

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

**904 CRIMINAL APPLICATION NO.1520 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 357 OF 2019**

**SHAIKH LAL S/O. RASUL PATEL
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. A. K. Bhosale, Advocate for Applicant
Mr. A. S. Shinde, APP for Respondent State
WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 190 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 357 OF 2019
WITH
WITH
CRIMINAL APPLICATION NO. 2394 OF 2019
IN
CRIMINAL APPLICATION NO. 1520 OF 2021

**IRFAN RAHIM SHAIK
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

Mrs. S. K. Doke, Advocate for the applicant
Mr. A. S. Shinde, APP for the State
Mr. K. Bhosale, Advocate for respondent No.2.

CORAM : PRAKASH D. NAIK, J.
DATE : 21st December, 2021

ORDER:

1. Criminal application No.1520/2021 is preferred for modification of the order dated 10.04.2019 passed by this Court in ABA No.357/2019, granting anticipatory bail to the applicant. The applicant was directed not enter territorial jurisdiction of Aurangabad Tahsil till

culmination of the trial as per his undertaking. He was directed to attend Paithan Police Station twice in a week i.e. on every Tuesday and Saturday and mark his presence in the said police Station from 3.00 PM to 5.00 PM. The applicant is permitted to enter into Aurangabad city only to mark his presence on the dates before the trial Court.

2. Learned Advocate for the applicant-accused submitted that the condition was imposed in the year 2019. The applicant has not committed breach of condition. He has not tampered with the evidence. The applicant has filed additional affidavit-cum-reply in support of his application. It is submitted that the applicant is suffering from cardiac as well as cataract to his eyes. He has undergone orthopedic surgery to his left leg as he had suffered accident. Copies of medical certificates are annexed to this reply. It is submitted that co-accused Noor Burhan Patel, who had also given similar undertaking that he would stay out of jurisdiction of Aurangabad, had preferred application for relaxation of such condition. The said application was allowed by order dated 15th September, 2021.

3. Learned APP submitted that the applicant has committed breach of condition. He had entered into Aurangabad City. Enquiry reveal that the applicant has entered into Aurangabad City. The said fact is fortified by CCTV footage collected by the police. Application seeking relaxation of condition is also affirmed at Aurangabad which shows that the

applicant has been entering into city of Aurangabad. Hence relaxation may not be granted to him.

4. Learned Advocate for the complainant submitted that the applicant had attended function at Aurangabad and the photograph and CCTV footage in the regard have been submitted to the Investigating Officer. The application for modification of order may be rejected.

5. The complainant had preferred Criminal Application No.2394/2021 seeking permission to assist the Public Prosecutor. The complainant has also preferred Application for Cancellation Bail No. 190 of 2021. The grounds raised in the application for cancellation of bail are that the applicant had entered into the city of Aurangabad. There is every likelihood that he would tamper with evidence and commit similar offence. The applicant-accused had given undertaking to this Court and in view of the undertaking, the said condition was imposed upon him. Hence anticipatory bail granted to the applicant-accused be cancelled. The application for cancellation of bail is supported by the learned APP.

6. From documents annexed to the affidavit in reply filed by the applicant-accused, it appears that he has reported the concerned police station as per the directions of this court. Acknowledgments are placed on record. It is not the case of prosecution that the applicant

has tampered with evidence or threatened the witnesses in any manner. Co-accused Noor Burhan Patel had preferred similar application before this Court . The said accused had also given similar undertaking that he would stay out of area of Aurangabad. This court, has relaxed the condition by order dated 15.09.2021.

7. The applicant-accused was granted anticipatory bail after analyzing the nature of evidence against him vide order dated 10.04.2019. On reading the reasoning in paragraph Nos. 6 and 7 of the order granting anticipatory bail, it can be seen that supplementary statement of the informant shows that the applicant tried to save the deceased at the time of assault. The statement of the first informant was recorded on 24.10.2018 under section 164 of the Criminal Procedure Code and the said statement is totally silent about the role of the applicant-accused. The charge sheet shows statement of independent witness Shaikh Wasim Patel. His statement under section 164 Cr.P.C. mentions that the said witness and the applicant were trying to intervene in the matter, taking Moin Khan(deceased) away from the spot of incident. Statement of Sabiya Begum, an independent witness recorded during the course of investigation under section 161 also states that applicant was trying to separate the quarrel. Statement of Mazhar Khan refers to the fact that applicant and others were taking efforts to shift the injured to Hospital.

8. Learned counsel for the complainant has submitted that in the order dated 10.04.2019, it can be clarified that the observations made thereunder are prima facie for consideration of application for anticipatory bail and the trial Judge shall not be influenced by the same.

9. In the order granting bail to the applicant-accused, role of the applicant has been discussed. The applicant has reported to Paithan Police Station. No ground for cancellation of anticipatory bail is made out. To take care of apprehension of the complainant and the prosecution, the applicant can be directed to report Harsul Police Station. Similar Condition is also imposed on accused Noor Burhan Patel who had preferred application for relaxation of condition.

10. In the circumstance, I pass following order:

ORDER

- i. Criminal Application No. 1520/2021 is allowed.
- ii. Order dated 10.04.2019 passed in Anticipatory Bail Application No. 357/2019 is modified.
- iii. Condition No. (iii) stipulated in operative part of the order dated 10.04.2019 whereby the applicant was restrained from entering territorial jurisdiction of Aurangabad Tahsil till culmination of trial as per his undertaking is relaxed.

- iv. The applicant is directed to report Harsul Police Station, Dist. Aurangabad once in a week on Saturday between 11.00 a.m. to 1.00 p.m. till further orders.
- v. Criminal application NO.2394/2021 is disposed of.
- vi. Application for cancellation of Bail No. 190/2021 is rejected.
- vii. It is clarified that observations made in the order dated 10.04.2019 passed by this Court in ABA NO. 357/2019 are prima facie for granting anticipatory bail and the trial court shall not be influenced by the same and shall decide the case in accordance with law.

(PRAKASH D. NAIK, J.)

JPC