

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

ANTICIPATORY BAIL APPLICATION NO. 894 OF 2021

Shaikh Imran s/o Shaikh Amir ... **Applicant**
Age 36 years, Occu: Business
R/o Kurban Ali Shah Nagar, Dara Road,
Parbhani Tq. & Dist. Parbhani

VERSUS

The State of Maharashtra, ... **Respondents**
Through Kotwali Police Station,
Parbhani.

Mr. S. R. Pande, Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 22nd September, 2021
PRONOUNCED ON : 24th September, 2021

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.0147/2021 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 307, 323, 504,506, 34 of the Indian Penal Code, 1860, Sections 3/25, 7/25 and 27/2 of Indian Arms Act 1959 and sections 37(1), 37(3), 135 of Maharashtra Police Act.

2. Prosecution case in short is that on 24.06.2021, at about 2.45 p.m., while informant alongwith his friends was proceeding towards house of one of his friend, they saw applicant and accused Shaikh Salim

Shaikh Amir brandishing Pistol and beating his brother-in-law and the father of his brother-in-law. When the informant and others went to their rescue, it is alleged that they were also beaten by the applicant and said accused by fist and kick blows. It is further alleged that in order to kill the informant and his friends, the applicant fired from his Pistol but it did not hit any of them. Later on, the informant lodged the report.

3. Mr. S. R. Pande, learned counsel for the applicant, submits that on 29.12.2019, the present applicant had filed a complaint against the informant herein and others with the Deputy Superintendent of Police, Parbhani in respect of various illegalities and because of which the informant was having grudge against the applicant. Learned counsel then submitted that except the provisions of the Arms Act, all the offences are bailable. Similarly, before applying section 3/25, sanction of District Magistrate as contemplated under section 39 of the Arms Act is mandatory which is lacking in the instant case. Learned counsel then further submitted that the weapon allegedly used in the crime is already recovered. None of the prosecution witness was injured because of the alleged firing. In such circumstance, custody of the applicant is not necessary. The present applicant is permanent resident of Parbhani and is having landed property and thus, he will be available for investigation and trial as well.

4. Mr. S. B. Narwade, learned A.P.P., on the other hand, opposed the submissions by contending that the applicant is habitual offender and earlier, on three occasions, had indulged in criminal activities and therefore, his custody is necessary for the purpose of investigation.

5. I have carefully gone through the contents of the first information report. Although it is alleged that the applicant had fired shot from his Pistol aiming the informant and others but it did not hit the target. It is also clear from the investigation papers that alleged Pistol is duly seized during the course of investigation. Therefore, custodial interrogation of the applicant is not required.

6. As far as sanction of under Section 39 of the Indian Arms Act, 1959 is concerned, learned A.P.P. makes a statement that due sanction has been taken.

7. Even otherwise, having regard to the nature of allegations and the fact that the Pistol in question has already been seized by the Police during the course of investigation, I do not find necessity of custodial interrogation.

8. In view of above, I am inclined to allow the application with certain conditions. Hence, the following order.

O R D E R

- i. In the event of arrest of the applicant in connection with Crime No. 0147/2021 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 307, 323, 504,506, 34 of the Indian Penal Code, 1860, Sections 3/25, 7/25 and 27/2 of Indian Arms Act 1959 and sections 37(1), 37(3), 135 of Maharashtra Police Act, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs. 20,000/- [Rs. Twenty thousand only], with one or two solvent sureties in the like amount.
 - ii. The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
 - iii. The applicant shall not tamper with prosecution evidence in any manner.
9. Application stands disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC