

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.509 OF 2022

SYED ATHAR ALI S/O SYED KHADAR ALI (NAE REFERRED IN FIR AS
SYED ZUBER ALI SYED KADAR ALI) AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicants : Mr. Wajeed Ahmed Shaikh
APP for Respondent/State : Ms. V. S. Choudhari
...

CORAM : S. G. MEHARE, J.

DATE : 05-07-2022

PER COURT :-

Heard learned Counsel for the applicants and the learned
A.P.P. for the State.

2. It has been alleged by the complainant against the accused that the accused entered into the shop of complainant and assaulted him and other persons with a stick.

3. Learned counsel for the applicants referred to various previous orders of the Civil Court, Appellate Court and order of this Court in Civil Revision Application. Referring to these orders, he has tried to press before the Court that the applicant Saber Ali is the owner and possessor of shop in question. Therefore, no offence

under Section 427 of the Indian Penal Code is made out. Besides this, he has referred to report dated 23.11.2021 lodged against the present complainant alleging that he has tried to enter the shop forcibly. He intended to take the possession of the premises unauthorizedly. Since the complainant could not succeed in the previous civil litigation, he tried to take the law in his hands, particularly applicant Saber Ali. The alleged incident is false. The other co-accused have been arrested and the alleged sticks used in the crime have also been seized from them. No serious injuries have been suffered by the complainant and others. It is a matter arising out of civil dispute between the parties. Therefore, the custodial interrogation of the applicants is not required.

4. Per contra, the learned A.P.P. has vehemently argued that the applicants in a suit filed against the first informant have stated that applicant Saber Ali and the first informant were partners in the said business and the shop was in their joint possession. A serious allegations of breaking open the lock of the shutter of the shop have been made against the accused. The applicants have committed a serious offence. The custodial interrogation of the applicants is required to recover sticks used in the crime.

5. The learned Counsel for the applicants would submit that the interim protection was granted to the applicants by this Court and

they were directed to attend the police station thrice a week. They have strictly followed the condition imposed by this Court and attended the police station, but police never asked for recovery of weapon and they were satisfied with the investigation. Hence, also custodial interrogation is not required.

6. It reveals from the documents placed on record that there were civil disputes between the applicant Saber Ali and the first informant. They are fighting for field / inam land. Various orders were passed by the Civil Court. The relations between the first informant and Saber Ali seems inimical. The prosecution has no explanation why the recovery of weapon was not done, when the applicants were attending the police station as per condition imposed by this Court while granting the interim protection. The prosecution has lost the opportunity to have proper investigation. It seems that the Investigating Officer has done the mere formality to have the attendance of the applicant. Granting the attendance is not for the purpose of mere attendance. It is an opportunity to the Investigation Officer to make investigation in pursuance of the allegations made against the accused. However, the record further reveals that the alleged weapon like stick has been seized. The entire conduct of Investigating Officer reveals that he does not need the recovery of weapon.

7. Considering the chequered history of litigation about the land, the possibility of making false allegations cannot be ruled out. The learned A.P.P. has fairly submitted that injury certificate shows simple injury. In view of this fact, this Court is of the view that no purpose would be served if the applicants are allowed to undergo the police custody. The application deserves to be allowed.

8. Hence, The following order -

- i) Application is allowed.
- ii) The interim protection granted by the order of this Court dated 28.04.2022 is confirmed with the same terms of bail with modification in the condition to attend the police station as and when called by the Investigating Officer on written notice.

(S. G. MEHARE)
JUDGE

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