

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.824 OF 2020

Shaikh Muntajib s/o Shaikh Maula Bagwan

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. H. I. Pathan, Advocate for applicant.
Mr. A. M. Phule, APP for respondent – State.
Mr. P. S. Agrawal, Advocate for Informant.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 11-12-2020

ORDER :

. Present applicant is apprehending his arrest in connection with Crime No.395 of 2020 dated 12-08-2020 registered with Police Station Hingoli (City), Dist. Hingoli for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code and, therefore, he has filed present application under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. H. I. Pathan for applicant, learned APP Mr. A. M. Phule for respondent – State assisted by learned Advocate Mr. P. S. Agrawal for informant.

3. It has been vehemently submitted on behalf of the applicant that perusal of the FIR would show that no role has been attributed to the present applicant. The alleged offence is stated to have taken place in the year 2006. At that time, the applicant was the representative of Municipal Council. On the request of the relative of one Mohammad Hussain Miyan Abdul Gafoor Tambe, the applicant had given information about his death for the registration of the same in the death register on 21-01-2006. The entry showed that said Mohammad Hussain Miyan had expired at Hingoli on 18-01-2006. However, as per the informant, who is a senior clerk in Municipal Council, said Mohammad Hussain Miyan had, in fact, died in Saudi Arabia when he had gone for Hujj pilgrimage. The said complaint has been lodged alleging that one Shaikh Nayeem Shaikh Lal had filed complaint application with the Municipal Council contending that the present applicant had cheated and committed forgery in respect of death certificate. Admittedly, it is a very much delayed action after about 14 years. It has been prompted because of the political rivalry. The physical custody of the present applicant is absolutely not required and, therefore, the interim protection granted by this Court vide order dated 01-10-2020 deserves to be confirmed.

4. Learned APP well assisted by learned Advocate Mr. P. S. Agrawal representing the informant submitted that the present applicant had not made any enquiry as to where deceased has expired and just gave application to the

Municipal Council for taking entry in the death register. The death had, in fact, taken place at Saudi Arabia, but it has been falsely shown at Hingoli. If the real fact would have been revealed, the Municipal Council would not have issued any such certificate. Therefore, the physical custody of the present applicant is required.

5. At the outset, from the contents of the FIR itself, it can be seen that it is prompted with some political rivalry by said Shaikh Nayeem Shaikh Lal. Further, it appears that the Chief Executive Officer of Hingoli Nagar Parishad without making any inquiry, it appears that, had directed the senior clerk working under him to lodge the report. Even if for the sake of argument it is accepted that the present applicant had given the application for registration of death in the respective register, yet, it ought to have been seen by the authority taking entry that the document ought to have been attached in respect of burial in the Kabristan at Hingoli. When no such document was attached, the authority under the act could have called upon the applicant to produce those documents before taking entry. No such procedure appears to have been followed and now after a gap of 14 years, merely on the say of some person, action appears to have been taken. It is not clear from the FIR that the said complainant was in any way related to the deceased and he has any wrongful loss sustained due to the said wrong entry. There is absolutely no necessity for the physical custody of the applicant and, therefore, the interim protection granted earlier by this Court vide

order dated 01-10-2020 deserves to be confirmed and made absolute. Hence, the following order :-

ORDER

- I) The application stands allowed.
- II) The order passed by learned Additional Sessions Judge-1, Hingoli in Criminal Miscellaneous Application No.241 of 2020 dated 14-09-2020 is hereby set aside. The said application stands allowed.
- III) The ad-interim protection, granted by this Court earlier to applicant vide order dated 01-10-2020, is hereby confirmed and made absolute. In other words, in the event of arrest of the applicant – Shaikh Muntajib s/o Shaikh Maula Bagwan in connection with Crime No.395 of 2020, registered with Police Station Hingoli (City), Dist. Hingoli for the offences punishable under Sections 420, 468, 471 read with Section 34 of Indian Penal Code, he be released on P. R. Bond of Rs.15,000/- with one surety in the like amount.
- IV) The applicant shall not tamper with the evidence of the prosecution in any manner and shall cooperate with the investigation.
- V) The applicant shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

[SMT. VIBHA KANKANWADI, J.]

scm