

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.895 OF 2021

(1) Shaikh Mohammad Asif Ejajuddin,
(2) Mohammad Sadiq Ejajuddin ...Applicants

Versus

The State of Maharashtra ... Respondent

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Advocate for the Applicants : Mr. V. B. Patil and
Mr. S. S. Chitre
APP for the Respondent – State : Mr. S. B. Narwade
Advocate for the informant to assist APP : Mr. S. V. Dixit

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CORAM : V. G. BISHT, J.

DATE : 15th 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 75/2019, registered with Faizpur Police Station, District Jalgaon for the offences punishable under Sections 307, 326, 324, 323, 504, 506 read with Section 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution that on 16.10.2019 at about 09.00 to 09.30 a.m. Asifuddin Ejajuddin (applicant No.1), Sadiq Ejajuddin (applicant No.2), Javed Ejajuddin and Mustaq

Jahiruddin visited the house of informant and told that since they want to construct a house and he should leave 10 feet of space as it does not belong to his father. As informant refused, it is alleged all the abovesaid persons started abusing informant and his children and accused Javed Ejajuddin picked up a spade and gave a blow on the head of son of informant. Rest of the accused/aplicants assaulted by means of sticks. The informant accordingly lodged the report.

3. Mr. V. B. Patil , learned counsel for the applicants, submits that as far as the role of present applicants are concerned it is alleged that they used sticks while assaulting the informant and his son. Therefore, the ingredients of Section 307 are not attracted against them. There is nothing to be recovered from applicants and in such circumstances, the application deserves consideration.

4. Mr. S. B. Narwade, learned APP for the Respondent - State, on the other hand, opposed the submissions by contending that during the course of investigation the statement of injured was recorded wherein he stated that he was caught hold of by applicant No.2 whereas accused Javed had given a blow of spade on his head. Interestingly, the

statement of this witness is in sharp contradiction to the contents of the First Information Report lodged by his father. F.I.R. nowhere shows that son of informant was caught hold of by applicant No.2 and it is then accused Javed Ejajuddin had given a blow on his head.

5. I have gone through the investigation papers and more particularly the Medical Certificate issued by Adit Neurosurgical and Maternity Hospital – Trauma Centre wherein the concerned doctor found in C.T. Brain, fracture of right parietal bone. The nature of injury was grievous. This injury may be attributed to the assault which was launched by accused Javed Ejajuddin on the head of victim by means of spade. Similar injury was noted by Medical officer, Rural Hospital, Nhavi, Taluka Yawal, Dist. Jalgaon. The latter Injury Certificate also noted blunt trauma to back with tenderness. It further noted that no external injuries mark were seen and he was referred to Civil Hospital, Jalgaon. General Hospital, Jalgaon after taking C. T. Scan found epidural haemorrhage and small haemorrhage contusion in right parietal lobe. Accordingly all injuries prima-facie can be attributed to the overt act indulged in by accused Javed Ejajuddin.

6. I have also gone through the N.C vide under Section 155 of Cr.P.C. by the victim herein, namely, Nakibul Islam Mohd. Nazim Faruqi on 14.09.2021. It is alleged in the N.C. that on 14.09.2021 applicant Mohd. Asif Ejajuddin had abused and threatened the victim with spade. It may not be out of place to mention here that when the said N.C. came to be filed there was no interim protection of any nature operating in favour of any of the applicants. Since now the application is being allowed, necessary care can be taken by imposing suitable conditions upon the applicants and those conditions will take care of the future act, if any, of the applicants.

7. Having regard to the accusation and Medical Certificate and the alleged role played by the applicants, in my considered opinion, the present application deserves consideration.

8. In view of above, I pass the following order :-

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest of the applicants - (1) Shaikh Mohammad Asif Ejajuddin, (2) Mohammad Sadiq Ejajuddin herein in connection with Crime No. 75/2019, registered with Faizpur Police Station, District Jalgaon for the offences punishable under Sections 307, 326, 324,

323, 504, 506 read with Section 34 of the Indian Penal Code, 1860, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.20,000/- (Rupees Twenty Thousand only), each with one or two sureties in the like amount.

- (iii) The applicants shall attend 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) The applicants shall not indulge in such kind of activities.
- (vi) Application is accordingly disposed off.

(V. G. BISHT)
JUDGE

shp/-