

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

ANTICIPATORY BAIL APPLICATION NO. 1001 OF 2021

1. Mohammed Bilal Yunus Khatik ... **Applicants**
Age 25 years, Occu: Labourer
R/o Garib Nawaj Colony,
Dondaicha, Tq. Sindkheda, Dist. Dhule.
2. Quadir Noor Mohammed Lohar
Age 34 Years, Occu: Labourer
R/o Abdul Hamid Chowk,
Dondaicha, Tq. Sindkheda, Dist. Dhule.

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through Police Station Officer,
Dondaicha Police Station, Dondaicha
District Dhule
2. The Superintendent of Police
Dhule, Tq. & Dist. Dhule

Mr. Syed Azizoddin R. Advocate for the applicants
Mr. Mr. S. B. Narwade, APP for the Respondent-State

CORAM : V. G. BISHT, J.
RESERVED ON : 16th September, 2021.
PRONOUNCED ON : 21st September, 2021

ORDER:

1. The present application under section 438 of the Code of Criminal Procedure, 1973 is preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 48/2021 registered with Dondaicha Police Station, District Dhule for the offences punishable under Sections 307, 353, 332, 333, 225, 143, 145, 147, 149, 269, 270, 271, 504 of the Indian Penal Code, 1860, Sections 37(1)(3), 135 of the Maharashtra Police Act and Sections 2, 3 4 of Epidemic Diseases Act,

1897 and Section 11 of the Maharashtra Covid-19 Rules, 2020.

2. It is the case of prosecution that on 31.03.2021, the accused Lulya alias Sharif Shaikh Saleem Shaikh and Imran Shaikh Saleem Shaikh were taken into custody in connection with Crime No. 47/2021 registered with Dondaicha Police Station for the offences punishable under sections 354(A)(D), 504, 506, 427 IPC and sections 11, 12 and 18 of the Protection of Children from Sexual Offences Act, 2012. The prosecution alleges that after some time, 19 persons including the present applicants followed by 150 to 200 persons from the Muslim community gathered around the police station, protesting the arrest of the said accused. They did not listen and started abusing and pelting stones and thereby caused injuries to the police personnel.

3. Mr. Syed Azizoddin R., learned counsel for the applicants, at the outset, submits that there is delay of 8 hours in lodging the first information report. In the similarly situated condition, this court has granted benefit of pre-arrest bail to the other accused. There is no difference in the facts and circumstances of the case and therefore, on the ground of parity, the present applicants also be given benefit of pre-arrest bail. Besides, having regard to the allegations, there is no necessity of custodial interrogation and in such circumstance, the present application deserves to be allowed, argued learned counsel.

4. Mr. S. B. Narwade, learned A.P.P., on the other hand, would oppose the submissions by contending that the present applicants alongwith mob of 150 to 200 persons gathered at the police station and started pelting stones resulting into injuries to the police personnel. Learned A.P.P. also invited my attention to the injury certificates. Regarding the parity aspect, according to learned A.P.P., the role of the present applicants are different than the others who have been granted the benefit of pre-arrest bail. There being no merit in the application, the same is liable to be rejected.

5. I have carefully gone through the first information report and as also the investigation papers. The first information report would show that the present applicants and others had gathered in the police station with a view to protest the arrest of those accused persons named in the first information report (Crime No. 47/2021). The allegations against the present applicants and others are that they indulged in stone pelting and thus attempted to kill the police personnel on duty. They used criminal force also to deter the public servants from discharging their duties.

6. Reading of the first information report as a whole would show that there is no distinguishable facts as regards the present applicants vis-a-vis the accused who have been granted benefit of pre-arrest bail. In such circumstance, I do not agree with the submission of learned A.P.P. that the present applicants cannot claim parity.

7. I have also gone through the medical certificates filed on record. Admittedly, two police personnel sustained injuries but at the same time, these applicants also sustained injuries which is apparent from the injury certificates issued by the General Hospital, Dhule. What is pertinent to note is that the cause of injuries was use of fire arm weapon and nature of injury sustained by these applicants were grievous in nature. It also goes to show that they were subjected to assault by the police personnel on duty albeit may be with a view to control the mob violence.

8. Apart from above, having regard to the material on record, in my considered opinion, this is not a case of custodial interrogation. In such circumstance, I am inclined to allow the application. Hence, the following order.

O R D E R

In the event of arrest of the applicants in connection with Crime No. 48/2021 registered with Dondaicha Police Station, District Dhule for the offences punishable under Sections 307, 353, 332, 333, 225, 143, 145, 147, 149, 269, 270, 271, 504 of the Indian Penal Code, 1860, Sections 37(1)(3), 135 of the Maharashtra Police Act and under sections 2, 3 4 of Epidemic Diseases Act, 1897 and Section 11 of the Maharashtra Covid-

19 Rules, 2020, 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.

9. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC