

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.247 OF 2022

WASIM S/O AJJUBHAI PATHAN
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. S. P. Koli
APP for Respondent-State : Mr. A. M. Phule
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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 09-03-2022

PER COURT :

1. The applicant is apprehending his arrest in connection with Crime No.758 of 2019, registered with Newasa Police Station, Newasa District Ahmednagar, for the offence punishable under Section 406, 420 of IPC.
2. Heard learned Advocate Mr. S. P. Koli for applicant and learned APP Mr. A. M. Phule for respondent-State.
3. It has been vehemently submitted on behalf of the applicant that the FIR has been lodged by one Shahnaz Walimohammod Pathan. She states that the vehicle belonging to her was given for use to her brother Asif Walimohammod Pathan, however, he was not returning. She came to know that her brother has been arrested by Chattisgad Police in connection with an offence under NDPS Act on 10-02-2019 by

Errabore Police Station. She went to make inquiry with the brother after his release on bail and he come down to Ganeshwadi Shirdi Tq.Rahata on 21-06-2019 as to what had happened to her vehicle. He told that the vehicle went missing from Pachegaon Phata Newasa. They searched for that vehicle but could not get it, and therefore, she again went to meet her brother on 31-10-2019. In the meantime, she had filed a report about her vehicle being lost. At that time, he told that he had taken amount of Rs.15,000/- from present applicant and could not repay it, and therefore, the applicant has taken away the said vehicle and has not returned it. The informant then met present applicant and asked him to return the vehicle, but the present applicant represented her that the said vehicle has been seized by Chhatisgad Police. He told that he would give the vehicle only after his amount is returned. It is then realised by the informant that her brother has cheated her. All those contentions would show that the allegations are against the brother of the informant. The brother of the applicant has been released by Additional Sessions Judge, Newasa, District Ahmednagar, under Section 438 of Cr.P.C., and therefore, on the ground of parity, the applicant deserves to be released on bail. There is no direct transaction between the informant and the applicant. His physical

custody is not required. He has been falsely implicated by the co-accused. He is ready to abide by the terms of the bail. In fact, he is a driver on vehicle on daily wage basis/ contract basis but he has deep roots in the society.

4. Per contra, the learned APP has strongly opposed the application and submitted that the matter is coming for the first time and he is not armed with papers, however, the applicant himself has given the copy of the charge-sheet which appears to have been filed on 19-10-2020. Page No.138 to 142 show the efforts made by the Investigating Officer to arrest the present applicant, but he is absconding, and therefore, he does not deserve extraordinary relief under Section 438 of Cr.P.C.

5. The contents of the FIR have been narrated earlier, and therefore, they are not reproduced. It is not in dispute that the informant is the owner of the vehicle. Even she had lodged the report about stealing of the vehicle. The vehicle number is MH-01/BB-5810. What has been produced on record is the charge-sheet filed against against the brother of the informant i.e. Asif Walimohammod Pathan by Chhatisgad Police. The vehicle that was seized in that case is MH-05/AB-6101 and not the vehicle owned by

the informant. Now the fact remains is that informant had given the said vehicle to her brother accused No.1 and then it is stated that he had given that vehicle to the present applicant. The said vehicle has not been seized yet. Further, it also appears from the charge-sheet itself that efforts were made to arrest the present applicant. The Block Development Officer had made inquiry with residence of Bhenda Tq. Newasa Dist.Ahmednagar, which is stated to be the permanent address of the applicant, and for about eight months he was making inquiry and giving certificates to the Investigating Officer that the applicant is not residing at the said place. Thus, when there is prima facie evidence about the fact that applicant has gone absconding and the charge-sheet has been filed under Section 299 of Cr.P.C., the applicant does not deserve extraordinary relief in the nature of anticipatory bail. He cannot pray for parity on the ground that the co-accused was released by the learned Additional Sessions Judge, Newasa. As regards co-accused is concerned, he has not gone absconding but the present applicant has, on this count itself, the application stands rejected at the threshold.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.