

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1707 OF 2023
WITH APPLN/3959/2023 IN ABA/1707/2023

SHAIKH AREF SHAIKH TAIYAB AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA

...

Advocate for Applicants : Mr. D. B. Kale
APP for Respondents: Mrs. G. L. Deshpande
Advocate for informant: Mr. A. D. Hande

...

CORAM : R.M. JOSHI, J
DATE : OCTOBER 30, 2023

PER COURT :

1. At the outset, Mr. A. D. Hande, learned Counsel, states that he has instructions to appear on behalf of informant to assist APP.

2. Having regard to the nature of offence, application no. 3959/2023 is allowed and he is permitted to assist APP.

3. This is successive bail application for pre-arrest bail. Previous bail application filed by the Applicant bearing No. 962/2023 was withdrawn by the Applicants after this Court has shown disinclination to grant any relief.

4. Present application is filed by contenting that there is change in circumstance as the co-accused are granted anticipatory bail by the learned Additional Sessions Judge. Apart from this, bail is also sought on merits of the case.

5. Applicants apprehend arrest in connection with Crime No. 602/2022 registered with Akhada Balapur Police Station, Dist. Hingoli for the offences punishable under Sections 302, 307, 326, 324, 452, 143, 147, 148, 149, 504, 506 of Indian Penal Code. Shaikh Samir Shaikh Tabdil gave information to the police about the incidents occurred on 28.12.2022 and two days prior thereto. It is his contention that owing to the political rivalry, accused launched assault on him with iron rod and sticks. In the said incident, informant sustained serious injuries. It is reported that he died subsequently.

6. Learned Counsel for the Applicants submit that co-accused Shaikh Samir and others are granted anticipatory bail by the Additional Sessions Judge in Bail Application No. 275/2023. Thus, it is his contention that on parity, present Applicants are

entitled for protection. On merits, it is submitted that there are no specific allegations against Applicants of causing particular injuries to the injured and that there is doubt as to whether the injured died owing to the said injuries caused to him. It is also submitted that mere recovery of the weapons from the accused is not sufficient ground to deny bail. It is also submitted that charge-sheet has been filed against the co-accused and as such, custodial interrogation of the Applicants is not necessary.

7. Learned APP and learned Counsel for the informant opposed the application firstly on the ground that this application is not maintainable for want of change in circumstances. By referring to the record, it is submitted that the previous anticipatory bail application was filed after filing of the charge-sheet against co-accused and hence, there is no substantial change in circumstance to entertain subsequent application. It is also submitted that it is the case wherein informant and others were attacked by the accused persons with weapons and in the said assault number of persons sustained injuries and owing to the

said injuries, one of the injured died. It is also submitted that since the weapons used by the Applicants are yet to be recovered, their custody is necessary. Thus, according to prosecution, it is not a fit case for enlargement of Applicants on pre-arrest bail.

8. There is no doubt about the fact that the present application is second bail application. There is no embargo on filing of subsequent bail applications, however, unless material change is there in fact or law, which is *sine qua non* for entertainment of said application, second bail application cannot be entertained by the Court. Since first bail application was rejected even after filing of the charge-sheet against co-accused, there is practically no change in circumstance of fact in order to enable the Applicants to file said application.

9. As regards contention of the Applicants about co-accused being granted bail is concerned, perusal of the FIR shows that the incident in question has occurred out of political rivalry and even prior to two days of the incident present Applicants had been to the informant and he was assaulted with iron rod. Apart

from this, even in incident dated 28.12.2022 participation of the Applicants in the assault can be seen. Thus, there is material difference in the role alleged against present Applicants and co-accused who is enlarged on bail by the Additional Sessions Judge.

10. In this incident, assault was caused with iron rod and wooden sticks. One of the injured has died and the cause of death is death due to blunt trauma on left side of chest with hemorrhagic contusion over left lung with left anterior descending coronary artery narrowing. Since previous bail application was withdrawn by the Applicants after this Court has shown disinclination to grant relief, there was no occasion to this Court to record reason for non granting of relief. Hence, these reasons are recorded. Issue of recovery of weapon used by them justifies claim of prosecution for custodial interrogation.

11. It is pertinent to note that the incident has occurred on 28.12.2022 since then, Applicants are absconding/avoiding their arrest. Merely because, they are successful in avoiding arrest, they are not entitled for bail on the ground that the charge-sheet

has been filed against co-accused. In the aforesaid circumstances, present Application is not maintainable for want of material change in circumstances. Hence, application stands dismissed.

(R. M. JOSHI, J.)