

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.399 OF 2022

1. Amiruddin @ Ammu s/o Bashiruddin Shaikh
2. Takhiyoddin s/o Bashiruddin Shaikh ... Applicants

Versus

The State of Maharashtra ... Respondent

WITH
CRIMINAL APPLICATION NO.1251 OF 2022

...

Mr. S. S. Thombre, Advocate for applicants .
Mr. B. V. Virdhe, APP for the respondent – State.
Mr. S. J. Salunke, Advocate for assist to APP.

...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 12.04.2022

Pronounced on : 22.04.2022

ORDER :-

1. Criminal Application No.1251 of 2022 filed by the original informant seeking permission to assist learned APP stands allowed and disposed of.

2. The applicants are apprehending their arrest in connection with Crime No.66 of 2022 registered with Kaij Police Station, Dist. Beed for the offences punishable under Sections 307, 326, 324, 427, 504, 506 read with Section 34 of Indian Penal Code.

3. Heard learned Advocate Mr. S. S. Thombre for the applicants and learned APP Mr. B. V. Virdhe well assisted by learned Advocate Mr. S. J.

Salunke for the original informant.

4. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated due to the political rivalry. In fact, the informant and the applicants are the close relatives, but they are followers of different political party. Elections of Nagar Panchayat, Kaij were recently over in which the brother of the applicants got elected. The informant is the follower of the rival political party and mother-in-law of the informant is also elected as Corporator. In fact, the informant himself had assaulted accused No.1 i.e. present applicant No.1 with the help of knife and caused injury to his left hand. The police authorities have not taken report of applicant No.1. Applicant No.1 was taken to Government Hospital, Kaij and then was referred to Government Hospital, Ambajogai. It appears that in order to avoid legal action against him, the informant has filed false complaint. Custodial interrogation of the applicants is not necessary. They are ready to abide by the terms of the bail.

5. Learned APP well assisted by learned Advocate Mr. S. J. Salunke for the original informant submitted that the informant has suffered grade 1st compound fracture Shaft Tibia and fibula without N-V deficit with sutured CLW over left DHIN of tibia. He was required to undergo operation for the same. It was caused by the act of applicant No.1. Applicant No.1 by saying that he would kill the informant had assaulted the informant on legs with iron rod. The applicant No.2 had caused injury to his left eyebrow. In the supplementary

statement, the informant has stated that, in fact, applicant No.1 had also intended to assault the informant on head, but the said blow was received on the left eyebrow. It has been further stated that while investigating this case, when search of the house of accused - Takhiyoddin was taken, they found a sword and separate offence vide Crime No.68 of 2022 for the offence under Section 4 punishable under Section 25 of the Indian Arms Act came to be registered on 10.03.2022 and apart from accused - Takhiyoddin, his father and brother are also made as an accused in that case. When there is criminal background of the applicants, then possibility of repetition of crime cannot be ruled out. So also, the weapons used in the commission of present crime are yet to be recovered. The applicants are absconding since the date of the incident. The custodial interrogation of the applicants is required and taking into consideration the nature of the offence, it is certain that the applicants had intention to kill the informant.

6. Perusal of the police papers would show that statements of witnesses have been recorded under Section 161 of the Code of Criminal Procedure as well as of certain witnesses under Section 164 of the Code of Criminal Procedure. The injury certificates of the informant and two other persons have been produced. Informant has sustained one grievous injury, which was stated as aforesaid i.e. fracture to the left leg. The other two injuries are abrasions over left knee and left eyebrow, but those injuries are simple in nature. It appears that the

informant was admitted on 22.02.2022 and was discharged on 05.03.2022. The other two witnesses have sustained only abrasions and it appears that the nature of their injury is simple. The improvement in the supplementary statement cannot be considered at this stage. The position now emerges as grievous injury to the leg. Even if by statement that person might have said that he would kill and then the situs chosen is leg, then whether such act would amount to intention to commit murder is a question. *Prima facie* that does not seem to be the thing. At the most, the said offence may fall under Section 326 of Indian Penal Code, which is then triable by Court of Judicial Magistrate First Class. Definitely, there appears to be some political angle to the dispute. The subsequent emergence of any offence cannot be considered, yet it is to be noted from the documents of that FIR; when the police party was taking search, definitely the present applicant was not present in the house, therefore, question of cautious possession of the sword would arise. Merely because applicant No.2 has been made as an accused in that case will not disentitle him from claiming bail in the present case.

7. Another fact to be noted is that there is delay of more than 16 days in lodging the FIR, which is not explained properly at this stage. The injuries were to the leg and eyebrow, but he was oriented and there is nothing on record in the police papers to show that he was not in a fit condition to give statement and when the hospital had considered it as Medico Legal Case and would have

informed the fact to the police, then what was the hurdle for the police to record the statement of the informant is a question. Benefit of all these things should go to the applicants. Merely on the count of recovery of weapons, the application cannot be rejected. No doubt, in normal course, recovery of weapon used in the commission of crime would be an important aspect, but here coupled with the delay and the political rivalry tilting in favour of the applicants, that reason cannot overpower the plus point for the applicants.

8. For the aforesaid reasons, following order is passed :-

ORDER

I) ABA No.399 of 2022 stands allowed.

II) In the event of arrest of applicants viz. (i) Amiruddin @ Ammu s/o Bashiruddin Shaikh and (ii) Takhiyoddin s/o Bashiruddin Shaikh in connection with Crime No.66 of 2022 registered with Kaij Police Station, Dist. Beed for the offences punishable under Sections 307, 326, 324, 427, 504, 506 read with Section 34 of Indian Penal Code, they be released on P. R. Bond of Rs.30,000/- with two solvent sureties of Rs.15,000/- each.

III) The applicants shall remain present before the Investigating Officer on every Monday, Wednesday and Saturday between 10.00 a.m.

to 12.00 noon, till filing of charge-sheet and cooperate with the investigation.

IV) They shall not tamper with the evidence of the prosecution in any manner.

V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm