

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [ABA] NO. 627 OF 2021.

Aminuddin Qutubuddin and another.

-Versus-

State of Maharashtra, through P.O. Barshitakli, District Akola.

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

Court's or Judge's orders

Shri S.V. Sirpurkar, Advocate for Applicants.
Shri H.D. Dubey, A.P.P. for the Non-applicant.

CORAM : VINAY JOSHI, J.

DATE : OCTOBER 12, 2021

Heard.

2. In anticipation of arrest in Crime No.306/2021 registered with the non-applicant – Barshitakli Police Station, District Akola for the offence punishable under Sections 307, 324, 326, 143, 147, 148, 149, 188 of the Indian Penal Code read with Sections 25[3] and 25[4] of the Arms Act, applicants have prayed for grant of pre-arrest protection.

3. The learned Counsel for applicants took me through various statements to contend that besides mere presence, no other role has been ascribed to applicants. Moreover, it is submitted that the

investigation is complete and charge sheet has been filed against the co-accused.

4. The State has resisted the bail by filing affidavit in reply. The State has pointed towards seriousness of the crime. Learned A.P.P. would submit that applicants were members of unlawful assembly and they had shared common object to eliminate the deceased. Moreover, it is argued that applicants have hired the assailants, who in turn indiscriminately assaulted the deceased and injured the witnesses.

5. At the instance of a report lodged by one Abdul Rehman, the aforesaid crime was initially registered under Section 307 of the Indian Penal Code, however, after death of Mohd. Saquib Abdul Gaffar, it was converted into Section 302 of the Indian Penal Code. The informant has stated that at the instance of monetary dispute, on 24.05.2021 around 4.30 p.m., he heard shouts from the side of his house. At the relevant time, both applicants and one Tipu were abusing them. At the relevant time, some assailants arrived at the spot by two four wheelers. The assailants were armed with deadly weapons like Gun, Sword, Knife, Iron pipes etc. They have assaulted Mohd.

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Saquib [deceased], Sheikh Nadim and also fired a bullet, in which one village lady sustained bullet injury. Later on Mohd. Saquib succumbed to the injuries.

6. With the assistance of both the learned Counsel, I have gone through various statements recorded by the police. The learned Counsel for the applicant took me through the first information report lodged by Abdul Rehman dated 24.05.2021, and his supplementary statement dated 01.06.2021. He also took me through the statements of injured Sk. Nadim dated 25.05.2021, 23.06.2021 and a statement recorded by the Magistrate on 02.08.2021. Besides that my attention has been invited to the dying declaration of deceased Saquib. On the basis of said material, it has been argued that besides mere presence, no other role is ascribed to applicants. It is also argued that as per the statement of informant Abdul Rehman, inference cannot be drawn that applicants have shared common objection.

7. Perusal of the said material indicates that at the relevant time, applicants came to the spot which was followed by assailants, who were armed with deadly weapons. Pertinent to note that all of them

came to the house of the informant, which carries importance. On perusal of the entire charge sheet, it reveals that police have recorded statements of Mohd. Irfan and Abdul Imran, who have stated that the applicant Aminuddin was instigating co-accused Khaiser who has fired bullets from his pistol. Moreover, statement of Sk. Nadim recorded by the Magistrate states that both applicants have instigated Khaisar to fire bullets.

8. Prima facie, it is evident that applicants were accompanied by the assailants who indiscriminately made assault by deadly weapons, as well as pistol was freely used. Unless applicants are interrogated, there would be no investigation to ascertain their actual role and connection with the co-accused. The offence is of serious nature, which may attract capital punishment. In such type of serious offence, the investigating agency should get every opportunity to thoroughly investigate, to reach to the truth. In view of that, this is not a fit case to grant pre-arrest protection. Criminal Application stands rejected.

JUDGE

Rgd.