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

ANTICIPATORY BAIL APPLICATION NO.303 OF 2022

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| 1. | Nabil Abdul Chaus, | |
| 2. | Yasin Nisar Shaikh-Pawar, | |
| 3. | Majid Iqbal Shaikh Pawar, | |
| 4. | Arfat Iqbal Shaikh Pawar, | |
| 5. | Kamran Kalim Shaikh, | |
| 6. | Chetan Anil Chopra | .. Applicants |

Versus

The State of Maharashtra	..	Respondent
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Mr Ajinkya Kale, Advocate for and on behalf of Talekar And Associates
for applicants;

Ms. V. S. Choudhari, A.P.P for respondent/State;

Mr Yuvraj V. Kakde, Advocate to assist A.P.P

CORAM : S. G. MEHARE, J.

DATE : 2nd August, 2022

PC.

1. Heard the learned counsel for the applicants and learned A.P.P
for the respondent along with the learned counsel to assist him.

2. It has been alleged that on the date of the incident, a person
Imran Shafi Ahmed Shaikh, called him on his cellphone and asked
him to come to Kamdhenu Chahate hotel at Kondyamama square to
discuss the issue of the land of Nagori Muslim Misgar trust. When the
complainant reached there, Imran Shafi Ahmed Shaikh, Yunus Sultan
Tambatkar, Imran Jamir Khan and Khalil Jabbar Khan were discussing

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the issue of the said land. That time, suddenly accused Yasin Nisar Shaikh (Pawar) came from the opposite side holding a chopper along with Majid Iqbal Shaikh (Pawar), Arfat Iqbal Shaikh (Pawar), Kamran Kalim Shaikh, Nabil Abdul Chaus and other 7 to 8 unknown persons. They were holding chopper, wooden logs and shock observer pipes. Yasin Nisar Shaikh loudly said, 'kill them all'. Yasin Nisar Shaikh struck the complainant with a chopper on his throat, but he obstructed it by hand and suffered an injury to his left hand. Other persons, along with Yasin Nisar Shaikh started beating the complainant with kicks and blows and shock observer pipes. Imran Rafi Ahmed Shaikh came to rescue him, Yasin Nisar Shaikh assaulted him with a knife to his throat, but he avoided that strike that caused injury to his chin. Then Sultan Tambatkar came to rescue them. That time Majid Iqbal Shaikh assaulted him with a motorcycle shock observer pipe. Arfat Iqbal Shaikh (Pawar), Kamran Kalim Shaikh, Nabil Abdul Chaus and other unknown persons assaulted them with kicks, blows and wooden logs.

3. In the backdrop of the above allegations, a crime came to be registered against the applicants and others for the offence punishable under Sections 307, 323, 324, 143, 147, 148, 149, 504, 506 read with Section 34 of the Indian Penal Code at Tofkhana police station, Ahmednagar.

4. The learned counsel for the applicants has vehemently argued that a false report has been lodged against the applicants. At the relevant time, applicant no.2 Yasin was in the Suzuki company showroom. Applicant no.1 Nabil was also not on the spot of the incident. However, it has been alleged that applicant no.4 Arfat and applicant no.5 Kamran assaulted them with kicks, blows and wooden logs. General allegations have been leveled against the applicants. They have played no specific role. So far as applicant no.1 Nabil is concerned, he has also been falsely implicated. The injuries sustained by the injured are simple. The arrested co-accused has produced the weapons. The report has been lodged to take vengeance. The complainant is not honest. He has involved the persons who were not present on the spot of the incident. The prosecution has no case that the custodial interrogation of the applicants would serve the purpose. Therefore, the application may be allowed.

5. Learned A.P.P. vehemently argued that the Investigating Officer had examined CCTV footage supplied by the accused. Its translated copy reveals that the applicant Yasin Nisar Shaikh was in one Sai-Midas Suzuki showroom at the time of the incident. It has also been transpired that at the time of the incident, applicant Nabil was also not on the spot of the incident. However, the other applicants, Arfat,

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Kamran and Majid, have assaulted the injured. They have not used deadly weapons. Though the injuries were simple, the way of the assault was threatening and with an intention to kill the complainant and other injured. The applicants who had been granted the interim protection were attending the police station but did not support regarding the weapons they used. The weapons are yet to be recovered. Recovery of the weapons is essential to complete the investigation. Therefore, they are not entitled to anticipatory bail.

6. The learned counsel for the complainant has vehemently argued that there are antecedents to the discredit of the applicants Yasin and Nabil. The other applicants have used deadly weapons, and they have been seen in CCTV footage. Considering the nature of the offence and antecedents to the discredit of the applicants. Hence, they are not entitled to anticipatory bail. The application may be rejected.

7. Perused the papers and the charge-sheet. The learned counsel for the applicant has rightly argued that though these two applicants were on anticipatory bail, the charge sheet has been filed under Section 299 of the Code of Criminal Procedure. Filing of the charge sheet has no concern with the present application. That is purely a technical aspect, it makes no difference.

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8. The record reveals that though the complainant has specifically alleged that the applicant Yasin Nisar Shaikh (Pawar) and Nabil Abdul Chaus were present on the spot, the prosecution could not collect the evidence that they were present on the spot of the incident. On the contrary, the CCTV footage which has been provided by the applicant Yasin Nisar Shaikh (Pawar) to the Investigating Officer reveals that at the time of the alleged incident, he was in one showroom.

9. So far as applicant Chetan Anil Chopra is concerned, he has not been named in the first information report. He may be among unknown 7 to 8 persons, but the description of that person has not been given.

10. So far as the applicants Arfat and Kamran are concerned, it has been specifically alleged against them that they assaulted the injured with a wooden log and stick and Majid assaulted with a shock observer pipe.

11. Suffering injuries may not be a ground to grant anticipatory bail. *Prima facie* case has to be considered while dealing with an application under Section 438 of the Code of Criminal Procedure. *Prima facie*, the prosecution has direct evidence against Arfat, Kamran and Majid. They have assaulted the injured with weapons. Those

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weapons are yet to be recovered. Recovery of the weapon is essential. That may help to prove the allegations against the accused.

12. Considering the entire aspects of the case and the material collected by the Investigating Officer, this Court is of the view that applicants Yasin Nisar Shaikh (Pawar), Nabil Abdul Chaus and Chetan Anil Chopra are entitled to anticipatory bail and applicants Arfat Iqbal Shaikh (Pawar), Kamran Kalim Shaikh and Majid Iqbal Shaikh (Pawar) are not entitled to anticipatory bail. Hence, the following order:-

- i) The application is partly allowed.
- ii) The application of the applicants Yasin Nisar Shaikh (Pawar), Nabil Abdul Chaus and Chetan Anil Chopra is allowed, and the application of the applicants Arfat Iqbal Shaikh (Pawar), Kamran Kalim Shaikh and Majid Iqbal Shaikh (Pawar) stands dismissed.
- iii) The interim protection granted to applicant no.1 Nabil Abdul Chaus and applicant no.6 Chetan Anil Chopra is confirmed on the same terms and conditions.
- iv) In the event of arrest, applicant no.2 Yasin Nisar Shaikh (Pawar) be released on bail on executing P.B. and S.B. of Rs.25,000/- with one solvent surety of like amount, in C.R. No49 of 2022, registered with Tofkhana police station, Ahmednagar, for the offence

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punishable under Sections 307, 323, 324, 143, 147, 148, 149, 504, 506 read with Section 34 of the Indian Penal Code.

v) The condition imposed while granting anticipatory bail to applicant no.1 Nabil Abdul Chaus, applicant no.4 Arfat Iqbal Shaikh (Pawar), applicant no.5 Kamran Kalim Shaikh and applicant no.6 Chetan Anil Chopra to attend the police station on every Monday, Wednesday and Saturday, is withdrawn.

13. At this stage, the learned counsel for the applicant requested to extend the temporary protection granted to applicant no.4 Arfat Iqbal Shaikh (Pawar) and applicant no.5 Kamran Kalim Shaikh for three weeks. The request is accepted. The interim protection granted by this Court to applicant no.4 Arfat Iqbal Shaikh (Pawar) and applicant no.5 Kamran Kalim Shaikh by order dated 17.3.2022 is extended for three weeks from today.

(S. G. MEHARE, J.)

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