

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1299 OF 2021

WITH

CRIMINAL APPLICATION NO.2925 OF 2021

MOHAMMED GULAM ADIL S/O MOHAMMED GULAM SAMDANI

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. R.S. Deshmukh, Senior Counsel i/b Mr. D.R. Deshmukh, Advocate for the
applicant

Mr. V.M. Kagne, APP for the respondent Nos.1 and 2

Mr. M.K. Bhosale, Advocate for assist to APP

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 24th FEBRUARY, 2022

PRONOUNCED ON : 13th APRIL, 2022

ORDER :

1 Criminal Application No.2925 of 2021 moved for assist to APP
stands allowed and disposed of.

2 The applicant is apprehending his arrest in connection with
Crime No.159/2020 dated 25.03.2020 registered with Nanded Police Station,

Dist. Nanded, for the offence punishable under Section 302, 307, 143, 147, 148, 149, 504, 506, 188 of the Indian Penal Code, 1860, under Section 3/25, 4/25, 4/27 of the Arms Act, 1959 and under Section 135 of the Maharashtra Police Act, 1951.

3 Heard learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant and learned APP Mr. V.M. Kagne, well assisted by learned Advocate Mr. M.K. Bhosale for the informant.

4 Learned Senior Counsel Mr. R.S. Deshmukh instructed by learned Advocate Mr. D.R. Deshmukh for the applicant vehemently submitted that the applicant has been falsely implicated. The investigation is complete and charge sheet is also filed i.e. Regular Criminal Case No.293/2020. That fact requires to be considered and we are then required to consider as to what kind of evidence has been collected against the present applicant. Though it is stated that he is absconding, it is not correct. The First Information Report, therefore, now cannot be taken on its face value but the entire material in the charge sheet is required to be seen.

5 It has been further submitted that the informant in his First Information Report states that the present applicant had assaulted with

sword. Specific act, that is, to whom he has assaulted is not stated. Informant's brother Mohd. Juned was assaulted with khanjar and sword and he expired on 25.03.2020. In the supplementary statement the informant has only stated that his brother was assaulted with khanjar and sharp weapon. The Postmortem Report column No.17 states four external injuries. One is stab wound on chest and cause of death is stated to be "Haemorrhagic shock due to stab injury to heart". Siraj was assaulted with sword as well as kicks and fist blows by present applicant and cousin brother of informant and he expired on 01.04.2020. The Postmortem Report column No.17 states seven injuries. Most of them are sutured and cause of death is - "Septicemia is an operated case for stab injury to chest and abdomen". Therefore, whether Section 302 of the Indian Penal Code would be attracted, is a question. Further, if we consider the statement of witness Mohd. Gayasoddin @ Minajoddin Farooqui, then he says that he had gone to intervene the dispute and he was assaulted by present applicant with cricket bat. He has not stated that the present applicant was having sword and he had assaulted the deceased Siraj with sword. It appears that only one previous antecedent is against the present applicant and it is under Section 326, 325, 304, 147, 148, 149 of the Indian Penal Code and Section 4/27 of the Indian Arms Act. Taking into consideration these contradictions the custodial interrogation of the applicant is not required. The applicant was not present at the spot on

the alleged day of incident. It has been contended that the incident had taken place on 25.03.2020. In fact, the applicant was admitted from 24.03.2020 to 26.03.2020 at Telangana Vaidya Vidhan Parishad Area Hospital, Banswada, Dist. Kamareddy in Telangana. He was suffering from diarrhea and viral fever. He has produced document to that effect. Further, the important fact to be noted is that even in respect of earlier offence how he has been falsely implicated can also be demonstrated and documents to that effect have been produced on record. The applicant is a student and he needs to be protected from false implications. He is ready to abide by the terms of the bail.

6 The learned APP well assisted by learned Advocate Mr. M.K. Bhosale vehemently submitted that the applicant was very much present at the spot of incident and he has used sword to cause injuries on the person of Juned. The First Information Report clearly shows that all of them armed with pistol, sword, khanjar and sword respectively had gone to the house of informant around 3.00 p.m. on 25.03.2021. Accused Yunus Inamdar was holding pistol and he shot towards informant and the bullet had caused injury to the back of the informant. Accused Gaus Inamdar had given blow of sword, which hit to the left shoulder of the informant. When informant's brother Mohd. Juned came to rescue him, accused Sarowar Inamdar stabbed

the khanjar in the chest of Juned. Then Anis Inamdar tried to strangulate Juned, at that time one Minajoddin and Siraj had come, to whom present applicant and cousin brothers of the informant had assaulted with sword and gave them kicks and fists. Now one of the injured is saying that he was assaulted by one of the applicants with cricket bat, but as regards others are concerned, they are saying that the present applicant has assaulted by sword. The present applicant is absconding since the date of offence. The offence that has been committed is serious in nature. The applicant has criminal antecedents. Juned had seven injuries on his person and there was attempt to save him. But it appears that he succumbed to the injuries. The Medico Legal Certificate of the informant states that he had fire arm injury over the lower back left side of vertebral column, level L-3 and L-4 and the second injury was stab injury to the left arm (post). This supports the contention of the informant. Plea of *alibi* cannot be taken into consideration at this stage. The custody of the present applicant is required for the purpose of investigation. Though the charge sheet is filed; yet, the sword used by the present applicant while committing the offence is yet to be recovered.

7 At the outset, it is to be noted that the charge sheet has been filed and it has to be in respect of all the accused. We cannot say that since one or more accused are not arrested, then, the charge sheet is against only

the arrested accused persons. Charge sheet is to be filed in respect of all accused and not in respect of arrested accused. It also appears from the record that police party was searching the applicant and he could not be found. Investigating Officer could have taken the steps under Section 82 and 83 of the Code of Criminal Procedure to declare the applicant as proclaimed offender, however, he has not done so. But the fact remains that when the police party had gone to arrest the applicant on several occasions, he was not at the residence or the given address. Therefore, relying in the decision of **Lavesh vs. State (NCT of Delhi), 2012 (8) SCC 730** the applicant does not deserve discretionary and extraordinary relief.

8 Coming to the plea of *alibi* it is tried to be taken on behalf of the applicant that it is to be noted that though the discharge card has been produced in photo copy form, first of all it has not been endorsed as 'True Copy' by the learned Advocate appearing for the applicant. Secondly, the plea of *alibi* will have to be proved by the accused, who takes up the defence and it can be only done at the time of trial and not before that. Therefore, it cannot be taken into consideration at this stage.

9 The informant in clear words in First Information Report has stated that the present applicant had used sword to assault one Minajoddin

and Siraj. Therefore, statement of Minajoddin was pointed out, wherein he has stated that the present applicant has assaulted him by cricket bat but as regards the other person i.e. Sarowar Inamdar is concerned, he states that he had stabbed knife in his back. This contradiction would be taken at the stage of trial, because we cannot take only the statement of the injured. We will have to take the statements of eye witnesses also into consideration. Witness Shaikh Javed, who is the relative of the informant states that when he came to know that incident is taking place, he went there and saw that the present applicant was holding sword in his hand. He also states that present applicant had assaulted Minajoddin and Shaikh Siraj with sword. Shaikh Javed Shaikh Ismail appears to be the person residing in the same locality and was knowing the informant and his family members as well as accused persons and he was the passerby at that time and also stated that the present applicant had assaulted the persons there with sword, cricket bat, rod etc. There are other statements of the witnesses also, who are saying that the present applicant had assaulted Minajoddin and Siraj with sword.

10 The police papers also show that time and again search was made of the absconding accused persons but they were not found. Not only the present applicant is absconding but there are other accused persons also who are still absconding. It also appears that attempts were made to record

the statement of deceased Siraj, however, he was not in a position to give statement and ultimately he succumbed to the injuries. It may be due to septicemia, but taking into consideration the Postmortem Report it can be definitely said that there were seven injuries, they were sutured, but it could have been predicted that such blows would lead to death. Taking into consideration these things the applicant is not entitled to the discretionary extraordinary relief under Section 438 of the Code of Criminal Procedure. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

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