

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 298 OF 2015

Asif s/o. Ibrahim Shaikh	...	Applicant
vs.		
The State of Maharashtra & Anr.	...	Respondents

CRIMINAL APPLICATION NO. 227 OF 2015

IN

ANTICIPATORY BAIL APPLICATION NO. 298 OF 2015

Naeem Kayyum Khan	...	Intervener
In the matter between		
Asif Ibrahim Shaikh	...	Applicant
vs.		
The State of Maharashtra & Anr.	...	Respondents

Mr. M.D. Adkar i/b. Mr. U. N. Tripathi, Advocate for the applicant.
Mr. S.S. Pednekar, APP for the State.
Mr. Tushar Jadhav, Advocate for the applicant/intervener in
APPP/227/2015.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 1st April, 2015.

P.C.

This Application is moved for anticipatory bail, as the applicant /accused is prosecuted for the offences punishable under sections 307, 504, 506(2) r/w. 34 of the Indian Penal Code, section 3(25) of the Arms Act and section 37(1), 135 of the Mumbai Police Act.

2. It is the case of the prosecution that on 18th January, 2015 there was verbal altercations between the son of the complainant and accused

no. 1, who is juvenile when they were flying kites in the terrace. The son of the complainant came down because some threats were given to him and told the incident to his father/complainant. So, the complainant approached the father of the juvenile, at that time, the applicant/accused was present there and his relatives threatened him. The applicant took out pistol and fired at the complainant, which was missed and the complainant started running so he fired another bullet. The incident was reported to the police and the police arrived there. The offence was registered at C.R. No. 11 of 2015 at Faraskhana Police Station, Pune.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused has not committed any offence. He is innocent. There is a long standing property dispute between the parties and therefore, the complainant has given a false complaint against him. The learned counsel argued that the incident of firing took place at 6 p.m. on 18th January, 2015, however, on the same day at 6.30 p.m. a complaint was given by Dilshad Shaikh to Faraskhana Police Station, which was registered as N.C. by the police. It is submitted by the learned counsel that it was not the applicant/accused but the complainant himself has fired towards the applicant/accused. He further submitted that the learned Sessions Judge while rejecting the anticipatory bail has given weightage on the criminal antecedents of the applicant/accused,

however, the police has given a false information in respect of criminal antecedents and refuting the same, he has filed affidavit before this Court. The learned counsel further submitted that though the learned Sessions Judge has stated that there are 14 criminal cases pending against the applicant/accused, it is a false information. He submitted that the applicant/accused is acquitted from four cases and only five cases are pending against him and those cases are fake cases. He submitted that it is the duty of the police to verify the true facts and make a correct statement and file reply to that effect. He further submitted that two criminal cases are filed by the applicant/accused against the informant and the police have not investigated the complaint given by the applicant/accused.

4. Learned APP opposed the Bail application. He relied on the statement of the eye witnesses, so also the report of the police in respect of criminal antecedents of the applicant/accused.

5. The learned counsel for the intervener also opposed the Application and relied on the statement of the complainant.

6. On perusal of the complaint and the statement of the eye witnesses, it appears that the incident of firing *prima facie* has taken

place in the manner stated by the informant. There may not be 14 cases pending against the applicant/accused as stated in the order passed by the learned Sessions Judge, however, admittedly there are 5 criminal cases pending against the applicant/accused. In the cross complaint, the applicant/accused is not the informant but one Dilshad Shaikh is the informant. The statement of learned APP that custodial interrogation is required for the recovery of pistol, is justified. Hence the Application for anticipatory bail is rejected.

7. Intervention Application is accordingly disposed of.

(MRS. MRIDULA BHATKAR, J.)