

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 479 OF 2017

Khatijabi @ Khudajabi Mohd. Rafiq and Ors

.....Applicants

V/s.

The State of Maharashtra

....Respondent

Mr. Sherali S. Khan Advocate for the Applicant.

Mr. R. M. Pethe APP for the State.

Mr. Ravindra Pawar, API-I Branch, C.I.D. Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 20th MARCH, 2017.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending their arrest in crime no. 220 of 2016 registered at I Branch Police Station, Mumbai for offence punishable under sections 3 r/w 6 of the Indian Passport Act, 1950 and section 3 (1) r/w section 14 of the Indian Foreigners Act, 1946.

2) It is the case of the prosecution that on 30/12/2016, police had received

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an information from one Mr. Akhtar on 26/09/2016 that there are several Bangladeshis who were residing in the said area without there being a valid passport or any other genuine documents. The police had inquired into the same. Present applicants had produced before the police their birth certificates, pan cards and other relevant documents. Police had referred the same for verification to the Municipal Corporation and a report was received that all the documents in possession of the present applicants are fabricated documents. Hence, applicants are apprehending their arrest.

3) Perused the records. It appears that the date of birth of the present applicant no. 1 is 30/01/1977 and the place of birth is shown as Mumbai. That the school leaving certificate is also placed on record. It is shown that applicant no. 4 herein has been adopted by present applicant no. 1. applicant no. 2 happens to be sister of applicant no.1 and applicant no. 3 happens to be daughter of applicant no. 1.

4) The learned counsel for the applicants submits that documents are genuine and the investigating agency has misconstrued the said documents, in

all probabilities because of some typographical errors.

5) The learned APP has placed on record the documents to show that the names of the parents have been changed and the applicants have taken advantage of similarity in names as far as original records are concerned. It appears that they have changed the name by filing an application for changing name in the official gazette wherein parents' name is changed. The learned APP submits that all the documents are fabricated only after an inquiry was initiated.

6) Application seeking change in name of the applicant in official gazette is dated back to 2005. It is doubtful as to how the names of the parents have been changed. This is a case not only under the Passports Act or the Foreigner's Act, but offence such as 467 and 471 of the Indian Penal Code would also be attracted since there is finding by the Municipal Authorities that these are fabricated documents. However, that could be considered at the time of filing of the charge-sheet. As on today, no case for pre-arrest bail under section 438 of Code of Criminal Procedure, 1973 is made out.

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However, it is made clear that observations made herein above are restricted to an application under section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration while deciding an application under section 437 or 439 of Code of Criminal Procedure, 1973.

7) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)