

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 ANTICIPATORY BAIL APPLICATION NO.205 OF 2022

SOHAIL CHAND SHAIKH AND OTHERS

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.R. Wakale, Advocate for applicants

Mr. A.M. Phule, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 24th FEBRUARY, 2022

ORDER :

1 Applicants are apprehending their arrest in connection with Crime No.20/2022 dated 12.01.2022 registered with Bhingar Camp Police Station, Dist. Ahmednagar, for the offence punishable under Section 307, 326 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. S.R. Wakale for applicants and learned APP Mr. A.M. Phule for the respondent.

3 It has been vehemently submitted on behalf of the applicants that the First Information Report has been falsely lodged. The allegations in

the First Information Report are exaggerated and with ulterior motive. According to the applicants, the CCTV footage of the incident has been recovered by the Investigating Officer and it would falsify the case of the informant. The CCTV footage would clearly show that there is no use of dangerous weapons and assault is by kicks and fist blows. It also shows that the brother and sister of the informant were never assaulted by the applicants. Offence under Section 307 and 326 of the Indian Penal Code is not made out. The informant is discharged. Nothing is to be recovered and discovered at their end and, therefore, their custodial interrogation is not necessary. The applicants are ready to abide by the terms of the bail.

4 The learned APP strongly opposed the application for grant of any interim relief and submitted that as the matter is coming for the first time he is not armed with police papers. He also submitted that taking into consideration the allegations in the First Information Report it would be seen that the informant and the witnesses were assaulted by scythe on the head, hands and neck. At the time of report the informant was taking treatment as indoor patient at Crystal Hospital. Learned APP also pointed out the order passed by the learned Additional Sessions Judge while rejecting the application and since the allegations made in the First Information Report matters, at this stage no relief be granted.

5 At the outset, it is to be noted that if this Court comes to the conclusion that the protection deserves to be granted even at the initial stage, notice is required to be issued to the other side and protection can be granted. However, if the circumstances are not appearing, then, such applications will have to be rejected at the threshold.

6 It will not be out of place to mention here that when submissions are made in respect of CCTV footage, it was asked to the learned Advocate representing the applicants, as to how the applicants know what was recorded in the CCTV. He submitted that his client has the CCTV footage. He then orally sought time to produce the CCTV footage. At the outset, it is to be noted that there are no pleadings in the application, as to where the CCTV was installed, how the applicants came to know about it and when it was pointed out by the learned Advocate for the applicants. He submits that the CCTV was installed at a nearby place and the camera was covering the spot of incident. It was also submitted that after the police had taken footage, the relatives of the applicants had taken footage from the same owner. This kind of activity is not contemplated. There is some overact on the part of the applicants. If at all that CCTV footage has been taken from the said owner, then, of course, it should be by lawful means and it should also come before this Court, by lawful procedure, including the certificate under Section 65-B

of the Indian Penal Code. When the evidence in the form of CCTV footage would be adduced in evidence and the proof of the same would matter, it cannot be so considered abruptly in bail petition. If we consider the contents of the First Information Report, then, definitely role is attributed to the applicants and it is stated that the informant, his brother and sister were assaulted by scythe and the injury is to the vital part. The criminal antecedents of the informant cannot be considered. Definitely, the weapons used in the commission of the offence are required to be recovered. The custodial interrogation, therefore, is necessary in this case. Hence, the application deserves to be rejected at the threshold. Accordingly, it is rejected.

(Smt. Vibha Kankanwadi, J.)

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