

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

ANTICIPATORY BAIL APPLICATION NO.147 OF 2023

**MOHAMMAD RAFIQ S/O. MOHAMMAD YUSUF
VERSUS**

THE STATE OF MAHARASHTRA AND ANOTHER

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Mr. V.D. Sapkal, Sr. Advocate i/b Mr. S. R. Sapkal, Advocate for
Applicant

Ms. R.P. Gour, APP for Respondents – State
Mr. S.R. Pande, Advocate for Informant

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 23rd FEBRUARY, 2023

PER COURT :

1. Applicant apprehends arrest in Crime No.139/2021, Registered with Kotwali Police Station, District Parbhani, for offence punishable under sections 307, 324, 109, 143, 147, 148, 149 of the Indian Penal Code, sections 4 and 25 of the Arms Act, 1959 and sections 37(1), 37(3) and 135 of the Maharashtra Police Act, 1951.

2. FIR is lodged by Shaikh Saleem Shaikh Amir alleging that on 24/06/2021, at about 02:00 p.m. while he was at his house, he received phone call from his master Imran Zain Gaus asking him to accompany him for getting hair-cut. So informant went to the house of his master situated at Qurban Ali Shah Nagar. Imran asked him to drive Activa vehicle. Thereafter informant was riding the Activa vehicle and Imran was sitting as pillion rider. They

were proceeding towards post colony in order to get the hair-cut. At that time, from front side Ali Chaus with his vehicle was proceeding and after seeing them Ali Chaus abused them saying abusive word and went away with his vehicle. On hearing such abusive word Imran asked informant to chase Ali Chause. Accordingly the informant and Imran were chasing Ali Chaus on said Aactiva vehicle. They came towards Dargah. At that time, Ali Chaus was proceeding with his vehicle towards Parwa gate. Informant and Imran were chasing Ali Chaus, at that time, one boy who was selling balloons sustained dash of the vehicle of informant and they all fell down. Surrounding persons gathered there to help them to get up. By that time, Ali Chaus went away from that place, therefore, informant and Imran came back to the house of Imran Gaus. Thereafter, again Informant and Imran Gaus went towards Pedgaon road for getting hair-cut. When they reached in Qurban Ali Shah Nagar in front of house of Sayeed Maulana, at about 02:45 p.m., Imran received a phone call, hence they halted there. At that place, Mohammad Rizwan who has newly constructed house there, came running and caught Imran from behind asking him why he chased his friend Ali Chaus. Mohammad Rizwan Khan forcibly caused Imran to fall down. At that time, Ali Chaus who was armed with knife and Rizwan Khan who was armed with sword, came there running and gave blows of their respective weapons to Imran with intention to kill him.

Thereafter Mohammad Rizwan took the sword from the hands of Rizwan Khan and gave blows of the sword to Imran, father of Mohammad Rizwan lifted the stone and assaulted Imran with stone. In the meantime Ziya came there on black colour pulser motorcycle and hit Imran with stone. Informant went running to Imran's brother Maulana Atik Shaikh and called him, who came on the spot. By that time, all the accused persons were fled from the spot.

3. Heard learned senior advocate for applicant, learned Additional Public Prosecutor for State and learned advocate for informant. Perused the papers of investigation.

4. Learned senior advocate for applicant submits that the applicant is discharged in MCOC Act by the trial Court. Applicant is a pensioner who was retired from the Government Service as Agricultural Officer and he has no criminal antecedents. Sessions Court has rejected his application observing that he was seen in the CCTV footage pelting stones, therefore, he has actively participated in common object of unlawful assembly and has assailed the informant.

5. Learned advocate for informant strenuously opposed the application contending that discharge order of the applicant is challenged before this Court by the victim and the same is subjudice. He submits that only on the basis that Division Bench of

this Court had made certain observations in favour of the applicant, trial Court has discharged him from MCOC Act. He submits that active participation of applicant in the incident is clear from the CCTV footage.

6. Learned Additional Public Prosecutor by relying on the injury certificate submits that some of the incised wounds are caused to the informant by sharp object and some of them are possible by sharp stones which were pelted by the present applicant.

7. Out of five accused persons four are arrested. It appears from the investigation papers that applicant is 65 years old retired Government servant and has no criminal antecedents. Charge-sheet is already filed on 20/12/2021 and therefore, further custodial detention of applicant is not necessary in the facts of the present case.

8. In the result, application is allowed.

9. In the event of arrest of applicant in Crime No.139/2021, Registered with Kotwali Police Station, District Parbhani, for offence punishable under sections 307, 324, 109, 143, 147, 148, 149 of the Indian Penal Code, sections 4 and 25 of the Arms Act, 1959 and sections 37(1), 37(3) and 135 of the

Maharashtra Police Act, 1951, applicant be released on executing Personal Bond of Rs.15,000/- with one surety in the like amount. Applicant shall not tamper prosecution evidence.

(NITIN B. SURYAWANSHI, J.)