

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

937 BAIL APPLICATION NO.554 OF 2022

SHAIKH UJER SHAIKH ISMAIL

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. A.U. Pawar, Advocate for the applicant

Mr. V.S. Badakh, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 29th APRIL, 2022

PER COURT :

1 Applicant has been arrested on 14.01.2022 in connection with Crime No.7/2022 dated 14.01.2022 registered with Palam Police Station, Dist. Parbhani, for the offence punishable under Section 489-A, 489-B, 420 read with Section 34 of the Indian Penal Code, 1860. Present application has been filed under Section 439 of the Code of Criminal Procedure, 1973.

2 Heard learned Advocate Mr. A.U. Pawar for the applicant and learned APP Mr. V.S. Badakh for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 At this stage, the investigation is complete and charge sheet is filed on 18.03.2022, therefore, the further physical custody of the applicant is not required for the purpose of investigation. Whatever evidence is collected is therefore required to be considered. The police papers including the First Information Report, which has been lodged by Dipak Hemantrao Jadhav attached to Local Crime Branch, Parbhani, would disclose that on the tip of accused No.1 Shaikh Hussain Shaikh Jilani was arrested and counterfeit currency notes were found from his possession. They were in the denomination of Rs.200/- and Rs.500/- and the currency notes were 34 and 32 respectively. It was in all Rs.22,800/-. After those currency notes were seized, inquiry was made with the said accused as to from where he has found those currency notes. He has taken the name of the applicant. Immediately thereafter it is stated that present applicant was arrested and inquiry was also made with him, whereupon he told that he had brought those currency notes from Niazamabad. Thereafter, First Information Report came to be lodged. It also appears from the charge sheet that the Investigation Officer had gone to Nizamabad for further investigation. However, according to him, the accused, who had then provided those counterfeit notes to the present applicant, was not found. Therefore, we can say that the said information given by the present applicant has not resulted in any kind of discovery. Even that statement about fetching the fake notes

from Nizamabad is very vague and cannot be termed within the four corners of Section 27 of the Indian Evidence Act. The statements of the witnesses would also say that the accused No.1 had taken the name of accused No.2 and thereafter accused No.2 i.e. the present applicant came to be arrested. Whether the said statement of accused No.1 can be considered under Section 27 of the Indian Evidence Act or under Section 30 of the Indian Evidence Act would depend upon the proof at the time of final hearing, but as on today it has no value, in view of the fact that it has further led to any kind of discovery. No currency note which can be said to be fake or counterfeit has been seized from the possession of the present applicant. Under such circumstance, with this kind of evidence he need not be asked to remain in jail. With stringent conditions he deserves to be released on bail. Hence, following order.

ORDER

1 Application stands allowed.

2 Applicant viz. **Shaikh Ujer s/o Shaikh Ismail**, who has been arrested in connection with Crime No.7/2022 dated 14.01.2022 registered with Palam Police Station, Dist. Parbhani, for the offence punishable under Section 489-A, 489-B, 420 read with Section 34 of the Indian Penal Code,

1860, be released on PR. of Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand only) each.

3 Applicant shall not indulge in any criminal activity nor shall tamper with the prosecution evidence, in any manner.

4 He shall cooperate with the investigation and shall remain present before the Investigating Officer as and when required.

5 Bail before Trial Court.

(Smt. Vibha Kankanwadi, J.)

agd