

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

**CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.2183 OF 2016**

1) AMANULLAH HAFIZUDDIN SHAIKH       )  
2) SMT.MARIYAM AMANULLAH SHAIKH    )...APPLICANTS

V/s.

SR.POLICE INSPECTOR AND ANR.               )...RESPONDENTS

Mr.Mateen Abdul Rahim Shaikh a/w. Mr.Sajid Qureshi, Advocate  
for the Applicants.

Ms.Veera Shinde, APP for the Respondent - State.

**CORAM       :       A. M. BADAR, J.**

**DATE         :       9<sup>th</sup> OCTOBER 2017**

**P.C. :**

1               Applicants who are accused in Crime No.289 of 2016  
registered with Police Station Trombay for offences punishable  
under Sections 420, 439, 467, 468, 471 read with 34 of the Indian  
Penal Code (IPC) and under Sections 12 of the Passport Act, 1950,  
as well as Section 34(40) of the Aadhaar Act, 2016, by this  
application are seeking pre-arrest bail.

2            Heard the learned advocate appearing for applicants / accused. He argued that both applicants / accused were already arrested by police in pursuant to the First Information Report (FIR) registered on 1<sup>st</sup> October 2010 by Sukumar Tukaram Patil which resulted in registration of Crime No.170 of 2016 for offences punishable under Sections 3 and 6 of Passports Act, 1950, and Section 3(1) of Foreigners Act, 1948, as well as under Section 14 of the Foreigners Citizenship Act, 1946, by Special Branch of CID, I Branch, Mumbai. The subsequent FIR is virtually containing same allegations and therefore, on second occasion custodial interrogation of present applicants / accused is not warranted.

3            The learned APP opposed the application by contending that initially the case was registered with Special Branch of CID, I Branch, with an averment that both applicants along with other accused persons had entered in jurisdiction of India, without having permission of the Officer of the Border

Security Force of State, and are staying illegally at Indira Nagar, Maharashtra Nagar, Mankhurd, Mumbai. The second case was registered for getting Indian Passport by submitting forged birth certificate.

4           I have carefully considered the rival submissions and also perused affidavit tendered by the State opposing the application.

5           Perusal of averments in the FIR dated 1<sup>st</sup> October 2016 as well as in the second FIR dated 31<sup>st</sup> October 2016 which resulted in registration of two different crimes with two different police stations goes to show that allegations against present applicants / accused reflected in second FIR are virtually same as they are in the FIR dated 1<sup>st</sup> October 2016 lodged by Sukumar Patil with Special Branch of the CID. Perusal of the FIR dated 1<sup>st</sup> October 2016 shows that First Informant – Police Officer has averred therein that applicant no.1 Amanullah Shaikh had applied for Indian Passport by moving an application dated 19<sup>th</sup> May 2016.

He had annexed copy of his birth certificate allegedly issued by Gram Panchayat Tehatta, District Nadia of West Bengal in support of his claim for issuance of passport in his favour. This first FIR registered against both applicants / accused reveals that a copy of the birth certificate tendered by applicant no.1 Amanullah Shaikh came to be forwarded to the concerned Gram Panchayat located in West Bengal and police has received report vide communication dated 1<sup>st</sup> September 2016 informing that the so called birth certificate was not issued by the Gram Panchayat of Tehatta.

6            If second FIR dated 31<sup>st</sup> October 2016 lodged by Chandrakant Koyande, Police Sub-Inspector, is perused, then paragraph 3 thereof contains very same allegations which were subject matter of the FIR dated 1<sup>st</sup> October 2016. Undisputedly, applicants / accused came to be arrested in pursuant to FIR dated 1<sup>st</sup> October 2016 and were subjected to custodial interrogation. Allegations, as are found in the FIR dated 31<sup>st</sup> October 2016, were very much there on record of police when applicants were interrogated in pursuant to the FIR dated 1<sup>st</sup> October 2016.

7           In this view of the matter, as procedural requirements requires second FIR with some different police station for the purpose of some other sections of the IPC, on second occasion for same allegations, custodial interrogation of present applicants / accused is not warranted. Therefore, the order :

**ORDER**

- i) The application is allowed.
- ii) The order dated 7<sup>th</sup> April 2017 passed by this court is confirmed on same terms and conditions.
- iii) In addition, applicants / accused to attend the concerned Police Station twice in a month on 2<sup>nd</sup> and 4<sup>th</sup> Sunday, in between 11.00 a.m to 1.00 p.m., till filing of the charge-sheet against them.
- iv) Applicants / accused shall not tamper with the evidence in any manner.
- v) Applicants / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

vi) Applicants / accused should not commit any offence in future till conclusion of his trial.

vii) The application stands disposed of accordingly.

**(A. M. BADAR, J.)**