

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

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

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

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.0138/2021 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 279, 337, 427, 34 of the Indian Penal Code, 1860 and Sections 3/25, 4/25, 7/25, 27/2 of Indian Arms Act 1959.

Page 1 of 4

stopped his Car. The people gathered there were trying to apprehend driver of the Aactiva but pillion rider of said Aactiva fired in air by a gun and thus people dispersed out of fear. While fleeing from the spot, the said person again fired at the Car of the informant which hit on the rear right side door of the Car. Later on, the informant came to know that the person who had fired was the applicant and driver of the Aactiva was accused Shaikh Salim Shaikh Amir. The informant accordingly lodged the report.

3. Mr. S. R. Pande, learned counsel for the applicant, submits 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. According to the learned counsel, the weapon allegedly used in the crime is already recovered. It is the not the case that somebody was injured in the incident and in such circumstance, custody of the applicant is not necessary. The applicant is permanent resident of Parbhani and is having landed property. 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. Apparent reading of the first information report would show that the applicant had fired two shots, firstly in the air and secondly, while fleeing from the spot, towards the Car of the informant. It is also pertinent to note from the investigation papers that the alleged gun has been seized during investigation and thus, question of custodial interrogation of the applicant does not arise.

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 gun 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.0138/2021 registered with Kotwali Police Station, District Parbhani for the offences punishable under Sections 279, 337, 427, 34 of the Indian Penal Code, 1860 and Sections 3/25, 4/25, 7/25, 27/2 of Indian Arms Act 1959, 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