

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

ANTICIPATORY BAIL APPLICATION NO. 1314 OF 2021

Mohammad Faran s/o Latif ... **Applicant**
Age 24 years, Occu: Education
R/o Galli No.7, Bari Colony, Aurangabad

VERSUS

The State of Maharashtra, ... **Respondent**

Mr. Latif M. A. Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.

CORAM : PRAKASH D. NAIK, J.

DATE : 17th November, 2021

ORDER:

1. This is an application for pre-arrest bail in Crime No. 184 of 2021 registered with Jinsi Police Station, Aurangabad for the offences under section 307, 323, 504 and 506 of the Indian Penal Code (for short "IPC").

2. This is the second application for anticipatory bail before this Court. Previous application was disposed of vide order dated 11.08.2021. The said order indicates that after hearing the arguments, when the Court had expressed disinclination to grant relief, the Advocate appearing for the applicant sought leave to withdraw the application. In view of the submission, leave was granted and the application was disposed of as withdrawn.

3. The case of the prosecution is that on 2nd May, 2021, the applicant accused had assaulted the injured with knife by giving blow on abdomen.

4. The applicant had initially preferred application for anticipatory bail before the Court of Sessions which was rejected vide order dated 25.05.2021. Thereafter, application preferred before this Court was withdrawn on 11.08.2021 since the Court was not inclined to grant the relief. The applicant then moved application before the Sessions Court which was rejected vide order dated 20.10.2021. In pursuant to the aforesaid order the applicant has preferred the present application before this Court.

5. It is pertinent to note that the FIR was registered on 2nd May, 2021. The applications were repeatedly rejected. Apparently the applicant has been absconding by evading arrest.

6. Learned counsel for the applicant submitted that there is change in circumstance. He relied upon the injury certificate which has been annexed to this application and statement of witness Saif Jafar recorded on 03.05.2021. On the basis of these two documents, it is submitted that the injured had sustained three injuries which were simple in nature. There was no intention to commit murder. Section 307 IPC is not attracted. At the most, the offence could be under section

324 IPC. Statement of the said witness referred herein above indicates that injured was carrying knife in his hand. He tried to assault the accused. Injured was admitted in the Hospital by the said witness. It is further submitted that the applicant is young student. He has no criminal antecedents. His custodial interrogation is not necessary.

7. The learned counsel relied on the decision of the Apex Court in the case of **Sushila Aggarwal and others Vs. State (NCT of Delhi) and another (2020) 5 SCC 1**. Reliance is placed on the observation made in paragraphs 92.7 and 92.8 of the said decision. It is submitted that the applicant need not be subjected to custodial interrogation. The weapon can be recovered without subjecting him to custody. Arrest of the applicant would jeopardize his career. Hence, the application may be allowed.

8. Learned A.P.P. submitted that this is the second application for anticipatory bail. Previous application was disposed of as the court was not inclined to grant relief. This application is not maintainable. There is no change in circumstances. It is not clear as to how the applicant is in possession of the statement of witness dated 03.05.2021 which has been annexed to the application and relied upon by the learned counsel for the applicant. It is further submitted that injury certificate indicate that there were injuries on right arm, abdomen and left hand. Knife is required to be recovered. Statement of the injured was recorded. The

applicant has been named in the statement and specific overt act is attributed to the applicant. Learned APP pointed out the medical case papers of the injured which indicate that there were penetrating injuries over the abdomen. He has also pointed out the station diary entries which indicate that attempts were made to search the applicant but he was not found.

9. I have perused the documents annexed to this application and the investigation papers produced by the learned A.P.P. It is pertinent to note that the FIR was registered on 2nd May, 2021. Specific overt act has been attributed to the applicant. Apart from the complainant, the injured has also ascribed the overt act to the applicant having assaulted with knife. Apart from other parts of the body, blow was given on the abdomen. Apparently he has been absconding from 2nd May, 2021. Previous application has been withdrawn since the Court was not inclined to grant relief. Injuries were of penetrating nature. It is relevant to note that there were stab wounds on the abdomen at the instance of the applicant by using knife. The submission that section 307 is not attracted is devoid of merits.

10. I have perused the statement of the witness annexed to the application. It is not clear what is the source of collecting the statement. The statement indicate that witness was accompanying the accused and apparently he has alleged that the injured was armed with

knife and he attempted to assault accused. Thereafter the accused snatched the knife and gave two blows on abdomen. The statement of this witness about assault on injured runs in consistent with the version of the complainant as well as injured person. I have also perused the decision of the Apex Court in **Sushila Aggarwal and others (supra)** relied on by the learned counsel for the applicant. Applying the principles therein to the factual matrix of this case, the applicant is not entitled for anticipatory bail.

11. In view of above, Criminal Application No. 1314 of 2021 stands rejected and disposed of.

(PRAKASH D. NAIK, J.)

JPC