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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2587 OF 2019

AKHLAKH AHMED RAFIMIYA KAZI & ORS. ..APPLICANTS
VS.
THE STATE OF MAHARASHTRA & ANR. ..RESPONDENTS

Adv. Hassnain Kazi a/w. Adv. Raeed Kazi, Adv. Shraddha Vavhal
for applicants.

Mr. N.B. Patil, APP for respondent - State.

Mr. Amin Solkar for respondent No.2 - original complainant

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 1, 2021

P.C. :

Heard learned counsel.

2. This is an application for pre-arrest bail in respect of the offences punishable under Sections 304, 323, 504, 506 read with Section 34 of the Indian Penal Code and Sections 4 and 25 of the Arms Act, 1959 registered as C.R.No. 237 of 2019 of the Junnar Police Station.

3. The dispute is in respect of partition of an ancestral property. Farid (deceased) is the complainant's husband. With a view to settle the dispute, the relatives decided to meet at

Junnar, District Pune where the applicants are residing. There were some discussions. It is alleged that the applicant No.1 invited all the relative including Farid who is the applicant No.1's cousin brother for dinner. After dinner there were some more discussions. It is alleged by the complainant that sometime around 10.30 a.m., on 15/7/2019, in view of some harsh exchange of words and altercation between the family members, the applicants came back with some deadly weapons like sticks, koyta and swords in their hands, abused and threatened Farid, the complainant and other relatives as they were not happy with the settlement proposal. It is alleged by the complainant that the applicants knew about the heart ailment of Farid and that in view of the threats and the altercations , it will seriously affect Farid's health. It is alleged that the complainant was pulled by her hair by the applicants. As a result of all this Farid became unconscious. Farid was taken to the hospital where he was declared dead.

4. The ADR is registered on 16/7/2019 at 5.29 a.m. The ADR as reported by the complainant, states that as a result of a dispute of partition of the ancestral property and the altercation which applicants had with Farid, that he became unconscious and later died.

5. The First Information Report ('FIR' for short) is registered on 5/10/2019. It is the contention of learned counsel for the applicant that there is delay in lodging the FIR. He submits that the FIR is lodged almost after two months. This is controverted by Shri Solkar appearing for the complainant. He submits that the complainant is a resident of Mumbai and had gone to Junnar along with Farid to resolve the dispute. The complainant was completely shaken after the incident. Even in the ADR, it has been stated that there was altercation between the applicants and Farid as a result of which Farid collapsed. A letter was sent to the Senior Inspector for registration of the FIR on 23/7/2018 followed by a communication addressed to the Superintendent of Police on 4/10/2019. It is only thereafter that the FIR came to be registered on 5/10/2019. The explanation for delay appears satisfactory.

6. So far as the facts are concerned, the allegation is that the relatives had decided to meet at Junnar to settle the dispute regarding partition of the ancestral property. The discussion did take place and the applicant No.1 had invited the relatives for dinner at his residence. During the course of the discussion there was an altercation. It is alleged that the applicants who were armed with weapons threatened Farid and the complainant. It is

stated that Farid became unconscious and later he was declared dead.

7. Learned APP and Shri Solkar for the complainant submitted that the weapons are yet to be recovered and therefore custodial interrogation is necessary.

8. The offence is registered under Section 304 of the Indian Penal Code. There is no injury on the person of Farid nor it is the allegation that the applicants caused bodily injury to Farid by use of the weapons. It is the statement of the complainant that the applicants knew about the heart condition of Farid and that the applicants were well aware that if Farid is threatened, such an act in all likelihood will result in his death.

9. The statements of two other witnesses namely Sayed Shakil, who is the brother of the complainant and Gulnaz, who is the sister-in-law of the complainant are recorded. They have stated about the threats administered by the applicants. The family members had met to discuss the settlement in the course of which there was an altercation.

10. In my opinion, having regard to the facts and circumstances of the present case, the custodial interrogation of the applicants is not required. The applicant can be asked to present themselves before the investigating officer and co-operate with the investigation.

11. Moreover, the applicants have been granted interim protection which is in operation since 26/11/2019. Learned counsel for the applicants submits that the applicants have reported to the investigating officer in terms of the order passed by this Court. Hence the following order.

ORDER

- i. In the event of arrest of the applicants in connection with C.R.No. 237 of 2019, registered with the Junnar Police Station, Pune, the applicants be released on bail on their executing P.R. Bond in the sum of Rs.25,000/-, each, with one or two sureties in the like amount.
- ii. The applicants shall report to the investigating officer on 5th, 7th and 9th October, 2021 between 10.00 a.m. to 1.00 p.m. and thereafter as and when called for by the investigating officer.

iii. The applicants shall not tamper with the prosecution witnesses and shall not in any manner attempt to contact and threaten the complainant and the witnesses.

12. The application is disposed of.

(M.S.KARNIK, J.)