

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.194 OF 2021

- 1) Shaikh Habib s/o Shaikh Usman,
Age 53 years, Occupation Business,
- 2) Shaikh Juned s/o Shaikh Habib,
Age 28 years, Occupation Driver,
- 3) Shaikh Kadir s/o Shaikh Usman,
Age 48 years, Occupation Driver
and Reporter,
- 4) Shaikh Samir s/o Shaikh Kadir,
Age 22 years, Occupation Mechanic,

All R/o Raj Mohalla, Andrun Killa,
Jafrabad Tq. Jafrabad Dist.Jalna.

....Applicants

VERSUS

The State of Maharashtra,
Through P. I. Police Station, Jafrabad
Distict Jalna.

....Respondent

.....

Advocate for Applicants : Mr. G. S. Shete
APP for Respondent-State : Mr. M. M. Nerlikar

.....

CORAM : SMT.VIBHA KANKANWADI, J.

DATE : 30-03-2021.

ORDER :

1. Applicants are apprehending their arrest in connection with Crime No.33 of 2021, registered with Jafrabad Police Station District Jalna, for the offence punishable under Section 353, 294, 143, 147, 149, 186, 189 of Indian Penal Code and under Section 135 of Maharashtra Police Act. They have filed present application under Section 438 of Code of Criminal Procedure. Their application before the Learned Additional Sessions Judge under Section 438 of Code of Criminal Procedure code has been rejected.

2. Heard learned Advocate Mr. G. S. Shete for the applicants and learned Additional Public Prosecutor Mr. M. M. Nerlikar for respondent-State.

3. It has been vehemently submitted on behalf of the applicants that the applicant No.1 is original resident of Fort Area situated in Jafrabad. The residents have been rehabilitated in the area namely Punarvasan (पुनर्वसन) and it is the cause of the floods affecting the Fort Area every year. The applicant No.1 was the member of the Grampanchayat for the last term and was representing the area of Punarvasan (rehabilitation). Since last three to four months the

water was not supplied to Punarvasan area. Various representations were made by the residents to the Municipal Council as well as to the informant who is the Chief Officer of the Nagar Panchayat, however no steps were taken. The anger against the Municipal Council and its officers was increasing in the mind of the residents as they were not paying any attention to the grievances those were put forward. In fact, the applicants No.2 to 4 were not even present in the office of the Municipal Council when the alleged incident is stated to have taken place. Applicant No.3 is the brother of applicant No.1 as well as news reporter of 'Dainik Bhaskar'. Only applicant No.1 being Ex-Member of the village Panchayat, had gone to the office of informant with other residents to give representation for non-supply of water, therefore the contents of the First Information Report are false and concocted. Physical custody of the applicants is not required and, therefore, they deserve to be released on anticipatory bail.

4. The learned Additional Public Prosecutor strongly opposed the bail application and submitted that the contents of the First Information Report would clearly show that it was not the only intention of giving representation to the informant, but it was the

commit offence. Even the video recording was made without the permission. None of the representations have been attached by the present applicants to the present application which the applicants say that those were forwarded to the office of Nagar Panchayat. The power under Section 438 of Code of Criminal Procedure is discretionary and to be used in exceptional circumstance. The facts of the case cannot be said to be an exceptional circumstance rather grave offence has been committed. A public authority has been restrained from discharging its duty and, therefore, no sympathy should be shown to the applicants.

5. The First Information Report has been lodged by Chief Officer, Nagar Panchayat, Jafrabad. She is working as Chief Officer since last one year. There was a meeting of the chief Officer at about 11.00 a.m. on 09-02-2021 with engineer Ms. Vijaya Shingane. A call was received on the mobile of said Shingane at about 11.53 a.m. disclosing the identity of the person calling as Shaikh Habib Shaikh Usman (applicant No.1) in an abusive, arrogant way asking as to since when she is doing her duty, many times she is not present in the office, no water has been given since last three months to Punarvasan, she has taken amount of Rs.1,50,000/- from

contractor but has not given water. He had come to the Nagar Panchayat office. When such arrogant behaviour was shown, said Shingane had recorded the conversation and it was played in front of the informant. Thereafter, present applicants entered the office of Chief Officer i.e. informant and started saying that, "तुम्ही पैसे खाता, तुम्हाला खूप जास्त झाली की, तुम्हाला समजत नाही का मी एक प्रतिष्ठित नागरिक आहे मला बसण्यासाठी खुर्ची का टाकली नाही." (You take bribe. You don't understand, I am a distinguished citizen, why didn't you put a chair for me). Thereafter, the informant replied that the office of the Nagar Panchayat is small and due to CORONA Pandemic Situation they have kept only one or two chairs. Then the applicants told that as the informant is a lady, she has become stubborn. There are 25 ladies in his house and he would call them and show. Applicant No.1, thereafter, snatched the chair of Accountant from the office and he sat on the same and started abusing in filthy language to informant as well as said engineer (both ladies) that, "तुमच्या कर्मचा-यांच्या गांडीत दम असेल तर मला बाहेर काढून दाखवा." He, thereafter, told the other applicants that they should go and bring two to three ladies and he would show the informant and engineer. He started saying that he would see as to how they would serve in Jafrabad. He also gave

threat of dire consequences. He, thereafter, pushed the table in the office. When Ms. Shingane had started video recording, applicant Shaikh Samir Shaikh Kadir snatched her mobile phone and started raising chaos in the office. The informant Chief Officer then gave information to Jafrabad Police Station to PSI More. Thereafter, police persons arrived and then the applicants left. This is the First Information Report against the applicants.

6. The language that is used, the arrogant behaviour that is reflected in the First Information Report would speak for itself. In fact, offence against women falls under the category of moral turpitude. When such men do not know how to behave with women, they deserve no sympathy at all. If there would have been a genuine problem of not getting water for three to four months then it could have been sorted out across the table and not in such a way. Further, there is absolutely no documentary evidence produced by the applicants, especially the applicant No.1 who has projected himself as the leader of the area, that such a representation was ever made. No doubt it could be understood that if people do not receive essential commodity like water for three to four months then it becomes very difficult for them to survive. But the applicant No.1

has not given details as to when he made the first representation and what was the reply, if any, given to any of the residents of the area by the Nagar Panchayat. It is stated in the application itself that due to the road widening that was undertaken, the water pipeline was damaged and there was no water supply to the area. Being the political representative, whether the applicant could have made the alternative arrangement also, ought to have been considered by him. But certainly the way the applicants are stated to have behaved with the ladies, especially those are in power, and in order to deter them when such act has been made, especially the words those allegedly used and also the filthy abuses, this case cannot be termed as an exceptional circumstance where any discretion can be used in favour of the applicants to grant them relief. Even the mobile phone in which another public servant wanted to record the behaviour of the applicants, her mobile was also snatched, to that extent the activities have been done by the present applicants. There was no reason for the informant to exaggerate. There appears no question of any enmity. Merely because the applicants are connected to some political party and had enjoyed some such post, he cannot expect that even after he has lost that seat, he should be given the same respect. Respect is to

be commanded and not demanded. It is the result of a give and take. If you give respect to the others, you will receive the respect. When the applicants are stated to have behaved in such way to lower the dignity of women, then no sympathy can be shown to the applicants. Their application deserves to be rejected, accordingly it is rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-