

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

ANTICIPATORY BAIL APPLICATION NO.1597 OF 2023
WITH CRIMINAL APPLICATION NO. 4002 OF 2023

1. Kalim @ Undri s/o Yusuf Shaikh
2. Saiyyed Sharif @ Undri s/o Saiyyed

VERSUS

State of Maharashtra

Mr. N. R. Shaikh, Advocate for the applicants
Mr. M. K. Goyanka, APP for the respondent/State
Mr. B. B. Kulkarni, Advocate for the informant

WITH

ANTICIPATORY BAIL APPLICATION NO.1242 OF 2023

Akram Shaikh s/o Sabdar Shaikh

VERSUS

State of Maharashtra

Mr. N. R. Shaikh, Advocate for the applicant
Mr. M. K. Goyanka, APP for the respondent/State
Mr. B. B. Kulkarni, Advocate for the informant

AND

ANTICIPATORY BAIL APPLICATION NO.1845 OF 2023

Mustapha Shah s/o Yunus Shah

VERSUS

State of Maharashtra

Mr. N. R. Shaikh, Advocate for the applicant

Mr. M. K. Goyanka, APP for the respondent/State

CORAM : R. M. JOSHI, J.

DATE : 4th DECEMBER, 2023

P.C. :-

1. Applicants apprehend arrest in connection with Crime No. 52/2023 registered with Bhusawal Bazarpeth Police Station, Tal. Bhusawal, District Jalgaon for the offences punishable under Sections 302, 307, 143, 144, 147, 148, 149, 504, 506 109 of the IPC.
2. Initially offence was registered punishable under Section 307 of IPC but since the injured died, thereafter offence of murder came to be charged.
3. First informant is injured/deceased he reported to the police incident occurred on 04/02/2023 at around 8.55 pm. Before that he narrates about the previous incident occurred with him involving some of the applicants and accused persons. As far as the incident in question is concerned, it is stated that the present applicants along with the other accused came to the spot. There is specific allegation against accused Teharin Shaikh stating that he caused assault with iron rod on the informant resulting into causing of injuries. With these allegations first information report came to be lodged.

4. Learned counsel for the applicants submits that there is no witness to the actual incident of assault and hence the the first information needs to be minutely considered. It is his submission that the first informant had not made allegation against any other person except accused Teharin Shaikh of causing actual assault and in fact it is stated therein that others abused and threatened him. It is contended that though in the CCTV footage applicant Mustafs is found present at the spot of the incident, however, thee is nothing to indicate that he has committed any overtact in the assault. As far as other applicants are concerned, it is submitted that their presence is not seen in the CCTV footage nor there is any witness who has confirmed their presence therein. By referring to the charge-sheet it is submitted that informant though sustained injuries on 04/02/2023 unfortunately died on 08/02/2023, however, the PM notes shows that the cause of death is due to acute respiratory distress leading to cardio respiratory arrest. It is submitted that the surface injuries were caused to the deceased recorded in the column No. 17 of PM notes, which indicates that there were no injuries on the vital part of the body of the deceased. Thus, it is his contention that it is not a case attracting Section 302 of IPC. According to him there is recovery of weapon at the instance of co-accused and after filing of the charge-sheet custodial interrogation of the applicants is not necessary.

5. Learned APP and learned counsel for the informant opposed the applications by essentially citing the seriousness of the crime. It is submission of the learned counsel for the informant that the previous enmity between the father of one of the accused who has actual assaulted the informant/deceased. By referring to the statement of Ali Ajgar who is claimed to be independent witness it is submitted that this statement indicates about existence of dispute between the applicants and brother of the informant. Thus, according to him there is sufficient material to indicate a conspiracy being hatched for the purpose of committing the crime in question. Learned APP also referred to the statement of the witnesses, transcript of CCTV footage as well as the medical evidence on record to oppose the application.

6. At this stage the record indicates that no one has witnessed actual occurrence of incident of causing of assault on informant. In this backdrop, it is material to note that the informant does not make any allegation against any other person/accused except for accused Teharin Shaikh of causing assault. It is claimed that Teharin assaulted him with iron rod. There is further specific statement in the first information report that the co-accused who were present at the spot abused and threatened him. If it is a case of conspiracy to kill informant, it does not stand to any reason that if all the accused with their common intention had gathered

at the spot for the purpose of assaulting and killing the informant, why no one else except for the one of the accused person even attempts to hit him. Apart from this as rightly pointed out by the learned counsel for the applicants that PM notes indicate that there is no injury caused on the vital part of the body and this runs contrary to the case of the prosecution about the intention of the accused to commit murder of the deceased.

7. Prima facie therefore, this Court is of the view that the involvement of the applicants may not be there in this crime. Now charge-sheet has been filed. Record indicates that except accused applicant Akram there is no criminal history against the other applicants. As far as this applicant-Akram is concerned, there is one crime pending against him of year 2021. Since his prima facie involvement is not found in the assault, this Court is of the view that only because one crime against registered against him his liberty cannot be denied. Hence, applications are allowed. Pending application, if any, stands disposed of.

8. The above observations are recorded on prima facie consideration of the material placed on record and for purpose of deciding pre-arrest bail. The same shall not bind the Trial Court. Hence the following order.

ORDER

- (i) ABA No. 1242/2023 is allowed in terms of interim order dated 31st July, 2023
- (ii) ABA No. 1845/2023 is allowed in terms of interim order dated 4th November, 2023.
- (iii) In the event of arrest of applicants in ABA No. 1597/2023 in connection with Crime No. 52/2023, registered with Bhusawal Bazarpath Police Station, Tal. Bhusawal, Dist. Jalgaon for the offences punishable under Sections 302, 307, 143, 144, 147, 148, 149, 504, 506, 109 of IPC, they shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) each with one solvent surety in the like amount.
- (iv) They shall attend the concerned police station till filing of the charge-sheet.
- (v) They shall not contact the witnesses directly or indirectly.
- (vi) They shall not interfere with the evidence in any manner whatsoever.
- (vii) They further directed to cooperate the investigating agency for further investigation.
- (viii) Pending application, if any, stands disposed of.

(R. M. JOSHI, J.)

ssp