

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

ANTICIPATORY BAIL APPLICATION NO.271 OF 2022

- 1) Shri Lakhan @ Rahul @ Lucky
S/o Sambhaji Kukurde,
- 2) Shri Ishwar S/o Vyankat Kukurde

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Amarjitsing B. Girase Advocate for Applicants.
Mr.B.V. Virdhe , A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 28th MARCH 2022

DATE OF PRONOUNCING ORDER : 13th APRIL 2022

ORDER :

1. The applicants are apprehending their arrest in connection with Crime No.10 of 2022 registered with Kasar Shirsi Police Station, District-Latur for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 324, 504 and 506 of the Indian

Penal Code and Section 135 of the Maharashtra Police Act.

2. Heard learned Advocate Mr. Girase for the applicants and learned APP Mr. Virdhe for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. Perusal of the First Information Report (for short "FIR") would show that no specific role is attributed to the applicants. The alleged incident has been reported by the informant after a delay of 25 hours and this delay speaks for itself. The investigating agency has almost completed the investigation and the physical custody of the applicants is not required. There was no previous enmity between the applicants and the informant, therefore, the element of intention to kill him is absent and it will not attract the ingredients of Section 307 of the Indian Penal Code. It is also to be noted that the incident is alleged to have been taken place on petrol pump but no other employee or even the owner had tried to intervene and call the police. Police Station is hardly few Kilometers away from the place of incident. The applicants are ready to abide by the terms of the bail.

4. Learned APP has strongly opposed the Application and submitted that perusal of the FIR would show that applicant No.2 and one Vyankat Ashte had brought the vehicle to the petrol pump from wrong side and were insisting that they should be given petrol first when they were supposed to come in line. The informant, who is a servant on the petrol pump, asked them to bring the vehicle from line and then they would be given petrol. At that time both of them had abused the informant and his colleague Sudhir Kokane. Applicant No.2 slapped Sudhir Kokane and then called the other co-accused persons. Applicant No.1 had assaulted the informant on his back with kicks and fist blows. Co-accused Dnyaneshwar had assaulted Sudhir by kicks. Co-accused Bajirao had hit a cement block on the left side on the head of the informant and co-accused Bablu assaulted Sudhir with hunter. They had gave threat that they would see all of them and then left. Further, during the investigation the CCTV footage has been recovered and it was found that applicant No.1 had used sword in the incident. Applicant No.2 is the head of the group who are spreading terror in the area. They are not deserving to discretionary relief under Section 438 of the Code of Criminal Procedure.

5. At the outset it is to be noted that when the contents of the FIR are already narrated, the same are not reproduced once again. In the FIR, the informant has not stated that applicant No.1 has used sword. Though certain photographs from the CCTV footage are forming part of the police papers, it cannot be said that applicant No.1 has used sword to cause injury either to the informant or to his colleague Sudhir. The injury certificates of both of them would show that the informant had received only one injury i.e. Contusion – CLW over left eyebrow on forehead, which is stated to be grievous and is possible by blunt and hard object. He is attributing the said injury to another accused Bajirao Kukurde and not the present applicants. Injury certificate of Sudhir would show that he had sustained two injuries, firstly blunt injury over knee, which is stated to be simple in nature and another injury is blunt trauma over chest, the nature of which is also stated to be as simple. The probable weapon used is stated to be blunt and hard for both the injuries. Statements of witnesses have also been recorded and none of them are saying that sword was used by applicant No.1. As against applicant No.1, the FIR as well as statements of the witnesses would show that he had assaulted the informant by kicks and fist blows, whereas applicant No.2 is concerned, it is alleged that he has

slapped Sudhir, colleague of the informant. Therefore, taking into consideration the role attributed, Section 307 or Section 324 of the Indian Penal Code cannot be attracted to the applicants. Their custody, therefore, not required for the purpose of investigation. They deserved to be released on anticipatory bail. Hence the following order:

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of applicant No.1 – Lakhan @ Rahul @ Lucky S/o Sambhaji Kukurde and applicant No.2 – Ishwar S/o Vyankat Kukurde in connection with Crime No.10 of 2022 registered with Kasar Shirsi Police Station, District-Latur for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 324, 504 and 506 of the Indian Penal Code and Section 135 of the Maharashtra Police Act, they be released on bail on PR Bond of Rs.30,000/- (Rupees Thirty Thousand) each with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.
- iii) Both the applicants shall remain present before the Investigating Officer on every Monday between 10.00 a.m. to

2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) The applicants shall not tamper with the evidence of the prosecution in any manner.

v) The applicants shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]

asb/APR22