

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

**ANTICIPATORY BAIL APPLICATION NO.1225 OF 2021
WITH
CRIMINAL APPLICATION NO.2816 OF 2021**

- 1) Mohammad Akhtar Abdul Rahim,
- 2) Mohammad Rafeeq Abdul Rahim

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...
Mr.Suvidh S. Kulkarni Advocate for Applicants in
Anticipatory Bail Application No.1225 of 2021.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
Mr.G.K. Naik-Thigle Advocate for Applicant in Criminal
Application No.2816 of 2021 for assist to APP.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 8th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 15th MARCH 2022

ORDER :

1. Criminal Application No.2816 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.189 of 2021 registered with Peth Beed Police Station, Taluka and District-Beed, for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 324, 504 of the Indian Penal Code.

3. Heard learned Advocate Mr. Kulkarni for the applicants and learned APP Mr. Kagne for the respondent – State well assisted by learned Advocate Mr. Naik-Thigle.

4. It has been vehemently submitted on behalf of the applicants that the applicants have been shown as accused Nos.4 and 5 in the First Information Report (for short "FIR"). Applicant No.1 is aged about 59 years and applicant No.2 is aged about 72 years. If we consider the FIR, then presence of ten accused persons has been shown and it is stated that they were armed with knife, wooden sticks and iron rod, but no specific weapon is assigned to the accused persons. Further, in the FIR it is stated that informant was assaulted with knife but since he resisted it, it had caused injury to his fingers. One of the accused had assaulted by stick and iron rod on his head and then it is

stated that others had assaulted him by stick on his hand, legs and back. After he was made to lie on the ground, it is stated that, present two accused persons had placed their feet on his neck by saying that they would kill him. The informant thereafter shouted, therefore other witnesses came and the assailants then fled away from the spot. Cross complaint has been filed and in fact the incident was the result of civil dispute. Suit for specific performance of the contract was filed before the Civil Judge, Senior Division, Beed in the month of September 2021. It is bearing Special Civil Suit No.88 of 2021 and the status report of the same has been annexed. It is then stated that 2-3 co-accused have received severe injuries and the photographs of the same have been annexed. In the same incident son of applicant No.2 had also received severe injuries and he had filed the cross complaint. His name was Mohammad Imran Mohammad Rafiq and he thereafter expired on 25th September 2021 i.e. three days after the incident. Taking into consideration the allegations in the FIR, the physical custody of the applicants is not necessary and they are ready to abide by the terms of the bail.

5. Per contra, the learned APP well assisted by learned Advocate Mr. G.K. Naik-Thigle strongly opposed the application

and submitted that the investigation is still in progress. The informant and the accused persons are residing in the same area. Possibility of commission of serious offence cannot be ruled out in view of the fact that son of applicant No.2 has expired. The statements of witnesses have been recorded which are supporting to the FIR. Age may be the criteria some times, but when it comes to the fact that these two applicants had put their feet on the neck of the informant, then definitely it would have caused his death if he would not have been rescued in time. The application, therefore, deserves to be rejected.

6. Contents of the FIR have already been reproduced and therefore, the same are not reproduced here once again. Contents of the FIR stands supported by the statements of the witnesses under Section 164 of of the Code of Criminal Procedure. However, it is to be noted that the injury certificate of the informant which has been collected from Medical Officer, District Hospital, Beed would show that he had sustained two injuries, one is incised wound on right index finger with sharp object and nature is stated to be simple and second injury is contused lacerated wound over left parietal region of scalp with hard and blunt object and nature is stated to be simple. No marks were found on the neck of informant by the Medical

Officer. Another fact about cross complaint will have to be considered and it can be seen that the cross complaint i.e. Crime No.188 of 2021 registered with the same Police Station around 1.25 a.m. on 23rd September 2021 for the offence punishable under Sections 307, 326, 452, 336, 337, 427, 324, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code on the basis of FIR given by Mohammad Imran Mohammad Rafiq (deceased son of present applicant No.2) appears to be earlier to the present FIR bearing Crime No.189 of 2021. Therefore, taking into consideration these aspects, the applicants deserve to be released on anticipatory bail.

7. As regards the apprehension that is expressed by the learned APP about the law and order situation in view of the fact that the informant and accused are residing in the same lane is concerned, this Court cannot impose the condition in the nature of not to reside in the said lane till the conclusion of the trial, because the informant in this case is accused in another case. So also there are many co-accused persons in both the cases. Therefore, only the condition that the applicants should not tamper with the evidence of the prosecution and shall not indulge in any criminal activity, would serve the purpose. This

Court, by order dated 21st October 2021 had already granted interim protection to the applicants, which deserves to be confirmed. Accordingly, following order is passed:-

ORDER

- i) Application stands allowed.
- ii) The interim protection granted to the applicants by this Court by order dated 21st October 2021 stands confirmed. It is thus clarified that in the event of arrest of applicant No.1 – Mohammad Akhtar Abdul Rahim and applicant No.2 – Mohammad Rafeeq Abdul Rahim in connection with Crime No.189 of 2021 registered with Peth Beed Police Station, Taluka and District-Beed, for the offence punishable under Sections 143, 147, 148, 149, 307, 323, 324, 504 of the Indian Penal Code, they be released on bail on PR Bond of Rs.20,000/- (Rupees Twenty Thousand) each with one or more sureties in the like amount, if already not released.
- iii) Applicants shall not tamper with the evidence of the prosecution in any manner.

- iv) Applicants shall not indulge in any criminal activity.
- v) Criminal Application No.2816 of 2021 stands disposed of.

[SMT. VIBHA KANKANWADI , J.]

asb/MAR22