

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

**ANTICIPATORY BAIL APPLICATION NO.548 OF 2021
WITH
CRIMINAL APPLICATION NO.1163 OF 2021**

- 1) Kundlik Sadashiv Korde,
- 2) Ganesh Sadashiv Korde,
- 3) Jejeram Kundlik Korde,
- 4) Ramkisan Kundlik Korde,
- 5) Udhav Ganesh Korde.

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Shivprasad G. Jadhavar Advocate for Applicants.
Mr.N.T. Bhagat, A.P.P. for Respondent-State.
Mr.D.M. Shinde Advocate for assist to APP.

...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 13th JANUARY 2022

DATE OF PRONOUNCING ORDER : 3rd FEBRUARY 2022

ORDER :

1. Criminal Application No.1163 of 2021 moved for assist to APP stands allowed and disposed of.

2. The applicants in anticipatory bail application are apprehending their arrest in connection with Crime No.100 of 2021 registered with Hingoli (Rural) Police Station, Taluka and District-Hingoli for the offence punishable under Sections 307, 324, 143, 147, 148, 149, 447, 427, 504 of the Indian Penal Code.

3. It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. Applicant No.1 is 70 years old person whereas applicant No.5 is only 19 years old. Applicant No.1 has not been named in the First Information Report. As against applicant Nos.2 to 5 it is stated that they were present at the spot holding plastic rods and omnibus statement has been made that they had assaulted the informant, his father and uncle. The custodial interrogation of the applicants is not necessary. The investigation is complete and charge-sheet has been filed. The applicants were granted ad-interim anticipatory bail by this Court on 28/5/2021 and

thereafter they were formally arrested and released on bail and thereafter the charge-sheet has been filed. It indicates that the investigating officer is also not considering that their presence is necessary. The applicants have abided by the conditions those were imposed by this Court while granting ad-interim relief. There is, admittedly, civil litigation pending in between the informant's family and the applicants. There was no intention on the part of the applicants to kill anybody. The applicants are ready to abide by the terms of the bail.

4. Per contra, learned APP well assisted by learned Advocate Mr. Shinde, strongly opposed the application and submitted that the applicants were absconding since the date of offence. Applicants were released on ad-interim anticipatory bail and then only they had appeared before the Police. The medico legal certificates would show that the informant and his family members had received injuries in the form of fractures to the vital part of the body. The informant, along with his application for assist to APP, has produced the photographs of the injured persons to show as to how grievous injuries were caused. Therefore, the physical custody of the applicants is necessary though charge-sheet has been filed.

5. At the outset it is to be noted that though this Court had granted ad-interim protection by order dated 28/05/2021, it was till 11/05/2021. That protection was not got extended thereafter. When this fact was noticed at the time of submissions by the parties, the investigating officer was asked to file an affidavit as to why he has not arrested those accused persons. Accordingly, two affidavits have been filed. Initially, it appears that Mr Baliram Ramdas Bandkhadke was the investigating officer. He says that after he had received the copy of the ad-interim anticipatory bail order passed by this Court, he had released the applicants by giving notice and then he says that thereafter there was a communication gap and the charge-sheet was filed on 15/08/2021 as the period of 90 days was to come to an end on 21/08/2021. He was, thereafter, transferred and was relieved on 20/08/2021. In his affidavit Mr. Ramkrishna Malghane, who took over the investigation, has stated that his predecessor had already filed the charge-sheet and therefore, he could not come to know that the ad-interim protection had come to an end. Both of them have tendered their unconditional apology.

6. Before proceeding further, therefore, it will have to be mentioned that because of such lethargic attitudes either the investigations are hampered or the accused persons are getting

benefits. Ultimately the sufferer is the victim. Merely because 90 days period was coming to an end that does not mean that the investigating officer should not keep track of the events. When the copy of the order of this Court was tendered to the investigating officer Mr. Bandkhadke, he ought to have noticed that said protection is till 10/06/2021 only. By merely stating that there was communication gap, he cannot get away. He could have made inquiry with the Public Prosecutor's Office in the High Court as to whether that ad-interim protection is still there or not. Further, that order had also stated that the applicants shall appear before the investigating officer as and when required for the investigation purpose. It appears that the said investigating officer never called the present applicants for the purpose of investigation. Now, he cannot say that the purpose behind his hasty act of filing of charge-sheet was that the other arrested accused should not get benefit of delayed filing of the charge-sheet. In fact he has not tried to give complete explanation as to what he has done from 11/06/2021 to 15/08/2021 in respect of the present applicants. Thereafter, he was succeeded by Mr. Ramkrishna Malghane. In fact, after filing of the charge-sheet for what purpose the investigation remained, is a question and therefore, this Court would not like

to give any importance to the affidavit filed by Mr. Malghane. Now, the position stands that because of inaction on the part of the then investigating officer Mr. Baliram Ramdas Bandkhadke the applicants had enjoyed the liberty though the ad-interim protection granted to them had come to an end on 11/06/2021 itself. The copy of this order, therefore, is required to be given to the superior of the then investigating officer for action, if any.

7. Now, turning towards the present application, as aforesaid the name of applicant No.1 is not appearing in the First Information Report, however, his name has been taken by the witnesses. Perusal of the statements of the witnesses would show that it is stereo-type, rather it is 90% to 92% copy paste and all of them have stated that in all eight persons had come armed with iron rod, axe, plastic rods and sticks and then they had assaulted to the witnesses / injured persons. Specific act is attributed to other co-accused who are not before this Court in this application, who appears to have been arrested earlier and then the discovery of the weapons have been made by them. As regards the offence under Section 307 of the Indian Penal Code is concerned, the present applicants act appear to be on the other parts of the body and not on the head or face. As regards applicant Nos. 2 to 5 are concerned, it is stated that they had

assaulted with said plastic rod to father of the informant, but it appears that it is on the hands or legs. Same is the case with the injury to the informant as well as his uncle. No doubt the injuries as per the injury certificates issued by Government Hospital as well as the private Hospital where the injured persons had taken treatment and also from the photographs those have been produced, it appear to be grievous in nature as well as simple and they are in the form of fractures. Note is to be taken in respect of statement of one Kashiram Sonaj Korde, who is the uncle of the informant, whose statement has been recorded on 03/06/2021, whereas the First Information Report has been lodged on 30/04/2021, would show that he has attributed role to the present applicants. It is then stated that these applicants had assaulted him by sticks, wooden handle of spade and plastic rod. When applicant No.5 was assaulting him on his head, he has put his left hand in between and therefore the blow was rested on his left hand causing him fracture. Applicant No.2's blow with fiber rod caused him covert injury to his back. Applicant No.4's assault by stick was on the leg. However, the background is required to be considered that incident alleged to have been taken place on 30/04/2021, the applicants had approached this Court and ad-interim protection was granted on 28/05/2021 and

thereafter statement of this witness has been recorded on 03/06/2021. There is no explanation by the prosecution at this stage, as to why there was so much of delay in taking statement of this witness Kashiram Korde.

8. At the cost of repetition, it can be said that now the charge-sheet is filed and after the ad-interim protection was granted by this Court, the investigating officer had never called the present applicants for investigation. There was an opportunity made available to the investigating officer to have investigation as against these applicants also and therefore, now case is made out to grant anticipatory bail to the present applicants. Hence following order is passed:-

ORDER

- i) Application stands allowed.
- ii) In the event of arrest of applicant No.1 - Kundlik Sadashiv Korde, applicant No.2 - Ganesh Sadashiv Korde, applicant No.3 - Jejeram Kundlik Korde, applicant No.4 - Ramkisan Kundlik Korde, applicant No. 5 - Udhav Ganesh Korde in connection with Crime No.100 of 2021 registered with Hingoli (Rural) Police Station,

Taluka and District-Hingoli for the offence punishable under Sections 307, 324, 143, 147, 148, 149, 447, 427, 504 of the Indian Penal Code, they be released on bail on PR Bond of Rs. 50,000/- (Rupees Fifty Thousand) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) Applicants shall not tamper with the evidence of the prosecution in any manner.

iv) Criminal Application No.1163 of 2021 stands disposed of.

v) Copy of this order be sent to District Superintendent of Police, Parbhani, for taking action, if any, in view of the observations made in Para No.6 of the order.

[SMT. VIBHA KANKANWADI , J.]