

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2406 OF 2019

Priti Suresh Patel ...Applicant
Versus
The State Of Maharashtra and Anr. ...Respondents

Mr. H. H. Ponda i/by Mr. Gaurav Chaubey, Advocate for the Applicant.

Mr. H. S. Venegaonkar, Special P. P. for Respondent No.2 - Union Territory of Daman.

Mr. S. H. Yadav, APP for the Respondent No.1 – State.

CORAM : N. J. JAMADAR, J.
RESERVED ON : 18th DECEMBER, 2021.
PRONOUNCED ON : 21st DECEMBER, 2021.

PC :

1. The applicant, who has been arraigned for the offences punishable under Section 25 of Arms Act, 1959 and Sections 468, 471 and 420 r/w Section 34 of the Indian Penal Code, 1860 (for short the “Penal Code”) in First Information Report No.41 of 2019 registered with Coastal Police Station, Kadaiya, Nani Daman, Daman, has preferred this application for pre-arrest bail.

2. Initially the crime was registered against the applicant for the offence punishable under Section 25 of the Arms Act, 1959 only, with the allegations that when search

was conducted at the house of Mr. Suresh Patel @ Sukha Patel, the husband of the applicant, who was suspected accused in FIR No. 39 of 2018 registered with Nani Daman Police Station for the offences punishable under Sections, 120-B, 341 and 302 r/w Section 34 of the Indian Penal Code and Sections 25 and 27 of the Arms Act, 1959, in the bedroom, one black colour purse containing one Ordinance Factory Revolver 32 (7.65 mm) loaded with 04 live bullets having engraved marks KF 32 S & W.L. was found. The applicant could not offer any satisfactory explanation. Nor could produce any valid document in relation to the said arm. Since the applicant, exclusively shared the bedroom with her husband Suresh Patel, the suspect in C.R. No.39 of 2018, Mr. Swanand Inamdar, P.S.I. lodged a report with Coastal Police Station, Kadaiya Nani Daman, leading to registration of C.R. No.41 of 2019.

3. The applicant preferred an application for pre-arrest bail before the learned Sessions Judge, Daman. To the said application, the applicant annexed a photostat copy of the Arms License purported to have been issued in the name of her husband Suresh Patel by the District Magistrate, Jammu and Kashmir. Investigation with regard thereto

revealed that no such license was issued by the licensing authority and the said license was forged. Hence, the offences under Sections 420, 468, & 471 of the Penal Code came to be added subsequently.

4. The learned Sessions Judge was persuaded to reject the application opining inter alia that the custodial interrogation of the applicant was required to ascertain the genuineness of the license. The learned Sessions Judge was of the view that there was a reasonable ground to suspect the genuineness of the Arms License as in the past the applicant and her husband had made a declaration that none of the family members was holding any other Arms License. Since the husband of the applicant was absconding, the case was not made out to exercise the discretion in favour of the applicant, observed the learned Sessions Judge.

5. The applicant has thus approached this Court.

6. By an order dated 5th November, 2019, this Court granted interim protection to the applicant and ordered her release on bail, in the event of her arrest, opining that the house search was for the apprehension of the husband of the applicant and she came to be arraigned for failure to offer satisfactory explanation regarding the weapon found in the

said search.

7. An affidavit-in-reply is filed by Mr. Liladhar Makwana, PSI, Coastal Police Station, Kadaiya, Nani Daman. It is contended, inter alia, that in the investigation carried out to ascertain the genuineness of the Arms License, a copy of which was annexed to the application for pre-arrest bail, it transpired that there was no original record or formal register regarding the Arms License No. Home-AR/387/2005, J & K - II dated 31st December, 2005 and no duplicate Arms License had been issued by the office of the District Magistrate, Kathua, Jammu and Kashmir. The investigating officer has further referred to the fact that as many as on five occasions the applicant and her husband had recorded in their application for the Arms License that no other family member held any other Arms License. Therefore, in order to unearth the fraud and uncover forgery of the license, the custodial interrogation of the applicant was necessary, especially for the reason that the applicant relied on the said forged document to seek pre-arrest bail.

8. An affidavit-in-rejoinder is filed on behalf of the applicant.

9. In the backdrop of the aforesaid facts and

pleadings, I have heard Mr. H. H. Ponda, the learned counsel for the applicant and Mr. Mr. H. S. Venegaonkar, the learned Special Public Prosecutor for the respondents. With the assistance of the learned counsels, I have perused the material on record.

10. Mr. Ponda laid emphasis on the fact that, initially the applicant was arraigned for the offence punishable under Section 25 of the Arms Act only, which entailed maximum punishment of three years imprisonment. It was thus incumbent upon the police to give a notice to the applicant under Section 41A of the Code of Criminal Procedure, 1973. Secondly, the case of the prosecution that the applicant forged the license is belied by the fact that the original license was seized by the Police from a small farm house at Moba Village of one Imam Bakhs Umar Khan, on 21st January, 2020 in FIR No.11197003200074 dated 22nd January, 2020. It further transpired that the license in question was issued by the government of Jammu and Kashmir as is evident from the communication dated 6th February, 2020 addressed to Mr. M. K. Puri, Head of Branch, CBI, SCB, Chandigarh, by the under Secretary to the said Government. Thus, the charge of forgery of the license against the applicant is wholly

unsustainable.

11. Mr. Venegaonkar endeavoured to controvert the aforesaid submissions by inviting attention of the Court, to the concluding part of the said letter dated 6th February, 2020 which inter alia records that two files with the same No. Home/AR-09/2005 available with the record of the said Government do not indicate that the license had been issued in those two files.

12. Mr. Venegaonkar laid stress on the fact that in the multiple applications preferred by the applicant and her husband Suresh Patel, in the intervening period, it was categorically asserted that, neither the applicant nor any other family member held any Arms License. Had the license in question been issued in the year 2005, the applicant and her husband would not have made such declaration. Thus, since it was the applicant, who had placed the photostat copy of the license on the record of the Sessions Court in support of her prayer for anticipatory bail, the authorship of preparing false document was attributable to the applicant alone.

13. I have considered the submissions on behalf of the applicant and by the learned Special Public Prosecutor. First and foremost, it is imperative to consider the genesis of the

transaction in question. From the own showing of the prosecution, house search was conducted at the house of the applicant to facilitate further investigation in C.R. No.39 of 2018 in which the husband of the applicant was a suspect. The weapon was found during the course of house search allegedly in the bedroom, which the applicant shared with her husband. With the recovery of the weapon, which was found in possession of the applicant, at the highest, without requisite license, so far as the offence punishable under Section 25 of the Arms Act, 1959, custodial interrogation of the applicant was not warranted to facilitate further investigation in that regard.

14. Secondly, the offences punishable under Sections 420, 468, & 471 of the Penal Code, came to be added as the investigating agency claimed that the copy of the Arms License (Page.33 of the application) was found to be a false document. The investigating agency claimed that the correspondence which ensued between the investigating officer and the licensing authority revealed that the licensing authority was not in possession of original record or formal register containing entry of the said license.

15. Even if the aforesaid case of the prosecution is taken

at par, the necessity of the custodial interrogation of the applicant warrants consideration. Firstly, the said license stands in the name of the husband of the applicant. We cannot readily impute knowledge to the applicant that the said license was forged. Secondly, there is material on record, which is adverted to in the rejoinder, to show, prima facie, that the original license has been seized. Thirdly, what the communication dated 6th February, 2020 in terms records is that the license in question, of which certificate copy was enclosed to the said communication, had been issued by the Under Secretary, (Home), by file No. HOME/AR-9/2005 with All India Validity. It is true that the said letter records that two files with same No. HOME/AR-9/2005 available with the record of the said office indicate that no license had been issued in those two files.

16. In the aforesaid view of the matter, the aspect as to whether the license had in fact been issued by the licensing authority is contentious. In the absence of prima facie material to show that the applicant used the photostat copy of the said license despite having known that it was forged, it would be rather difficult to accede to the submission on behalf of the investigating agency that the authorship of forgery

rests with the applicant. The fact that the weapon came to be seized when the house search of the husband of applicant was conducted, as the former was a suspect in a serious offence, cannot be lost sight off.

17. In any event, with the developments in the intervening period, namely, the arrest of the husband of the applicant and the alleged seizure of the original license, custodial interrogation of the applicant does not seem to be warranted to facilitate further investigation.

18. For the forgoing reasons, I am persuaded to the exercise the discussion in favour of the applicant and confirm the interim order. Hence, the following order :-

ORDER

1. The application stands allowed.
2. The interim order dated 5th November, 2019 stands confirmed on the same terms and conditions.
3. In addition, the applicant shall attend the Coastal Police Station, Kadaiya Nani Daman, Daman as and when directed by the investigating officer and shall also regularly attend the proceedings before the jurisdictional Court, in the event, post completion of investigation, charge sheet is lodged against the applicant.

4. The applicant shall not tamper with prosecution evidence/witnesses.
5. The application stands disposed of.

(N. J. JAMADAR, J.)