

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

**ANTICIPATORY BAIL APPLICATION NO.1271 OF 2021  
WITH  
CRIMINAL APPLICATION NO.2591 OF 2021**

- 1) Momin Fasiyoddin S/o Momin Riyajoddin,
- 2) Momin Faimoddin S/o Mohammad Sharif,
- 3) Momin Zahiruddin S/o Mohammad Sharif

**...APPLICANTS**

**VERSUS**

The State of Maharashtra

**...RESPONDENT**

...  
Mr.G.K. Naik-Thigle Advocate for Applicants in  
Anticipatory Bail Application No.1271 of 2021.  
Mr.A.M. Phule, A.P.P. for Respondent-State.  
Mr.V.S. Kadam Advocate for applicant in Criminal  
Application No.2591 of 2021 for assist to APP.

...

**WITH**

**ANTICIPATORY BAIL APPLICATION NO.1421 OF 2021**

- 1) Momin Sameer Zahiruddin,
- 2) Momin Saed Momin Zahiruddin

**...APPLICANTS**

**VERSUS**

The State of Maharashtra

**...RESPONDENT**

...  
Mr.G.K. Naik-Thigle Advocate for Applicants.  
Mr.A.M. Phule, A.P.P. for Respondent-State.  
...

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

**DATE OF RESERVING ORDER : 8<sup>th</sup> FEBRUARY 2022**

**DATE OF PRONOUNCING ORDER : 15<sup>th</sup> MARCH 2022**

**ORDER :**

1. Criminal Application No.2591 of 2021 moved for assist to APP stands allowed and disposed of.

2. Applicants in Anticipatory Bail Application (for short "ABA") No.1271 of 2021 and ABA No.1421 of 2021 are apprehending their arrest in Crime No.188 of 2021 registered with Peth Beed Police Station, Taluka and District-Beed 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.

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

4. It has been vehemently submitted on behalf of the applicants that the First Information Report (for short "FIR") has been lodged by Mohammad Imran Mohammad Rafiq. The civil litigation inter-se between the parties vide Execution Petition bearing No.124 of 2004 is pending before the learned Civil Judge Junior Division, Beed. It is between applicant No.1 in ABA No.1271 of 2021 and father of the informant. In Regular Civil Appeal No.3 of 2020 filed by father of applicant No.1 in ACB No.1271 of 2021, learned District Judge has granted stay to the execution and the said appeal is pending. Further, dispute is also pending before the Collector, Beed and in fact the matter was to be settled before *Lok Nyayalaya* on 15<sup>th</sup> September 2021, but only to create some grounds in the FIR it has been stated that there is property dispute. The contents of the FIR would show that the custodial interrogation of the applicants is not necessary, as their presence is stated, however, it is not stated as to how they had assaulted the deceased. The allegations are against other persons. As regards applicant No.2 in ABA No.1421 of 2021 is concerned, though it is stated that he took out knife and tried to assault the informant, his cousin brother had tried to

stop that blow of knife which had caused simple injury to the cousin brother of the informant.

5. Learned counsel for the applicants further submitted that investigation is complete and charge-sheet has been filed on 20<sup>th</sup> December 2021. The statements of witnesses would also show that no specific role is attributed to both the applicants in ABA No.1271 of 2021 and applicant No.1 in ABA No.1421 of 2021. The learned counsel also pointed out that postmortem report after death of informant, which was done under the supervision of 7<sup>th</sup> Joint Civil Judge Junior Division and Judicial Magistrate First Class, Aurangabad, at Aurangabad on 25<sup>th</sup> September 2021, by the panel of four doctors in view of the fact that informant was in custody of Police at that time, states that death was within 6 to 12 hours before starting autopsy examination. Further, it is opined that injury Nos. 1 to 5 are possible due to impact / friction with hard and rough surface / object. Therefore, those injuries which were allegedly caused in the incident which informant narrated in the FIR were not the cause of his death. Therefore, question of addition of Section 302 of the Indian Penal Code will not arise. Since the custodial interrogation of the applicants is not required, they deserve to be released on bail.

6. Per contra, the learned APP, well assisted by learned Advocate Mr.Kadam strongly opposes the applications and it is submitted that there were in all nine accused persons, out of them only three have been arrested and others are absconding. Charge-sheet is filed on 20<sup>th</sup> December 2021 and the informant has now expired. But the statements of the witnesses have been recorded, which specifically state that the witnesses were assaulted by accused Khadir, Amer, Azar, Sameer (applicant No.1 in ABA No.1421 of 2021) and Momin Raja by wooden sticks. Witness Mohammad Ifroj, Sameer Saudagar are the injured persons. Witness Kalim Saudagar states that on 22<sup>nd</sup> September 2021 when he saw that informant Imran was proceeding towards his house from Masjid after Namaj, at that time informant was abused by Momin Saed (applicant No.2 in ABA No.1421 of 2021). Applicant No.2 - Momin Saed was holding knife and he rushed towards informant Imran but that assault was stopped by Sameer Saudagar. The other seven accused persons holding sticks in their hands, thereafter assaulted the other witnesses including this witness Kalim. The statements of the witnesses have also been recorded under Section 164 of the Code of Criminal Procedure. Therefore, when there is prima facie

evidence against the present applicants and they were absconding, they do not deserve discretionary relief of anticipatory bail. Learned APP further submits that possibility of commission of serious offence cannot be ruled out in view of the fact that informant has expired.

7. At the outset, it is to be noted that though the informant Imran has expired on 25<sup>th</sup> September 2021, at this prima facie stage what is on record, is his autopsy report, which states that death of informant might have occurred 6 to 12 hours before starting of autopsy. The autopsy was started around 7.45 p.m. on 25<sup>th</sup> September 2021. As per his FIR, the incident had taken place around 19.00 hours on 22<sup>nd</sup> September 2021. Therefore, there is no possibility of addition of Section 302 of the Indian Penal Code in this case. Now, the investigation is also over without arresting the present applicants. Charge-sheet has already been filed on 20<sup>th</sup> December 2021. The charge-sheet does not say as to which attempts were made to arrest the present applicants. It appears that the Investigating Officer has not resorted to the procedure under Section 82 of the Code of Criminal Procedure. Therefore, merely his opinion that the applicants are absconding, will not be sufficient. He should have

produced evidence that attempts were made to arrest the applicants but they were not found. Such attempts should be more than once, then only it can be said that a person is absconding. From the spot itself, certain weapons appears to have been seized. Even if we go by the statements of the witnesses as the same are and also the FIR, the injured eye witnesses have stated that applicant No.2 – Momin Saed (in ABA No.1421 of 2021) tried to assault by knife to the informant, however, that assault was resisted by witness Sameer Saudagar, who has then received simple injury to his hand. As regards other applicants are concerned, their presence is stated along with wooden sticks but it is not specifically stated as to whom they assaulted and where the blows were received by those persons. It is also to be noted that the injury certificate of the witnesses mostly show simple injuries and therefore, the question of custodial interrogation of the applicants is not necessary. Note will have to be taken of the civil dispute that was pending since 2004. Therefore, taking into consideration these aspects, the applicants deserve to be released on anticipatory bail.

8. 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 26<sup>th</sup> October 2021 passed in ABA No.1271 of 2021 and by order dated 25<sup>th</sup> November 2021 passed in ABA No.1421 of 2021, had already granted interim protection to the applicants, which deserves to be confirmed. Accordingly, following order is passed:-

### **ORDER**

- i) Both the Applications stand allowed.
- ii) The interim protection granted to the applicants in Anticipatory Bail Application No.1271 of 2021 by this Court by order dated 26<sup>th</sup> October 2021 stands confirmed. It is thus

clarified that in the event of arrest of applicant No.1 – Momin Fasiyoddin S/o Momin Riyajoddin, applicant No.2 – Momin Faimoddin S/o Mohammad Sharif and applicant No.3 – Momin Zahiruddin S/o Mohammad Sharif in Anticipatory Bail Application No.1271 of 2021, in connection with Crime No.188 of 2021 registered with Peth Beed Police Station, Taluka and District-Beed 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, 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) The interim protection granted to the applicants in Anticipatory Bail Application No.1421 of 2021 by this Court by order dated 25<sup>th</sup> November 2021 stands confirmed. It is thus clarified that in the event of arrest of applicant No.1 – Momin Sameer Zahiruddin and applicant No.2 – Momin Saed Momin Zahiruddin in Anticipatory Bail Application No.1421 of 2021, in connection with Crime No.188 of 2021 registered with Peth Beed Police Station, Taluka and District-Beed 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,

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.

iv) Applicants in both the Applications shall not tamper with the evidence of the prosecution in any manner.

v) Applicants in both the Applications shall not indulge in any criminal activity.

vi) Criminal Application No.2591 of 2021 stands disposed of.

**[ SMT. VIBHA KANKANWADI , J. ]**