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

ANTICIPATORY BAIL APPLICATION NO.1100 OF 2022

KALIM MAHETAB PATHAN AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. More P. P.
APP for Respondent/State : Mr. S.B. Narwade

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CORAM : S.G. MEHARE, J.

DATED : 25th AUGUST, 2022

PER COURT:-

1. Heard learned counsel for the applicants and learned APP for the State.
2. The applicants have come with a case that applicant no.1 and Akram Khan were the adjoining land owners. Since there was encroachment in the property of applicant no.1, it was decided between Akram Khan and applicant no.1 that unauthorized construction from property of applicant no.1 shall be demolished. Therefore with consent, the JCB was brought on the spot and unauthorized construction was demolished. The police were present there. The police were satisfied that it was done with the consent of Akram Khan. Akram Khan did not lodge the report immediately. However, the police saw one video clip, and the crime was registered alleging that the applicants have created the terror in the locality. They were holding swords and sickle. Thereafter, all of a sudden, the

police started searching the applicants for arrest. In fact, no offence has been committed but it seems that Akram Khan has turned from his words and police asked him to give the statement. When the police were present there, there were no weapons allegedly used. Therefore, the applicants are entitled to the anticipatory bail.

3. Learned APP has strongly opposed the application contending that the applicants have created a terror on the spot of the incident and under the terror, they have demolished authorized construction. Since Akram Khan was under pressure and threat, he could not say anything against the applicants. Therefore, when the police were present on the spot of the incident, he could not complain against the applicants. However, the video clip is the direct evidence against the applicants that they have forcefully by creating the terror have demolished the construction unauthorizedly. Some of the accused were arrested and some weapons have been recovered from them.

4. Perused the papers produced by the learned APP. No doubt when the police had been to the spot of the incident, there were no complaints against the applicants, but subsequently the video clip was produced before the police and on the basis of that video clip, the crime has been registered. The person namely Akram Khan who was allegedly the encroacher, state nothing before the police. But subsequently, his statement came to be recorded. It has been

alleged that some people were holding swords, sickle and sticks. This seems to be an afterthought report. The police were on the spot to help Akram Khan, therefore, he had no reason to be under pressure and threats of the applicants. Akram Khan did not dispute that the construction was unauthorized and under encroachment. Considering the delay in lodging the report and recovery of some weapons, this Court is of the view that the applicants are entitled to the anticipatory bail. Hence, the following order :

ORDER

- (A) The application is allowed.
- (B) Interim protection granted to the applicants by order dated 17.08.2022 is confirmed on the same terms and conditions with an additional condition that they shall attend the police station as and when called by the Investigating Officer on written notice.

(S.G. MEHARE, J.)