

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.5 OF 2022

LAL KHAN S/O AASHRAF KHAN PATHAN AND ANR
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicants : Mr. A. U. Pawar and Mr. A. R. Syed
APP for Respondent-State : Mr. V. M. Kagne
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 03-02-2022.

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.276 of 2021, registered with Palam Police Station, District Parbhani, for the offences punishable under Section 353, 186, 188, 171 (E), 171 (B) of the Indian Penal Code and under Section 22 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, and under Section 135 of the Maharashtra Police Act.
2. Heard learned Advocate Mr. A. U. Pawar and Mr. A. R. Syed for applicants, and learned APP Mr. V. M. Kagne for respondent-State. In order to cut short, it is stated that both of them have made submissions in support of their respective contentions.

3. The First Information Report has been lodged by one Aakash Poul, who was the chief Officer of Mobile Patrolling, in view of the Nagar Panchayat Election of village Palam on the day on 21-12-2021. After he had received the information, he along with his team had gone to the spot and found that seven persons were sitting. Out of which, one was holding cash. When the informant informed the intention of his visit, at that time the present applicants fled away by manhandling police personnel along with the informant. However, the other five persons appears to have been caught. Cash amount of Rs.25,000/- has been recovered from one person, who was caught and he told that it was informed by applicant No.1 that he is one of the contesting candidates, who had given the amount with appeal to cast vote for him.

4. Out of the offences, under which the FIR has been registered, Section 353 of the IPC is non-bailable, other sections are bailable. Now, as regards Section 353 is concerned, the statements appear that seven persons were seen sitting, one was holding cash and when the informant was informing, those persons in order to avoid arrest, manhandled police personnel. Now manhandling or pushing police persons may strictly amount to use of criminal force, but for

that purpose a person cannot be asked to linger in jail for at least some period. The physical custody of a person on that count is not required. Definitely elections are required to be held in free, fair and healthy atmosphere. Distribution of cash and soliciting vote on that count, cannot be said to be a act consonance to constitution of India. However, in order to connect the same, the FIR states that the person who was arrested, had given the name of the persons who fled away from the spot. Therefore, it would be the matter of evidence and for that purpose it is stated that the entire incident has been video-graphed. The police papers produced now does not contain panchanama in respect of the video clip. Only letter has been given by the Investigating officer to Chief Officer, Palam Nagar Panchayat that he should provide the video clip which was video-graphed by one Digambar Poul along with certificate under Section 65 (B) of the Evidence Act.

5. The learned Advocate appearing for the applicants submits that they have abided by the terms of interim protection granted by this Court on 11-01-2022, and in order to show their bonafides, they are willing to deposit amount in any institution.

6. For the reasons stated above, the interim protection granted

earlier by this Court stands confirmed and accordingly following order is passed.

ORDER

- 1) Application stands allowed.
- 2) The interim protection granted by this Court on 11-01-2022 to the present applicants is hereby confirmed. In other words, in the event of arrest of applicants Lal Khan s/o Aashraf Khan Pathan and Bapurao s/o Dattarao Kawade, in connection with Crime No.276 of 2021, registered with Palam Police Station, District Parbhani, they be released on PR of Rs.30,000/- each (thirty thousand) with one or two sureties of like amount.
- 3) They shall not tamper with the evidence of the prosecution in any manner.
- 4) They shall not indulge in any criminal activity.
- 5) The applicants are directed to deposit amount of Rs.20,000/- each (twenty thousand) with the High Court Legal Services Sub-Committee, Aurangabad.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-