

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

ANTICIPATORY BAIL APPLICATION NO.1605 OF 2021

- 1) Atul Raju @ Rajendra Nakwal,
- 2) Aman Ajay Kharare,
- 3) Karan Sanjay Nakwal

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

WITH

ANTICIPATORY BAIL APPLICATION NO.1571 OF 2021

- 1) Ajay Vishnuraj Nakwal,
- 2) Vicky @ Vikrant Ajay Nakwal,
- 3) Sumit Raju @ Rajendra Nakwal

...APPLICANTS

VERSUS

The State of Maharashtra

...RESPONDENT

...

Ms.Sunita G. Sonawane Advocate for Applicants in both
the Applications.

Mr.A.M. Phule, A.P.P. for Respondent-State in both the
Applications.

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE : 21st JANUARY, 2022

ORDER :

1. Both these Applications have been filed by the accused persons who are apprehending their arrest in connection with Crime No.469 of 2021 registered with Bhingar Camp Police Station, Taluka and District-Ahmednagar for the offence punishable under Sections 307, 326, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 4/25 of the Arms Act.

2. Heard learned counsel for the applicants and learned APP for the respondent – State.

3. It has been vehemently submitted on behalf of the applicants that initially Section 307 of the Indian Penal Code was not added, however, after the injury certificate was received that Section is also added. This is a case where there was a free fight. Even the applicants' side had received severe injuries. In the First Information Report itself it is mentioned that there was previous quarrel between the informant and the applicants. There was, in fact, no motive for the applicants to commit any

such offence. The custodial interrogation of the applicants is not necessary in view of the fact that investigation appears to be substantially over. No deadly weapon is used in this case and neither Section 307 nor Section 326 of the Indian Penal Code can be said to be attracted to the facts of the case. Even the learned Additional Sessions Judge has observed about the material variance between the First Information Reports, yet rejected the pre-arrest bail on the statement regarding assigning of role to the applicants. However, no due weightage has been given to the First Information Report that has been lodged by Rekha Ajay Nakwal, who is the wife of applicant No.1 in Anticipatory Bail Application No.1571 of 2021, on 12th November 2021. Crime No.471 of 2021 was lodged against the informant and others for the offence punishable under Sections 326, 143, 147, 149, 324, 323, 504, 506 of the Indian Penal Code. In view of the fact that custodial interrogation of the applicants is not required, they deserve to be released on pre-arrest bail. Applicant Nos.1 and 2 in Anticipatory Bail Application No.1571 of 2021 have been granted interim protection by this Court by order dated 22nd December 2021. So also the applicants in Anticipatory Bail Application No.1605 of 2021 have been granted

interim protection by this Court by order dated 12th January 2022. The applicants are ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposed the applications and submitted that when due to the fight between two parties law and order situation has arisen, then they deserve no sympathy. The weapons with which the injuries have been caused, deserve to be recovered and therefore, physical custody of the applicants is required.

5. At the outset, it is to be noted that the present First Information Report in which the applicants in both the Applications apprehend their arrest, appears to be lodged prior in time. It was lodged at about 12.23 p.m. on 11th November 2021 in respect of an incident tht had been allegedly taken place at about 21.00 hours on 10th November 2021. It is lodged by one Asha Raju Chavan. It has been stated in this complaint that there used to be quarrels between the two families frequently. At about 9.00 p.m. on 10th November 2021 the nephew of the informant was standing outside his house. Brother of the informant stays opposite to the house of the informant. Applicant Ajay and Vicky came there and started unnecessarily abusing the nephew of the informant. Informant went there and asked as to

why they were abusing but then those two persons were annoyed and thereafter other six persons came there. Out of them, Sumit was holding iron pipe and he had assaulted the informant with that iron rod on her head causing bleeding injury to her. She fell down and thereafter accused Rohan Kharare pelted stone on her. Thereafter son, brother, another nephew of the informant also came there and they were also assaulted by the accused Atul, Raju, Aman and Karan with the help of pipe and wooden log. They all were then given blows of fists and kicks and were threatened to kill. The injured persons then taken to Civil Hospital and then shifted to Crystal Hospital, Ahmednagar.

6. Important point to be noted is that except as regards Ajay and Vicky, specific role is attributed to all the applicants and it is stated that they had assaulted not only the informant but also to the other i.e. nephews, brother and son of the informant with pipe and wooden log. One Rajendra Nakwal is stated to have been arrested and certain recovery of weapon has been made. However, it cannot be said that he would have discovered all those weapons which could have been used in the commission of crime. Only as regards Ajay and Vicky are concerned, the First Information Report is silent about any assault caused by them.

No doubt it states about their presence and alleged abuses given by them, but thereafter no role is attributed to them. Therefore, at the most as against them offence under Section 143, 147, 148 and 504 of the Indian Penal Code could be said to be attracted. They deserve to be released on pre-arrest bail. However, as regards other applicants are concerned, their physical custody is required. Case is not made out to release the other applicants on pre-arrest bail by exercising the extraordinary powers of this Court. Hence the following order:-

ORDER

- i) Anticipatory Bail Application No.1605 of 2021 stands rejected. The interim protection granted earlier, comes to an end with the rejection of the Application.
- ii) Anticipatory Bail Application No.1571 of 2021 so far as applicant No.3 – Sumit Raju @ Rajendra Nakwal, stands rejected.
- iii) Anticipatory Bail Application No.1571 of 2021 so far as applicant No.1 – Ajay Vishnuraj Nakwal and Applicant No.2 – Vicky @ Vikrant Ajay Nakwal, stands allowed.
- iv) In the event of arrest of applicant No.1 – Ajay Vishnuraj Nakwal and Applicant No.2 – Vicky @ Vikrant Ajay Nakwal in Anticipatory Bail Application No.1571 of 2021 in connection with

Crime No.469 of 2021 registered with Bhingar Camp Police Station, Taluka and District-Ahmednagar for the offence punishable under Sections 307, 326, 323, 143, 147, 148, 149, 504, 506 of the Indian Penal Code and Sections 4/25 of the Arms Act, they be released on bail on P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand) each.

v) They shall attend Bhingar Camp Police Station, Taluka and District-Ahmednagar on every Monday and Thursday between 10.00 a.m. and 2.00 p.m. till filing of the charge-sheet.

vi) They shall not tamper with the evidence of the prosecution in any manner.

[SMT. VIBHA KANKANWADI , J.]