh, Hamid Yunus Sayyed and others namely Daulat Shaikh, Siraj Habib Shaikh, Nasir Habib Shaikh (Applicant no.1), Ejaj Habib Shaikh (Applicant no.2), Lalkha Hussain Sayyed (Applicant no.3) and Amtul Khudub Sayyed (Applicant no.4) were also there. Out of them, applicant nos. 2 and 4 were armed with sticks. At that point of time, Siraj Habib Shaikh asked informant's son as to why he had ploughed the land and started abusing and also beat

by means of sticks. Applicant nos. 2 and 4 also started beating son of informant by means of sticks. When informant intervened, he was also assaulted by means of stick and caused injury. Similarly, applicant no. 1 inflicted blows of stick on informant's right thigh, right hand and back. Applicant no. 3 also beat informant, his son and grandson by means of kicks and fist blows.

3. Mr. Sudarshan J. Salunke, learned Counsel for the applicants, submits that having regard to the allegations as against the present applicants, the custodial interrogation of the applicants' is not at all necessary. Moreover, counter FIR is registered against the present applicants and others and, therefore, just to give counterblast the present applicants have been falsely implicated. Learned Counsel also invited my attention to paragraph no. 122(vii) of the judgment delivered in **Siddharam Satlingappa Mhetre v. State of Maharashtra and Ors.** reported in 2011 AIR SCW 3813.

4. Per contra, Mr. Kagne, learned APP, opposed the submissions by contending that during the assault, three persons were injured apart from the deceased. The incident is supported by independent witness. Having regard to the cause of death, which was

due to fracture on the parts of the body, the present application should not be entertained.

5. In paragraph no. 122 of **Siddharam** (supra), the Hon'ble Apex Court enumerated various factors and parameters while dealing with the anticipatory bail, of which particularly sub-clause (vii) lays down that the Court must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over-implication in the cases is a matter of common knowledge and concern.

6. I have carefully gone through the contents of the FIR. The role attributed to the applicant no. 1 is that, he had assaulted the informant on his right thigh, right hand and on the back. Similarly, applicant nos. 2 and 4 had allegedly assaulted the son of informant by means of sticks. Applicant no. 3 had inflicted fists and kick blows to the informant. Thus, *prima facie*, the FIR does not allege that all these accused had, in any manner, used sticks while assaulting on the vital

parts of the body. Moreover, the criminal antecedents are not brought on record. The applicants are permanent resident of their respective villages and there is no material on record to show that they would flee from justice if they are granted anticipatory bail.

7. In view of the above, I am inclined to allow application. Hence, the following order.

ORDER

- i. In the event of arrest of the applicants herein in connection with Crime No. 0120 of 2021, registered with Renapur Police Station, District Latur, for the offences punishable under Sections 143, 147, 148, 149, 325, 324, 323, 504 and 506 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs. 20,000/- [Rs. Twenty thousand only] each, with one or two solvent sureties in the like amount.
- ii. The applicants shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
- iii. The applicants shall not tamper with the prosecution evidence in any manner.

8. Criminal Application No. 828 of 2021 stands disposed of in the aforesaid terms.

9. Pending Criminal Application, if any, stands disposed of.

[V. G. BISHT]
JUDGE