IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH : NAGPUR

Criminal Application (ABA) No.780 of 2021

Shahzada Khan s/o Aziz Khan and others,
Versus
State of Maharashtra, through P.S.O. Sakkardara, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's order	Court's or Judge's Order

Shri D.N. Mehta, Advocate for applicant.
Shri V.A. Thakare, A.P.P. for non-applicant/State

CORAM : ANIL S. KILOR, J.
DATED : 11th MARCH 2022

The applicants are seeking anticipatory bail in Crime No. 429 of 2021 registered with Sakkardara Police Station for the offence punishable under Sections 384, 386, 467, 468, 471, 447 and 120-B of the Indian Penal Code.

2. The case of the prosecution is that, on 28th August, 2021, Shafik Khan S/o Ajij Khan R/o Bada Taj Bag, Yasim Plots, Nagpur, filed complaint at Police Station Sakkardara, Nagpur against Firoz Khan and his associates i.e. accused Nos. 1 to 5 alleging that about 30 years back, his father had took two shops on lease from Tajbag Trust on monthly rent of Rs.600/- and was running a restaurant. Tajbag Trust was established in 1984 and in around 1999, the accused Shazjadakhan R/o Tajbag, Nagpur on the basis of his hooliganism, created terror in Tajbag and used to tell people that he is Chairman of Tajbag Trust. His brothers Amjad Khan, applicant/Zakil Khan,

Firozkhan @ Abukhan, Iqbal @ Iggakhan and their associates together used to illegally extort money from small and big shop keepers and hawkers and in case anybody refused, they would beat him. Therefore, there was dread in the locality and no shopkeeper / person could dare to make a complaint against them. The shopkeepers were paying Rs.300/- per month to the Trust, but apart from that accused Shahzadkhan and his people used to collect daily Rs.100/- and Rs.50/- from them. His father also, because of the fear of the accused used to pay Rs.200/0 per month. In the year 2000, his father was not keeping well due to Asthama, therefore, he was unable to run the restaurant for some time and could not pay money to accused Shahzadkhan. Accused Shahzadkhan used to abuse his father and would say that if money is not paid, he should vacate the shop. By taking disadvantage of ailment of his father, accused Shahzadkhan called his entire family, gave them threats to kill and obtained their signatures by force on the documents of the shops. By putting his lock on both the shops, he took possession of the shops and articles therein. Because of fear, his father has not made complaint. After sometime, they sold these shops to some persons by taking money. His father could not bear the shock and fell sick. After sometime in 2001, his father expired. As his father used to tell all the developments to the family members, therefore, he is aware of it.

3. In the year 2013, for beautification of the area Tajbag Trust demolished all the shops. In the year 2021, the Secretary and Member of the Trust have been changed. The trust took decision that the persons whose shops have been demolished in 2013 for beautification, will be given new shops. On discussion with the Trustees, he came to know that accused Shahzadkhan by hand-in-glove with then

Chairman Sheikh Hussain and Secretary Iqbal Welchi, changed the record of two shops of his father in the name of some other persons, though the shops of the trust could not be transferred or sole to other persons. Accused Shahzadkhan and his associates do tell that his father has sold those shops to the people, which is a part of their conspiracy. Accused Shahzadkhan, his brothers Amjad Khan, Firoz @ Abukhan, Iqbalkhan @ Iggakhan and applicant Zakir khan and their associates since, 1999, till filing of the report are illegally extorting money from the shops at Tajbag, Nagpur. On the basis of their hooliganism, they pressurized the Trust and illegally took possession of all the land of the Trust. The accused have constructed their own house, shops, illegally without any permission on the land of the trust. All these accused are the known criminals and lot of criminal cases are registered against them and, therefore, people are scared and do not raise voice. From the money collected from the shops, the accused lead a luxurious life, though, they do not have any legal source of income.

4. In the year 2008, in Tajbag area, he was selling non-veg items on a stall and since then till filing of complaint, accused Shahzadkhan and his goondas take daily Rs.200/- to Rs.300/0 from him. Since last six months, the Trust has started checking the illegal extortion by the accused and, therefore, he and some other people like him have stopping paying money to the accused, but the associates of the accused are troubling them.

5. Based on this complaint, Crime No. 429 of 2021 for the offence punishable under Sections 384, 386, 467, 468, 471, 447 and Section

120-B of Indian Penal Code has been registered against accused and investigation is in progress.

6. Shri Mehta, learned counsel for the applicants submits that the First Information Report was registered out of the animosity to falsely implicate the applicant in the alleged offence, whereas, they have no way connected with the alleged offence.

7. The First Information Report was lodged after 20 years delay with giving no explanation which sufficiently supports the case of the applicant to falsely implicate the applicants in the alleged crime, the criminal complaint was lodged against the applicants.

8. It is submitted that there is no allegatiosn made agianst hea applicants which would attract Section 487, 488, 471 of the IPC. It is further submitted that the date of the death of father of the complainant mentioned in the FIR and the death certificate are different and from the said it can be seeen that on false allegations and on false information, the complaint came to be lodged.

9. It is further submitted that the offence was not lodged during the lifetime of the father of the complianant or the uncle of the complainant has also not lodged any complaint aginst the applicants. It is further submitted that there are no allegations against the applicant Nos.2, 3 and 4.

10. It is submitted that on 18.11.2021, by way of *ad interim* anticipatory bail, the applicants were granted *ad interim* protection. It is further submitted that the applicants attended the police station on every Sunday in between 12.00 noon to 2.00 p.m. till the charge-sheet was filed. After filing the charge-sheet, it was orally informed that the

attendance of the applicants is no further required. It is further submitted that as the custody of the applicants is not necessary and as they have not misused the liberty, the *ad interim* anticipatory bail granted by this Court vide order dated 18.11.2021, may be confirmed.

11. On the other hand, Shri Thakare, learned APP strongly opposes the application and submits that the custody of the applicants is necessary. In that view of the fact that the applicants are involved in the alleged offence.

12. The learned APP fairly states that the charge-sheet is filed in this case. However, he submits that there is terror of the brothers of the applicants in the area namely, Tajbagh, Nagpur and because of the same, the people do not come forward to make complaint against the main accused and his brothers and other relatives. It is submitted that if the applicants are released on bail, the applicants would pressurize the prosecution witnesses and may tamper the prosecution evidence by using their influence.

13. The learned APP further submits that it is a prerogative of the Investigating Officer as regards the custodial interrogation, as an arrest is the part of process of investigation intended to secure several purposes. It is submitted that in such situation, it may be necessary to curtail their freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent their disappearance, to maintain law and order in the locality. For this purpose, he has placed reliance in the judgment of the Hon'ble Supreme Court of India in the case of P. Chidambaram Vs. Directorate of Enforcement[1].

1 (2019) 9 SCC 24

14. The learned APP further points out that the allegations of Maharashtra Control of Organized Crime Act, 1999 (in short "MCOCA Act") have been made applicable against the main accused and his three brothers.

15. It is alleged that the applicants are the a member of organized crime syndicate. The police have applied provisions of the Maharashtra Control of Organized Crime Act, 1999 (in short "MCOCA Act") against the applicants and an approval is granted under Section 23(1)(a) of the MCOCA Act and as such, he prays for rejection of the present application.

16. The learned APP further points out that there are various criminal antecedents and criminal cases were filed against the accused, which are as follows:

List of Crimes against Shahzada Khan s/o Aziz Khan/Applicant No.1			
Sr. No.	Name of Police Station.	Crime No.	Section
1	Sakkardara	72/2008	Sections 307, 143, 147, 148, 149, 294, 506(B) of IPC Sub Section 4/25 of the Arms Act and Section 135 of the Bombay Police Act.
2	Sakkardara	459/2000	Sections 307, 143, 147, 148, of the IPC Sub Section 4/25 of the Arms Act.
3	Sakkardara	79/2010	Sections 324, 143, 147, 148, 149 of the IPC
4	Sakkardara	429/2021	Sections 384, 386, 467, 468, 471, 447, 120 (b) of IPC
5	Sakkardara	437/2021	Sections 384, 386, 420, 467, 468,

			447, 120 (b) of IPC

List of Crimes against Amjad Khan s/o Aziz Khan/Applicant No.2			
Sr. No.	Name of Police Station.	Crime No.	Section
1	Sakkardara	810/2000	Sections 143, 336, 427, 506-B, 379 of IPC.
2	Sakkardara	72/2008	Sections 143, 147, 148, 149, 307, 294, 506-B of IPC and 135 of Bombay Police Act
3	Sakkardara	3177/2008	Sections 4, 5 of Bombay Prevention of Gambling Act,
4	Sakkardara	79/2010	Sections 143, 147, 149, 324 of IPC
5	Sakkardara	61/2012	Sections 323, 385, 294, 506, 34 of IPC.
6	Sakkardara	221/2013	Sections 307, 34 of IPC and Section 4 r/w Section 25 of the Arms Act and Section 135 of Bombay Police Act
7	Sakkardara	421/2021	Sections 294, 506-B of IPC.
8	Sakkardara	428/2021	Sections 386, 294, 506 (2) 34 of IPC Sub Section 4/25 of Arms Act.
9	Sakkardara	429/2021	Sections 384, 386, 467, 468, 471, 477 and 120-B of IPC.
10	Sakkardara	437/2021	Sections 384, 386, 420, 467, 468, 471, 447, 120-B, 504, 506 of IPC.
11	Sakkardara	525/2021	Sections 204, 506(2), 34 of IPC.

Sr. No.	Police Station	List of Crimes against Zakir Khan s/o Aziz Khan/Accused No.3
1.	Sakkardara	Crime No.181/1996, Sections 336, 337, 323, 34 of the IPC.
2.	Sakkardara	Crime No.217/1996, Sections 294, 506(b) 143, 147, 148, 149 of the IPC.
3.	Sakkardara	Crime No.810/2000, Sections 143, 336, 427, 379, 506(b) of the IPC.
4.	Sakkardara	Crime No.621/2001, Sections 147, 148, 149, 324 of the IPC.
5.	Sakkardara	Crime No.8/2011, Sections 324, 143, 147, 148, 149 of the IPC and Section 4 read with Section 25 of the Arms Act and Section 135 of the Maharashtra Police Act.
6.	Sakkardara	Crime No.3077/2011, Sections 294, 506 (b), 34 of the IPC.
7.	Sakkardara	Crime No.221/2013, Sections 307, 34 of the IPC and Section 3 read with Section 25 of the Arms Act and Section 135 of the Maharashtra Police Act.
8.	Sakkardara	Crime No.150/2020, Sections 188, 270 of the IPC.
9.	Sakkardara	Crime No.429/2021, Sections 384, 386, 467, 468, 471, 447, 120(B) of the IPC.
10.	Sakkardara	Crime No.525/2021, Sections 294, 506(2), 34 of the IPC.

Sr. No.	Crimes against Iqbal @ Igga Khan so/ Aziz Khan/Applicant No.4
1.	Police Station Sakkardara, Crime No.3197/2007, Section 160 of the IPC.
2.	Police Station Sakkardara, Crime No.72/2008 Sections 143, 147, 148, 149, 307, 294, 506(b) of the IPC and 135 Bombay Police Act.
3.	Police Station Sakkardara, Crime No.3177/2008, Sections 4 and 5 Bombay Prevention of Gambling Act, 1887.
4.	Police Station Sakkardara, Crime No.307/2011, Sections 294, 506(b), r/w Section 34 of the IPC.
5.	Police Station Sakkardara, Crime No.429/2021, Sections 384, 386, 467, 468, 471, 477 and 120(b) of the IPC.

17. In reply to the submissions of the learned APP, the learned counsel for the applicants submits that the criminal antecedents are relevant only after considering the role of the applicants/accused in the present case. It is submitted that from the material available on record, there is no *prima facie* incriminating material available, therefore, the Court may not give weightage to the criminal antecedents.

18. In the above referred background, I have perused the case diary and gone through the judgment in the case of P. Chidambaram (Supra).

19. In the backdrop of the allegation of having terror of the applicants and also in the backdrop of criminal antecedents of the applicants and their and other family members, it is necessary to consider the observations made by the Hon'ble Supreme Court of India in the case of P. Chidambaram (Supra), which read thus:

"72. We are conscious of the fact that the legislative intent behind the introduction of Section 438 Cr.P.C. is to safeguard the individuals personal liberty and to protect him from the possibility of being humiliated and from being subjected to unnecessary police custody. However, the court must also keep in view that a criminal offence is not just an offence against an individual, rather the larger societal interest is at stake. Therefore, a delicate balance is required to be established between the two rights - safeguarding the personal liberty of an individual and the societal interest. It cannot be said that refusal to grant anticipatory bail would amount to denial of the rights conferred upon the appellant under Article 21 of the Constitution of India.

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74. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes. There may be circumstances in which the accused may provide information leading to discovery of material facts and relevant information. Grant of anticipatory bail may hamper the investigation. Pre-arrest bail is to strike a balance between the individuals right to personal freedom and the right of the investigating agency to interrogate the accused as to the material so far collected and to collect more information which may lead to recovery of relevant information. In State v. Anil Sharma (1997) 7 SCC 187, the Supreme Court held as under: (SCC P. 189, para 6)

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be *countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.*

75. Observing that the arrest is a part of the investigation intended to secure several purposes, in Adri Dharan Das v. State of W.B. (2005) 4 SCC 303, it was held as under:-

19. Ordinarily, arrest is a part of the process of investigation intended to secure several purposes. The accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail his freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent his disappearance, to maintain law and order in the locality. For these or other reasons, arrest may become an inevitable part of the process of investigation. The legality of the proposed arrest cannot be gone into in an application under Section 438 of the Code. The role of the investigator is well defined and the jurisdictional scope of interference by the court in the process of investigation is limited. The court ordinarily will not interfere with the investigation of a crime or with the arrest of the accused in a cognizable offence. An interim order restraining arrest, if passed while dealing with an application under Section 438 of the Code will amount to interference in the investigation, which cannot, at any rate, be done under Section 438 of the Code.

76. In Siddharam Satlingappa Mhetre v. State of Maharashtra and Others (2011) 1 SCC 694, the Supreme Court laid down the factors and parameters to be considered while dealing with anticipatory bail. It was held that the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material *against the accused very carefully. It was also held that the court should also consider whether the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*

77. After referring to Siddharam Satlingappa Mhetre and other judgments and observing that anticipatory bail can be granted only in exceptional circumstances, in Jai Prakash Singh v. State of Bihar and another (2012) 4 SCC 379, the Supreme Court held as under:-

19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroped in the crime and would not misuse his liberty. (See D.K. Ganesh Babu v. P.T. Manokaran (2007) 4 SCC 434, State of Maharashtra v. Mohd. Sajid Husain Mohd. S. Husain (2008) 1 SCC 213 and Union of India v. Padam Narain Aggarwal (2008) 13 SCC 305.)"

20. Thus, it is clear that a delicate balance is required between the two rights - safeguarding the personal liberty of an individual and the societal interest. Ordinarily, arrest is a part of the process of the investigation intended to secure several purposes, the accused may have to be questioned in detail regarding various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime. There may be circumstances in which the accused may provide information leading to discovery of material facts. It may be necessary to curtail her freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons connected with the victim of the crime, to prevent her disappearance, to maintain law and

order in the locality. For this or other reasons, arrest may become an inevitable part of the process of investigation.

21. The Hon'ble Supreme Court of India, in the above referred judgment also observed that while dealing with an anticipatory bail, the nature and the gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made and that the court must evaluate the available material against the accused very carefully.

22. It is further held that the anticipatory bail can be granted only in exceptional circumstances where the Court is prima facie of the view that the applicants have falsely been enroped in crime and did not misuse the liberty.

23. In the case in hand, there is a delay of about 15 years in lodging the report. However, the justifiable explanation has been given for such delay. The explanation is that because of the terror of the accused persons in the area of Tajbagh, a delay has been caused. The criminal antecedents of the applicants and their brothers and family members, sufficiently support the explanation given by the complainant.

24. I therefore, find substance in the submissions of the learned APP that the custody of the applicants is necessary to know various facets of motive, preparation, commission and aftermath of the crime and the connection of other persons, if any, in the crime.

25. I further find substance in the submission of the learned APP that looking to the terror of the applicants in the area of Tajbagh, it is necessary to curtail their freedom in order to enable the investigation to proceed without hindrance and to protect witnesses and persons

connected with the victim of the crime, to prevent disappearance of the applicants and to maintain law and order in the locality.

26. Thus, in this case, I am of the opinion that for the reasons stated above, the arrest of the applicants, would become an inevitable part of the process of investigation. In that view of the matter, I am not inclined to allow this application.

27. Moreover, sanction under the provision of Section 23(2) of the MCOC Act against the applicants is pending.

28. At this stage, the learned counsel for the applicants prays for extension of the *ad interim* protection for two weeks.

29. The Hon'ble Supreme Court of India, in the case of *Nathu Singh and Ors. vs State Of Uttar Pradesh and Ors.*, decided on 28th May, 2021, in Criminal Appeal No.522 of 2021, has observed thus:

> *"**24**. We cannot be oblivious to the circumstances that Courts are faced with day in and day out, while dealing with anticipatory bail applications. Even when the Court is not inclined to grant anticipatory bail to an accused, there may be circumstances where the High Court is of the opinion that it is necessary to protect the person apprehending arrest for some time, due to exceptional circumstances, until they surrender before the Trial Court. For example, the applicant*
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> *may plead protection for some time as he/she is the primary caregiver or breadwinner of his/her family members, and needs to make arrangements for them. In such extraordinary circumstances, when a strict case for grant of anticipatory bail is not made out, and rather the investigating authority has made out a case for custodial investigation, it cannot be stated that the High Court has no power to ensure justice. It needs no mentioning, but this Court may also exercise its*

powers under Article 142 of the Constitution to pass such an order.

25*. However, such discretionary power cannot be exercised in an untrammeled manner. The Court must take into account the statutory scheme under Section 438,Code of Criminal Procedure, particularly, the proviso to Section 438(1), Code of Criminal Procedure, and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one."*

30. In the light of the above said observations, the balance is to be made between the concerns of the Investigating Agency, the complainant and the society at large with the concerns/interest of the applicants. In this case, as observed herein above, the concerns of the Investigating Agency and the society at large is important and therefore, such request cannot be accepted.

31. Accordingly, I pass the following order:

The application is **rejected**.

[ANIL S. KILOR, J.]

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NIRANJAN DOMAJI THAWRE

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