

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.49 OF 2022
WITH
INTERIM APPLICATION NO.557 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.49 OF 2022**

Reshma Khairati Khan

...Applicant

Versus

The State of Maharashtra

...Respondent

....

Mr. Rizwan Merchant with Mr. Faisal Shaikh for the Applicant.

Ms A.A. Takalkar, APP for Respondent-State.

Mr. Milind Kathe, PI, DCB, CID, CIU present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 5th APRIL, 2022.

P.C.:-

1. This is an application under Section 438 of Cr.P.C. for pre-arrest bail in C.R. No.1436 of 2021 registered with Malvani Police Station, Mumbai, for offences punishable under Sections 420, 465, 467, 468 and 471 r/w 34 of the IPC, section 12(1)(A) of Passports Act, 1967 and Sections 13, 14(A)(b) of the Foreigners Act, 1946.

2. Heard Mr. Rizwan Merchant, learned counsel for the Applicant and Ms A.A. Takalkar, APP for Respondent-State. Perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Deepak Kurulkar, retired senior police inspector. A perusal of the FIR reveals that from the year 2015 to 2017 the Complainant was posted at 'T' branch, SB-1, CID, Mumbai, which was entrusted with verification of passport applications /documents. During his tenure in 'T' branch, the Applicant had applied for passport and she had submitted birth certificate No.037454 wherein her date of birth was shown as 01/01/1989 at Baduria, 24 Parganas, West Bengal. He had deputed two constables to West Bengal to verify the authenticity of the birth certificate and the verification from the concerned District revealed that there were no records in respect of the birth certificate of the Applicant. Hence, vide letter dated 12/09/2017 he called upon P.I. Malvani police station to register a crime against the Applicant under appropriate provisions of law. He claims that the Police Inspector of Malvani police station had orally informed him that the crime against the Applicant was not registered in view of the directions given by the then Jt. C.P., Law and Order. The Complainant did not pursue the matter any further while he was in service, but after his retirement he filed the present FIR dated 10/12/2021 in respect of an offence allegedly committed in the year 2017.

4. A perusal of the FIR prima facie reveals that the Complainant had not lodged the FIR on his own volition. On 08/12/2021 the Complainant was called by the then D.G. Home Guard, Maharashtra, for an enquiry against the Applicant, who was stated to be a Bangladeshi National. On the basis of the statement given by the Complainant in the said enquiry, the FIR came to be lodged against the Applicant, the then PI of Malvani Police Station and the then Assistant Commissioner of Police, (L & O).

5. The enquiry, based on which the first information has been lodged, was allegedly conducted under the directions of the Government after a period of over five years. No reasons have been assigned for cherry picking the case for investigation after such a long lapse of time. Mr. Merchant, learned counsel for the Applicant submits that the Applicant has been falsely roped in for some ulterior reasons. In ***Babubhai Vs. State of Gujarat (2010) 12 SCC 254*** the Hon'ble Supreme Court has held that the investigation into a criminal offence must be free from objectionable features or infirmities, which may legitimately lead to a grievance on the part of the accused that the investigation was unfair and carried out with an ulterior motive. It is no doubt true that the

question whether the investigation was actuated with malafides or not will be decided on merits. Nevertheless, the manner in which the case has been singled out for investigation, does prima facie give rise to a reasonable doubt about the bonafides of the investigation.

6. It is also pertinent to note that though the FIR is registered under Section 13 and 14-A (b) of the Foreigners Act, 1946, learned APP, upon instructions states that charge sheet will not be filed in respect of the said offences. As regards the question whether the certificate submitted by the Applicant is genuine or fabricated the same is a matter of trial. The Applicant was granted interim bail and was directed to co-operate with investigation. It is stated that the Applicant has reported to the Investigating Officer and that she has been duly interrogated.

7. Under the circumstances, this is not a case which would justify custodial interrogation. The Applicant is a permanent resident of the State and there are no chances of her absconding or thwarting the course of justice. Hence, the application is allowed on the following terms and conditions:-

(i) In the event of arrest of the Applicant in C.R.

No.1436 of 2021 registered with Malvani Police

Station, Mumbai, the Applicant shall be released on bail on executing PR bonds in the sum of Rs.25,000/- with one or two sureties to the like amount;

(ii) The Applicant shall report to the concerned Investigating Officer as and when required by the Investigating Officer;

(iii) The Applicant shall keep the Investigating Officer informed of her current address and mobile contact number, and /or change of residence or mobile details, if any from time to time.

8. The application stands disposed of.

9. In view of disposal of the anticipatory bail application, the interim application does not survive and hence stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)