

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

BAIL APPLICATION NO.1558 OF 2020

Younus Yousuf Shaikh ...Applicant

Versus

The State of Maharashtra ...Respondent

...

Mr. G.R. Syed, Advocate for the applicant.

Mr. A.M. Phule, APP for the respondent-State.

...

**CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 15th JANUARY, 2021
PRONOUNCED ON : 27th JANUARY, 2021**

ORDER:-

1. Present applicant has been arrested in connection with Crime No.808 of 2020 registered with Nandurbar City Police Station, Nandurbar, Taluka and District Nandurbar, for the offence punishable under Sections 307, 452, 323, 143, 147, 148, 149, 109, 504, 506 read with Section 34 of the Indian Penal Code. He has therefore filed the present application for bail under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. G.R. Syed for the applicant and the learned APP Mr. A.M. Phule for the respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. It can be seen from the FIR and other papers that there is huge and intentional delay by suppressing real facts in lodging the FIR.

The entire family has been roped unnecessarily. Now, the investigation is over and charge sheet has been filed. The medical report would show offence under Section 307 of the Indian Penal Code is not made out. The applicant is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the application and submitted that almost all the witnesses are corroborating the fact that the present applicant was armed with iron rod and he had assaulted son of the informant. The said blow has been received by the son on his forehead. The said blow was given with an intention to kill and the force behind the blow can be seen from the fact that the nasal bone of the son of the informant is fractured. Serious offence has been committed and the fact that the accused persons are also residing in the same vicinity where the informant and witnesses are residing, therefore, possibility of tampering cannot be ruled out.

5. At the outset, it can be seen that the investigation is over and charge sheet has been filed. Therefore, the custody of the applicant for the purpose of investigation is not required. It is now required to be seen as to what evidence that is produced on record. One Shaikh Kalim Shaikh Kasam Patwe is the informant. He has stated that at about 08.00 pm on 12.09.2020, one Liyakhat Bagwan had abused his nephew

Zuber. There was then a dispute between brother of the informant i.e father of Zuber and said Liyakhat Bagwan, but that dispute was resolved amicably. However, thereafter at about 09.30 pm, one Arbaz, Samir, Younus i.e. present applicant, wife and sister of one Haroon entered into the house of the informant. Informant was with his wife and son Mohsin. They started abusing them. Sameer and Arbaz were having iron pipes and Younus and his son was also holding iron pipes. When the informant and his son Mohsin went towards them for persuasion, at that time all the four persons started assaulting the informant and his son with an intention to kill them. Sameer and Arbaz assaulted the informant with iron pipe whereas, Younus and his son had assaulted Mohsin with their iron pipes. Sameer and Arbaz had then expressed their intention that they would eliminate them on that day. Informant's wife was assaulted by wife and sister of Haroon.

6. It appears that the FIR came to be lodged at about 03.37 am on 13.09.2020 when informant was admitted in hospital and infact, the endorsement of the medical officer about his consciousness has been taken on 01.10 am. There is no much delay as has been tried to be contended by the learned Advocate for the applicant. Every delay is not fatal to the case of the prosecution.

7. Statements of witnesses have been recorded, who

have echoed the same contents. There appears to be recovery from one Arbaz under Section 27 of the Indian Evidence Act in respect of the weapons those were used in commission of the crime. Statements of witnesses under Section 164 of the Code of Criminal Procedure have also been recorded. From the present applicant, his clothes have been recovered. It will not be out of place to mention here that, it was submitted by the learned Advocate for the applicant that applicant had also received injuries in the same incident and FIR has been lodged in respect of that offence, which is stated to be committed by the informant and his family members. Therefore, taking into consideration this aspect, possibility of blood stains on the clothes of the applicant which have been seized in this matter cannot be ruled out. The injury certificates are important and as regards the present applicant is concerned, it is stated that he has assaulted the son of the informant by name Shaikh Mohsin Shaikh Kalim. Provisional injury certificate has been produced along with the charge sheet which show lacerated wound root on nose, which is stated to be within four hours with hard and blunt object and it is stated to be grievous. The CT Scan provisional report says that there was displaced fracture bilateral to the nasal bone. The provisional certificate also says that CT Scan report of brain was normal. Thus, there is fracture to the nasal bone to Mohsin. The said certificate issued on 13.09.2020 does not say that the said injury was

fatal to the life of the patient. One more injury certificate which appears to be issued earlier in time by Civil Hospital Nandurbar would show that there were two injuries that were noted on Mohsin, but both of them are on nose. Final medical certificate appears to be not issued uptil now. Therefore, on the basis of the material that was placed along with the charge sheet, it is less likely that Section 307 of the Indian Penal Code would be attracted.

8. The investigation is over and charge sheet has also been filed. It would take much time to stand the trial and therefore, the application deserves to be allowed. Merely because, the accused are also residing in the same vicinity, we cannot deprive the liberty which is enshrined under the Constitution of India. Conditions are definitely required to be imposed. Hence, the following is passed.

ORDER

- I) The application stands allowed.
- II) The applicant viz. Younus Yousuf Shaikh arrested in connection with Crime No.808 of 2020 registered with Nandurbar City Police Station, Nandurbar Taluka and District Nandurbar, for the offence punishable under Sections 307, 452, 323, 143, 147, 148, 149, 109, 504, 506 read with Section 34 of the Indian Penal Code, be released on P.R. of Rs. 30,000/- (thirty thousand) with two solvent sureties of Rs.15,000/- (fifteen thousand) each.

- III) The applicant shall not tamper with the evidence of the prosecution in any manner.
- IV) The applicant shall not indulge in any criminal activity.
- V) The applicant to comply the requirements under Para 12 (1) to (6) of Chapter-I of Criminal Manual before the trial Court (whichever are applicable).
- VI) Bail before the trial Court.

(SMT. VIBHA KANKANWADI, J.)

Mujaheed//