

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

912 BAIL APPLICATION NO.1297 OF 2021

MOHAMMAD KHADIR MOHAMMAD FAIMODDIN MOMIN AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. H.V. Tungar, Advocate for applicants

Mr. V.M. Kagne, APP for the respondent

Mr. V.S. Kadam and Mr. S.S. Kulkarni, Advocates for assist to APP

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 08th DECEMBER, 2021

ORDER :

1 Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973. The applicants, who are the accused Nos.5, 6 and 8, have been arrested in connection with Crime No.188/2021 dated 23.09.2021 registered with Peth Beed Police Station, Dist. Beed, for the offence punishable under Section 307, 326, 452, 336, 337, 427, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code, 1860.

2 Heard Learned Advocate Mr. H.V. Tungar for applicants and learned APP Mr. V.M. Kagne for the respondent.

3 First Information Report has been lodged by one Mohd. Imran Mohd. Rafiq in respect of the incident that had taken place at 7.00 p.m. on 22.09.2021. He has given the history of the earlier date and he says that the dispute was raised by the accused persons in respect of the decision by the informant to purchase shop belonging to one Mainoddin Tailor, which was adjacent to the shop premises of the informant. He says that the present applicants were interested in purchasing that premises. On the earlier day the accused persons had manhandled them and abused them. The father of the informant had put end the dispute on the earlier day by calling certain respectable persons. However, on the next day i.e. on 22.09.2021 at about 11.00 a.m. accused Momin Syed Momin Zahiroddin went to the shop of informant and told that two days time is given to vacate the premises to them and threats were given. Thereafter, at about 7.00 p.m. when informant, his uncle and uncle's son were going home after offering the Namaz, they found Momin Syed Momin Zahiroddin near a pan shop. He started abusing informant. Informant asked him not to abuse, but then Mohd. Syed took out knife and rushed towards informant to assault him. He was about to give that blow on the neck of the informant, at that time, the cousin brother of the informant caught hold of the hand of accused Momin. As regards present applicants are concerned, it is stated that on the instigation of accused Mohd. Syed they had assaulted the informant by wooden stick on the head of the

informant. It was their intention to kill the informant and the others accompanying him.

4 Perusal of the police papers would show that the incident has been witnessed by many persons and they are consistent enough in saying that the applicants were holding wooden sticks. It can be seen that the situs chosen i.e. head is vital part. One Mohd. Ifroz, who has received the injuries on his head, was initially admitted to Government Hospital, Beed and then was required to shift to Kakunana Memorial Hospital, Beed and then he was required to shift to Yashoda Hospital at Hyderabad. Further, it can be seen that cross complaint appears to have been filed from the side of the applicants, however, it is subsequent, that is, filed at 2.49 p.m. on 23.09.2021. Further, it is to be noted that the informant in this case i.e. Mohd. Imran Mohd. Rafiq, who was accused in cross case bearing Crime No.189/2021 expired on 25.09.2021 while undergoing treatment at GHATI, Aurangabad. The police papers do not contain the Postmortem report. The investigation is still going on. Under such circumstance, this is not a fit case to release the applicants on bail, at this stage. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)