

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.935 OF 2021

Ashfak Hussain Kamruddin Shaikh
Age : 48 years, occ : business
R/o Behind Balaji Wada, Nandurbar

Applicant.

Versus

The State of Maharashtra.

Respondent.

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Mr. Shaikh Tarek Mobin, Advocate for the applicant.
Mr. N.T. Bhagat, A.P.P. for respondent – State.
Mr. R.S. Wani, Advocate assisting the PP.

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CORAM : **PRAKASH D. NAIK, J.**

DATE : 06-10-2021.

ORDER :

1. The applicant is seeking anticipatory bail in CR No. 379/2018 registered with Nandurbar City Police Station, Nandurbar for the offences punishable under Sections 436, 448, 504, 506 read with Section 34 of the Indian Penal Code.

2. The case of the complainant is that Survey No. 367/02 is the property owned by the complainant and he is occupying the same. Survey Nos. 368/01 and 368/02 is the property which is owned by complainant's brother Ashpak Hussain Kamroddin Shaikh (the applicant) and elder brother Faiyaz Hussain Kamroddin Shaikh. The elder brother is abroad and he has given general power of attorney to the complainant to look after the share of his property. On 10th November 2018, the complainant was doing work at his

shop at Survey No. 366/02. He was accompanied by Husnoddin Pinjari (watchman) and Mistri Mehmod Pathan (worker). Complainant's brother Mohammad Hussain Kamroddin Shaikh was armed with a torch and he was seen setting fire to the property at Survey Nos. 368/01 and 368/02. At that time the applicant was instigating the co-accused that he should set fire to everything. When the complainant tried to accost the co-accused, he ran away from the spot. The applicant also fled away from the spot. Thereafter the applicant entered into the bungalow situated at Survey No. 367/02 and set on fire the wooden bed in the bungalow. The complainant and others tried to extinguish the fire. The Fire Brigade was called. Loss of Rs. 12,00,000/- was caused to the complainant. Hence, the F.I.R. was lodged.

3. The applicant preferred application for bail before the Sessions Court. The said application was rejected by order dated 22nd July 2021.

4. The learned advocate for the applicant submitted that the applicant has been falsely implicated in this case. The complainant is brother of the applicant. The complaint has been filed to deprive the applicant from enjoyment of the properties at Nandurbar. The proceedings under Section 85 of the Maharashtra Land Revenue Code, 1966 for partition of the properties amongst brothers were initiated. Vide order dated 31st July 2014, the Tahsildar, Nandurbar permitted partition of properties bearing Survey No. 368/1, 368/2 and 368/3. There is dispute between the

complainant and the applicant relating to ancestral property. The applicant had given paper publication in daily newspaper on 9th October 2018 in respect of the property bearing Survey No. 366/2 and Survey No. 367 situated at Nandurbar stating that no deals in relation to the properties be executed with the informant. Due to publication, the informant had grudge against the applicant and therefore, he lodged false complaint. There are complaints filed by brother of the informant and the applicant before police and inquiry was conducted. The statement of Mohammad Hussain and informant was recorded and report was submitted stating that inquiry was conducted before the SDPO shows that there are disputes between the applicant and informant relating to Survey No. 366/2 and Survey No. 367/2. It is submitted that the applicant is joint owner of property Survey No. 368/1 and Survey No. 368/2 and the question of setting the said property on fire at the instance of the applicant does not arise. The allegation relating to setting the property on fire is false. Custodial interrogation of the applicant is not necessary.

5. Learned A.P.P. submitted that the applicant has been named in the First Information Report. The co-accused has set the property on fire. The applicant was present at the place of incident. He was instigating the co-accused. The applicant is involved in setting fire to the bed from the bungalow. The offence is of serious nature and custodial interrogation of the applicant is necessary.

6. Learned Counsel for the complainant submitted that the applicant was present at the scene of offence. The co-accused had set the property on fire. The applicant was instigating the co-accused. The applicant had given different address of his residence. In the event anticipatory bail is granted to him, he may abscond. The offence is of serious nature. He submitted that in the event, his application is allowed, the applicant may be directed to deposit the passport with the Investigating Officer. He relied upon the decision of the Apex Court in the case of **Lavesh vs. State (NCT of Delhi), (2012) 8 SCC 730** and submitted that there are chances of the applicant absconding. In the said decision the Apex Court has observed that the Court is required to see the nature and gravity of accusation, antecedents and possibility of abscondence of accused.

7. In re-joinder, the learned Counsel for the applicant submitted that the applicant is resident of Nandurbar. He produced voting card showing address of the applicant of Nandurbar. He also produced ration card which also bears the residential address of the applicant.

8. The applicant and complainant are brothers. There are disputes between them over the property. The proceedings were initiated by them for partition of the property. The order passed by Tahsildar indicates that the applicant is also owner of Gut No. 368/1 and 368/2 which is jointly owned with Faiyaz Hussain, elder brother of the applicant. The role attributed to the applicant is that, he was instigating the co-accused to set the property on fire. It is also

alleged that the bed was set on fire. Apparently both the sides are at logger head. There is dispute between them over ancestral property.

6. Considering the nature of the dispute, the applicant need not be subjected to custodial interrogation. Hence, the following order.

ORDER

- (i) ABA No. 935 of 2021 is allowed.
- (ii) In the event of arrest of the applicant in Crime No.379/2018 registered with Nandurbar City Police Station, Nandurbar, the applicant be released on bail on executing P.R. Bond in the sum of Rs. 25,000/- (Rupees Twenty Five Thousand only) with one or more sureties in the like amount.
- (iii) The applicant shall appear before the Investigating Officer on 12-10-2021, 13-10-2021 and 14-10-2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called for.
- (iv) The applicant shall not tamper with the evidence.
- (v) The applicant shall deposit his passport before the Investigating Officer.
- (vi) Application stands disposed of.

(PRAKASH D. NAIK, J.)