

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

APPLICATION FOR CANCELLATION OF BAIL NO.110 OF 2021

**MOHAMMAD ABID ZAINODDIN SHAIKH
VERSUS
THE STATE OF MAHARASHTRA AND ORS.**

Mr.G.R. Syed, Advocate for the applicant.

Mr.B.V. Virdhe, APP for the respondent/State.

Mr.S.B. Kadu, Advocate for respondent Nos. 3 to 14.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 04.04.2022**

PC :-

01. Present application has been filed under section 439(2) of the Cr.P.C. r/w section 482 of the Cr.P.C. for cancellation of bail granted by the learned Sessions Judge, Nandurbar by order dated 28.05.2021 in Cri.Misc. Application No.65 of 2021 in connection with Crime No.410 of 2021 registered with Nandurbar (City) Police Station, Tq. & Dist. Nandurbar, for the offence punishable under section 307, 143, 145, 147, 148, 149, 324, 323, 504, 506, 268, 269, 290 of the Indian Penal Code, section 2,3,4 of Epidemic Diseases Act and section 37(1), 37(3), 135 of the Maharashtra Police Act.

02. Heard Mr.G.R. Syed, learned Advocate for the applicant, Mr. B.V.

Virdhe, learned APP for the respondent/State and Mr.S.B. Kadu, learned Advocate for respondent Nos. 3 to 14.

03. At the outset it can be said that now the investigation is complete and charge-sheet has been filed. Present respondent Nos.2 and 3 are accused Nos.1 and 2. They were arrested on 08.05.2021 and underwent police custody till 10.05.2021. Thereafter, they were in Magisterial custody till 28.05.2021. The FIR was filed against 11 persons. The applicant in his FIR states that he was proceeding for Namaj at about 07.15 pm on 07.05.2021. At that time respondent No.2 was standing outside the Masjid along with 10-12 persons. The informant told them that they should not assemble in large number for Namaj as the Government has permitted only five persons and then he went for Namaj. He came out of the Masjid at about 07.30 pm and he found along with respondent Nos.1 and 2, there were nine other persons. Respondent No.2 asked him as to why he had restrained them from entering the Masjid for Namaj and by saying that he will not be left alive, respondent No.2 assaulted him by iron rod on his head. Respondent No.2 assaulted him with stick and had caused injury to his head, shoulder, legs and hands. His brothers came to rescue him, who were also assaulted by other persons. In

the meantime, police came and all the assailants fled away. The informant and his two brothers sustained grievous injuries and they were taken to the Government hospital and then he lodged the report.

04. Thus it is to be noted that there is no statement that there was any kind of enmity between the informant and the accused persons prior to the incident. It appears that the incident appears to have occurred all of a sudden. Now the statements of the witnesses which have been recorded are on the same line and therefore it is necessary to see the medico-legal certificate. The informant had sustained three injuries, two are lacerated wound on the left side forehead and right side elbow joint. Third injury is blunt trauma on left shoulder joint. All are stated to be simple injuries. His two brothers had also sustained simple injuries. Therefore, in the FIR as well as statements of witnesses the word serious injuries has been used, yet medico-legal certificate shows that it was simple. Therefore, whether ingredients of section 307 of the IPC would then be attracted is a question. Another fact to be noted is that even after going through the custodial interrogation, no weapon appears to have been seized from respondent Nos.2 and 3. Under such circumstances, bail granted to respondent Nos.2 and 3

under section 439 of the Cr.P.C. appears to be correct. One thing will have to be mentioned is, learned Sessions Judge, Nandurbar has passed cryptic order and within six lines in para 4 the reasoning has been stated. There is no mention of police station on medico-legal certificates. At least such cryptic orders are not expected from senior judges. Taking into consideration the fact that though cryptic order is passed, yet the application filed by respondent Nos. 2 and 3 under section 439 of the Cr.P.C. ought to have been allowed; on such cryptic reasons, this Court cannot exercise the exceptional powers under section 439(2) of the Cr.P.C.

05. The application stands rejected.

[SMT. VIBHA KANKANWADI, J.]