

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,  
NAGPUR BENCH, AT NAGPUR.**

**Criminal Application (ABA) No. 94 of 2021**

(Shivam Raju Kamble ..vs.. State of Maharashtra through P.S.O., P.S. Pusad City, Pusad, Tq. Pusad,  
Dist. Yavatmal)

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions  
and Registrar's orders  
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Court's or Judge's orders

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Mr. S. D. Dharaskar, Advocate for the applicant  
Mr. S. S. Doifode, APP for the State  
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**CORAM : ROHIT B. DEO, J.**

**DATED : 18-02-2021**

Heard.

2. The applicant is apprehending arrest in Crime 535/2020 registered with Tumsar Police Station, Pusad City, Tq. Pusad, District Yavatmal for the offences punishable under Sections 323, 324, 326, 341, 506, 147, 148, 149, 143 and 354-B of the Indian Penal Code and Sections 4 and 25 of the Indian Arms Act.

3. The submission of the learned counsel Mr. S. D. Dharaskar is that there is no direct role attributed to the applicant in the assault.

4. The statements of the eye witnesses including injured is that the applicant was a member of the unlawful assembly which assaulted the injured. The assault is a fall out of old rivalry. The applicant was armed with a knife, which is not recovered as yet. *Prima facie*, the unlawful assembly had a common object. Section 149 of the Indian Penal Code is invoked.

Whether the applicant actually dealt the blow or not is, therefore, immaterial.

5. Material in the case diary apart, the first application for pre-arrest bail was rejected on 18-2-2020. The applicant did not surrender. He tried his luck by preferring a second application seeking pre-arrest protection which came to be rejected on 20-8-2020. Undeterred, the applicant preferred third application seeking pre-arrest protection with the learned Sessions Judge, rejected vide order dated 19-1-2021. The applicant is absconding and, therefore, the charge-sheet which is filed, cannot be a relevant circumstance. Investigation qua the applicant is incomplete. Knife is yet to be recovered. Moreover, considering the propensity of the applicant to abscond, this is not a fit case for exercise of discretion.

6. The application is dismissed.

**JUDGE**