

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

907 ANTICIPATORY BAIL APPLICATION NO.122 OF 2022

1. Shaikh Aasef S/o Shaikh Khalil,
2. Syed Javed S/o Syed Babar,
3. Shaikh Sameer S/o Shaikh Khalil,
4. Shaikh Jamil S/o Shaikh Khalil,
5. Atikh Khan S/o Waliyat Khan

VERSUS

The State of Maharashtra

...

Advocate for Applicants : Mr. Pathan Hamzakhan I.

APP for Respondent-State : Mr. A. A. Jagatkar.

...

CORAM : S. G. MEHARE, J.

DATE : 21.06.2022

PER COURT :-

1. Heard the learned counsel for the applicants and the learned APP for the respondent-State.

2. Learned counsel for the applicants would submit that there was a riot between two groups of different religious followers. The FIR further reveals that there is nothing against the applicant except their presence. The counter case is also registered against the injured. The allegations against the applicants are general in nature. They have been arraigned as accused as they are the residents of Indira Nagar, where the incident happened. Since it was a riot between two rival

groups, the police have arraigned all the residents of the locality as accused, including the applicants. The main accused who allegedly used the weapon has been released on bail by the Sessions Court. This Court also granted the anticipatory bail to co-accused; therefore, the parity may be extended to the present applicants.

3. Per contra, the learned APP would submit that the applicants have committed serious offences. Applicants Nos.1 and 4 are the brothers of the main accused Shaikh Shakil S/o Shaikh Khalil. They reside together. The firearm was brought from the house of Shaikh Shakil S/o Shaikh Khalil. Serious other offences have also been registered against them. Since applicant no. 4 was involved in various illegal businesses, the detention order under the Slumlords Act has also been issued against applicant no.4. The entire family was involved in such destructive activities and always disturbed law and order. He has given the list of crimes registered against them. The investigation as regards the recovery and source of the firearm is necessary; unless the police custody is taken, the truth may not come out. So far as the other applicants are concerned, he would argue that they were consciously present in the riot; therefore, they have been correctly arraigned as accused. They

are liable to be tried under Section 149 of the IPC. Hence, the the application may be rejected.

4. It is a rule that parity should not be extended mechanically. To seek a parity, the person claiming the parity should convince the Court that the person granted bail was similarly situated. Therefore, the Court has to examine the facts and the role played by each accused while considering the claim of parity. In the application of the other co-accused, the anticipatory bail was granted considering the facts and role played by them. The learned APP has pointed out that applicant No.1 Shaikh Aasef and applicant No.4 Shaikh Jamil have been involved in a serious crimes and they are facing the cases of various offences. It seems that they were consistently disturbing law and order. A detention order was passed by the District Collector, Hingoli, against applicant No.4 Shaikh Jamil and the State Government has approved the proposal of the District Collector, Hingoli, for his detention under the Slumlords Act, 1981. The Investigating Officer has transpired that the firearms were coming from the house of these two applicants, and he has to investigate the source from where such firearms were brought by them.

5. Having regard to the allegations and their past, it

appears that they are the active members in causing the disturbance to law and order. The FIR reveals the name of applicants Syed Javed S/o Syed Babar and applicant No.5 Atikh Khan S/o Waliyat Khan. However, the FIR does not disclose the name of applicant No.3 Shaikh Sameer. The FIR reveals that the iron rods, swords, sticks, stones and firearms were used in the crime. Having regard to the nature of the incident seen well predetermined, and various persons from both the groups were involved in the incident. In such a matter of riot, a detailed investigation is to be made by the Investigating Officer. He has specifically contended that he wants to make an inquiry about the source of firearms from the persons who are involved in the same nature of the offence. Considering the gravity and nature of offence, this Court is not inclined to grant anticipatory bail to the applicants, except applicant No.3 Shaikh Sameer, since he has not been named in the FIR. Hence, the following order :

ORDER

- (i) The application is partly allowed.
- (ii) In the event of arrest of the applicant No.3. - **Shaikh Sameer S/o Shaikh Khalil**, in connection with Crime No.325 of 2021, registered with Police Station Kalamnuri, District Hingoli for the offences

punishable under Sections 307, 326, 323, 324, 143, 147, 148, 149 of IPC, Sections 3, 4, 25 and 27 of Arms Act and Section 7 of Criminal Law Amendment Act, be released on bail on furnishing P.B. and S.B. of Rs.20,000/- (Rupees Twenty Thousand only) with one solvent surety of the like amount on the condition that he shall attend the Police Station as and when called on written notice.

(iii) The prayer of applicant Nos.1. **Shaikh Aasef S/o Shaikh Khalil**, 2. **Syed Javed S/o Syed Babar** 4. **Shaikh Jamil S/o Shaikh Khalil** and 5. **Atikh Khan S/o Waliyat Khan** for releasing them on anticipatory bail is rejected.

(iv) *Humdast* allowed.

(S. G. MEHARE, J.)

...

vmk/-