

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.78 OF 2016

Shahid Mumtaz Khan & Anr.

..Applicants

V/s.

The State of Maharashtra

.. Respondent

Mr.Kamran Shaikh for the applicant.

Smt.S.S. Kaushik, APP for the Respondent-State.

Mr.D.M.Khedkar, PSI, Sheel Diaghar Police Station

CORAM : A. S. GADKARI, J.

DATE : 04th FEBRUARY 2016.

P.C.

1. The applicants are seeking pre-arrest bail in CR No.315 of 2015 registered with Sheel Diaghar Police Station, Dist-Thane under sections 143, 144, 147, 148, 149, 295(a), 504, 506(II) read with section 37(1) and 135 of the Mumbai Police Act.

2. The complainant Vishnu Patil has lodged First Information Report dated 25-12-2015 stating that on 24-12-2015 the religious function of Datta Jayanti was going on at village-Padle. That at about 4.00 pm applicant no.1 along with 70 associates came in procession. They were in two trucks and

on motorcycles. The applicant and the other persons had taken out a procession on the religious event of Id-E-Milad from the Diaghar Village. The applicant No.1 abused the persons from the Padle Village and gave threat to kill the complainant. At that time in the said truck there was a gun and two swords. The complainant has further stated that the applicant no.1 thereafter gave a phone call on the mobile phone of the son of the complainant and threaten to kill him. It is further stated that on 25-12-2015 at about 7.15 p.m. the applicant no.1 along with 22 to 25 persons came on motorcycles at Diaghar Village. At that time the said persons were having gun and swords in their hands. Due to the quarrel which took place on the earlier date the applicant no.1 again abused the villagers from Diaghar Village and extended threat to the complainant for his life. In the premise the said First information is lodged.

3. The learned counsel for the applicant submitted that in the present case the application of section 295A of the Indian Penal Code is not proper as though according to the prosecution the applicant had taken out a procession on the eve of Id-E-Milad and the said procession though obstructed the

religious function of Datta Jayanti which was being conducted at Village-Padle, the ingredients of section 295 are missing from the statement of the complainant. Prima-facie it appears that there is substance in the contention of the learned counsel for the applicant. However, it is to be noted here that it is the specific case of the complainant that the applicant along with his other associates, on two consecutive occasions came to his village with gun and swords and extended threat to his life. The recovery of the said gun and sword is yet to be effected. The record further discloses that the complainant in his First Information Report has not named the applicant no.2 and no overt act is attributed to him. Hence, prima-facie it appears that though the specific names of four other persons have been given in the First Information Report, the name of the applicant no.2 is not reflected therein. In view of the same the applicant no.2 has made out a case for his release on pre-arrest bail.

4. As far as applicant no.1 is concerned as stated herein above recovery of gun and swords is yet to be effected. The allegations made against applicant no.1 are serious in nature. The gravity of offence warrants that the custodial

interrogation of the applicant no.1 is necessary by the police. In view of the above I am inclined to reject the application of applicant no.1 and allow the application of applicant no.2.

Hence, the following order.

- (i) The pre-arrest bail application of applicant no.1 Shahid Mumtaz Khan is rejected.
- (ii) In the event of arrest of applicant no.2 Shaan Mohd. Saabik Ali in CR No. I-315 of 2015 registered with Shil Diaghar Police Station, Dist-Thane he shall be released on bail on his furnishing PR bond of Rs.25,000/- with one or two solvent local sureties in the like amount.
- (iii) The applicant no.2 shall attend investigating officer as and when called for investigation between 10.00 am to 4.00 pm. till the filing of chargesheet.
- (iv) The applicant no.2 shall not temper with the evidence and/or influence the prosecution witnesses.
- (v) The application is partly allowed in the aforesaid terms.

(A.S. GADKARI, J.)