

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1400 OF 2022

Yasin Hamid Khan .. Applicant

Vs.

The State of Maharashtra .. Respondent

AND

ANTICIPATORY BAIL APPLICATION NO.1401 OF 2022

Abdul Aziz Abdul Kadir Khan @ Bablu .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Ms. Anjali Patil for the Applicants.

Ms. Veera Shinde, A.P.P. for the State.

Mr. Irfan I. Shaikh, P.I. Malwani Police Station.

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CORAM: SMT. BHARATI DANGRE, J.

DATED : 28TH JUNE, 2020.

P.C:-

1. The two applicants apprehend their arrest in connection with CR No. 394 of 2022 registered at Malwani Police Station, invoking sections 307,324,323,506 (2), 504 r/w 34 of IPC.

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The said C.R. came to be registered on a complaint filed by one Saddam Abdul Huraira Shaikh aged 27 years, who allege that his wife Afrine had left his company and is residing in her parental house. On 17/04/2022 he alleged that she visited a mall in Malad and posted the video of the same on Instagram. At that time, the complainant came to know that the reason which she had given i.e. about illness of her mother, is not a true version and, therefore, he repeatedly called her on mobile, but she did not answer. It is, therefore, stated that on 18/04/2022, he visited her house to question her about her pretentious stay at her parental house and this caused a discord. The father-in-law of the complainant objected to such a questioning and a verbal altercation followed. It is alleged that one Ghani pinned the complainant on the floor and started assaulting him, however, he somehow managed to escape from his clutches. At that time, his brother-in-law Yasin Hamid Khan arrived on the spot with a sharp knife and threatened to kill him. Ghani and Yasin caught hold of the complainant and stabbed on his back 7 to 8 times, as a result of which, he started bleeding profusely. He was taken to Shatabdi Hospital, Kandiwali for treatment and offered first aid.

2 As far as the applicant Abdul Aziz Abdul Kadir Khan is concerned the only role attributed to him is that he caught hold of the complainant while Yasin assaulted him.

3 The injury certificate, which was produced on record by the learned APP, when the matter was argued on the last occasion, was under the stamp and signature of the hospital and,

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I had recorded that the certificate was neither on a letter head nor the signatory of the certificate can be identified. Therefore, today, the investigating officer came up with a certificate in the 'proforma for writing injury report', and it refers to 6 CLWs over abdomen, left flank and left lateral aspect of upper chest. All injuries are described to be grievous in nature. Yasin is the other applicant, who is alleged to have assaulted the complainant, by a knife resulting into the injuries.

3 The learned counsel for the applicants Adv. Ms. Anjali Patil state that the entire complaint is a concocted version and she submit that the complainant's wife Afrin was brutally assaulted in the incident and she suffered a miscarriage. She has also placed on record the documents to that effect from the MCGM hospital, where she specifically narrated the history of the assault at the instance of her husband. On 22/04/2022, she addressed a letter through her counsel to the Senior Inspector of Police about her complaint not being registered, despite she making an allegation that because of the assault she underwent the miscarriage. The complaint dated 22/04/2022 is placed on record along with the supporting medical papers to establish that the miscarriage took place.

4 On the last date, the investigating officer was directed to remain present and offer an explanation as to why on the complaint of Afrine, no offence is registered. Today the investigating officer came up with a document in form of C.R. No. 859 2022 registered on 27/06/2022 at the instance of Afrine

in connection with the incident dated 17/04/2022. In the said C.R, her husband is arraigned as an accused and sections 313, 504, 323 of IPC have been invoked. The time of occurrence of offence is recorded from 17/04/2022 to 22/04/2022 i.e. the date on which she suffered miscarriage.

5 When the learned APP is asked to offer explanation on part of the investigating officer about why the cognizance of the complaint was not taken earlier, the learned APP, feebly submit that there is a delay in lodging the FIR. I am not ready to accept the explanation as mere delay, but apparently it can be seen that, there is a clear dereliction of duty on the part of the officer, despite cognizable offence being brought to his notice and as per Constitution Bench decision of **Lalita Kumari v. Government of Uttar Pradesh** reported in **AIR 2012 SC 1515**, he ought to have registered the FIR. The explanation offered by the investigating officer to the effect that he collected the documents from the hospital and recorded the statement of some persons in the vicinity, and therefore delay is caused in registering the FIR, do not inspire confidence and in any case cannot be accepted.

6 From the entire story which is narrated above, the conduct of the investigating officer does not appear to be bonafide. He offers no explanation for not registering the FIR till 27/06/2022 and it is very apparent that the same has been registered, when the investigating officer was summoned before this Court.

7 In the aforesaid circumstances the conduct of Shri. Irfan I Shaikh, P.I. Malwani Police Station shall be investigated,

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departmentally. The investigation of both the C.Rs shall be transferred to some other investigating officer attached to Malvani Police Station. The DCP Zone-11 shall look into the conduct of the investigating officer and upon an enquiry, submit the report to the Court within a period of four weeks from today.

8 On the merits of the matter, as far as the accusations faced by Abdul Aziz are concerned, since the only role attributed to him that he pinned down the complainant, in my considered opinion, his custodial interrogation is not necessary. He, therefore, deserve protection from arrest.

9 As far as Criminal Anticipatory Bail Application No.1400 of 2022 is concerned, since Yasin Khan has been attributed a specific role by the complainant, which corresponds to injury certificate depicting 6 CLWs, all grievous in nature, and the first injury being located in left lateral aspect of upper chest, which precisely prompted the investigating officer to invoke section 307 of the IPC, learned counsel Ms. Patil do not intend to press the application. She undertakes that the applicant Yasin Khan shall surrender before the investigating officer on or before 4/07/2022. Hence the following Order.

ORDER

- (a) In the event of arrest, the applicant – **Abdul Aziz Abdul Kadir Khan @ Bablu** shall be released on bail in C.R. No.394 of 2022 registered with

Malvani Police Station, District Mumbai on executing P.R. bond to the extent of Rs.25,000/- and furnishing one or two sureties of the like amount.

- (b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case and shall not tamper with prosecution evidence.
- (c) The applicant shall report to the Malvani Police Station on every Thursday and Friday between 10.00 a.m. to 2.00 p.m. for a period of two weeks and thereafter as and when directed.

10 The Criminal Anticipatory Bail Application No.1401 of 2022 is allowed and Criminal Anticipatory Bail Application No.1400 of 2022 is dismissed.

11 All parties are directed to act on the downloaded copy of the order supplied by the Advocate under his seal and signature.

SMT. BHARATI DANGRE, J