

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CRIMINAL APPLICATION NO. 2593 OF 2017**

1. Shaikh Nazeer S/o Shaikh Ismail
Age : 45 years, Occ : Agri.,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.
2. Shaikh Rasheed S/o Shaikh Ismail
Age : 52 years, Occ : Agri.,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.
3. Shaikh Ahmed S/o Shaikh Ismail
Age : 55 years, Occ : Driver,
R/o Rahmaniya Colony, Kiradpura,
Aurangabad, Dist. Aurangabad.
4. Shaikh Rafiq S/o Shaikh Ismail
Age : 42 years, Occ : Labourer,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.
5. Shaikh Naeem S/o Shaikh Nazeer
Age : 30 years, Occ : Labourer,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.
6. Shaikh Nadeem S/o Shaikh Nazeer
Age : 25 years, Occ : Labourer,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.
7. Shaikh Shafiq S/o Shaikh Rafiq
Age : 27 years, Occ : Legal Practitioner,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.

8. Shaikh Ateeq S/o Shaikh Rafiq
Age : 22 years, Occ : Labourer,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.

9. Shaikh Saddam S/o Shaikh Rasheed
Age : 25 years, Occ : Agri.,
R/o Takli Rajarai, Tq. Khultabad,
Dist. Aurangabad.

..APPLICANTS

VERSUS

The State of Maharashtra
Through Police Inspector,
Khultabad Police Station,
Tq. Khultabad, Dist. Aurangabad.

..RESPONDENT

...

Advocate for Applicants : Mr. G.D. Jain
APP for Respondent/State : Mr. R.V. Dasalkar

...

CORAM : S.S. SHINDE, J.

Dated: 05th June, 2017

...

PER COURT :-

At the outset, the learned counsel appearing for the applicants seeks leave to withdraw the application of applicant no.5 — Shaikh Naeem S/o Shaikh Nazeer in view of the fact that, during pendency of this application, he is arrested by the concerned Investigating Officer.

2. Leave granted. The application is dismissed as withdrawn in respect of

applicant no.5 – Shaikh Naeem S/o Shaikh Nazeer with liberty to take out the appropriate application for regular bail.

3. Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel appearing for the parties.

4. This application under Section 438 of the Code of Criminal Procedure is filed with the following prayer :-

“B) This Hon'ble High Court may please be released the present applicants on anticipatory bail in the event of their arrest in C.R. No.161/2017 registered with Khultabad Police Station, District Aurangabad for offences punishable under sections 379 and 34 of Indian Penal Code.”

5. The learned counsel appearing for the applicants submits that, there is inordinate delay in lodging the first information report, in as much as, though the alleged offence had taken place on 17th March, 2017, the first information report came to be

lodged on 2nd May, 2017. It is submitted that, as the alleged incident, as stated in the first information report, had never happened, however, due to pendency of the civil dispute between the parties, the first information report is lodged with malafide intention. It is submitted that, the suit filed by the informant came to be dismissed on 2nd August, 2016. It is submitted that, no overt act is attributed qua each of the accused. It is further submitted that, though the appeal is filed by the informant, there is no interim order passed in the said appeal. The sum and substance of the arguments of the learned counsel appearing for the applicants is that, the alleged offence has never happened and secondly, the first information report is lodged with a malafide intention since the civil dispute is pending between the parties. Therefore, he submits that, the application deserves to be allowed.

6. On the other hand, the learned A.P.P. appearing for the Respondent/State, relying upon the investigation papers, submits that, the statements of other witnesses have also been recorded and they have supported the allegations in the first

information report. Therefore, he submits that, the application may be rejected.

7. Upon hearing the learned counsel appearing for the applicants, the learned A.P.P. appearing for the respondent/State and perusal of the investigation papers, and in particular, the contents of the first information report, it appears that, there is no explanation offered by the informant why there is delay in lodging the first information report though the alleged offence had taken place according to the informant on 17th March, 2017 and the first information report is lodged on 2nd May, 2017.

8. Apart from the delay in lodging the first information report, the allegations made in the first information report appear to be general in nature. It is not disputed that, the civil dispute is pending between the parties. Therefore, prima facie, involvement of the applicants in the alleged offence appears to be doubtful. In that view of the matter, the case is established for allowing this application. Accordingly, the application of applicant nos.1 to 4 and 6 to 9 is allowed in terms of prayer clause 'B'.

The applicant nos.1 to 4 and 6 to 9 be released on anticipatory bail in the event of their arrest in connection with C.R. No.161/2017 registered with Khultabad Police Station, Dist. Aurangabad for the offences punishable under section 379 and 34 of Indian Penal Code, on furnishing P.R. Bond in the sum of Rs.10,000/- each with one solvent surety by each of the applicants, on the following conditions :-

- (a) As and when the applicant nos.1 to 4 and 6 to 9 are called for investigation by the Investigating Officer, they shall extend full co-operation and attend the Investigating Officer.
- (b) They shall not indulge in any such similar acts.
- (c) They shall not tamper with the prosecution witnesses or the evidence.
- (d) They shall not leave the country without prior permission of the authority/Court.
- (e) They shall abide by any other conditions as stipulated in sub-section (2) of Section 438 of the Code of Criminal Procedure.

9. The Criminal Application stands allowed accordingly. Rule is made absolute in above

terms.

10. The observations made hereinabove are prima facie in nature and confined to the adjudication of the present application and shall not be used in any other proceedings.

(S.S. SHINDE, J.)

...

SGA