

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.158 OF 2023

Shaikh Yunus Shaikh Chand ... **APPLICANT**

VERSUS

The State of Maharashtra & anr. ... **RESPONDENTS**

.....

Mr. Rajendra Deshmukh, Senior Counsel with
Mr. Jay Veer, Advocate i/b
Ms. Priya S. Gondhalekar, Advocate for applicant
Mr. N.T. Bhagat, A.P.P. for respondents, assisted by
Mr. S.R. Pande, advocate for interveners

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WITH

**CRIMINAL APPLICATION NO.1251 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO.158 OF 2023**

Shaikh Imran Shaikh Ahemad ... **APPLICANT**

VERSUS

Shaikh Yunus Shaikh Chand & anr. ... **RESPONDENTS**

.....

Mr. S.R. Pande, advocate for applicant
Mr. Rajendra Deshmukh, Senior Counsel with
Mr. Jay Veer, Advocate i/b
Ms. Priya S. Gondhalekar, Advocate for respondent No.1.
Mr. N.T. Bhagat, A.P.P. for respondent No.2.

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WITH

**CRIMINAL APPLICATION NO.771 OF 2023 IN
ANTICIPATORY BAIL APPLICATION NO.158 OF 2023**

Shaikh Imran Shaikh Ahemad

... **APPLICANT**

VERSUS

Shaikh Yunus Shaikh Chand & anr.

... **RESPONDENTS**

.....

Mr. S.R. Pande, advocate for applicant

Mr. Rajendra Deshmukh, Senior Counsel with

Mr. Jay Veer, Advocate i/b

Ms. Priya S. Gondhalekar, Advocate for respondent No.1.

Mr. N.T. Bhagat, A.P.P. for respondent No.2.

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CORAM : R.G. AVACHAT, J.

DATE : 25th APRIL, 2023

ORDER :

Criminal Applications No.771/2023 and 1251/2023 are allowed. The original complainant is permitted to assist learned A.P.P. Copy of R.C.C. No.113/2006 is taken on record.

2. This is an application under Section 438 of the Code of Criminal Procedure. The applicant claims to have apprehension of arrest in connection with Crime No.0343/2020, registered with Satara Police Station, District Aurangabad for offence punishable under Sections 120-B, 307, 341, 201, 504 read with Section 34 of the Indian Penal Code, Sections 3, 25 of the Arms Act and Section 135 of the Bombay Police Act.

3. Heard. The First Information Report (F.I.R.) has

been lodged by the victim himself on 30/10/2020 in relation to the incident that took place by 4.30 p.m. on the preceding day. It has been averred in the F.I.R. that the applicant is the uncle of the informant (victim). There is a dispute between the applicant on one hand and his brother and his family on the other over ancestral agricultural land. The applicant has been alleged to have given threats to the life of the informant many a time.

4. The informant was returning on his motorbike after meeting his friend – Javedkhan. He was proceeding to meet his sister, residing at Silk Mill Colony, Aurangabad. It was about little past 4.30 p.m. He was passing by autorickshaw stand at Sadat Nagar. Two persons on motorbike came from behind. The pillion rider (co-accused) was the applicant's servant. He was armed with a pistol. He opened fire at the informant. The bullet grazed his thigh. Then those two persons intercepted the informant and abused him. The assailant attempted to load another bullet for opening fire at the informant. The bullet, however, could not be loaded. The informant attempted to overpower him. The duo fled on the motorbike, but not before making another attempt to load a bullet in a pistol with a view to fire at the informant. The informant then went to his sister's

house. Then he went to Vedant Nagar Police Station. The police referred him to Ghati Hospital, Aurangabad. He lodged the F.I.R. alleging the applicant to have conspired to eliminate him. An attempt on his life was made pursuant to the said conspiracy.

5. The submissions made by learned Senior Counsel for the applicant are not adverted to with a view to avoid repetition. The learned counsel for the informant filed his affidavit-in-reply. He also made oral submissions. It has been averred in the affidavit-in-reply that the applicant is a professional criminal. He was involved in over 50 criminal cases, pending or disposed of. The applicant has been indulging in theft of sand. He has caused loss to the public exchequer of over Crores of rupees during last 25 years. Pursuant to the order passed by learned Additional Sessions Judge, process has been issued against the applicant. The investigating officer is making further investigation. The pistol used in committing the offence is to be seized. Custody of the applicant is, therefore, eminently required. In some of the criminal cases pending against the applicant, non-bailable warrants have been issued against him. He has been declared absconding. Process to secure his presence has begun, pursuant to Section 82 of the

Code of Criminal Procedure. The number of crimes pending against the applicant have been mentioned in the affidavit-in-reply. It has further been averred that, the name of the applicant figures in the F.I.R. and in the statement recorded under section 164 as well. The specific role has been attributed to the applicant. The investigating agency was hand in gloves with the applicant. Although the charge sheet has been filed, the applicant was not sent for trial. The investigating officer consciously not filed 'B' Summary report with a view to ensure the informant did not get opportunity to oppose the same. Relying on the judgment of the Apex Court in case of **Prasanta Kumar Sarkar Vs. Ashis Chatterjee & anr. [(2010) 14 SCC 496]**, it was submitted that, in view of the name of the applicant to have been figured in the F.I.R., there is prima facie ground to believe him to have committed offence. The nature of offence is serious one. The punishment provided for the offence is of life imprisonment. The applicant is financially sound. He has amassed wealth/ property over 1000 Crores of rupees. Being a financially sound, there is every possibility of tampering with the prosecution evidence. He is even likely to repeat the offence, since he has indulged in over 50 crimes. Roznama/ case status of some of the crimes pending against the applicant has also been relied on to show that non-bailable

warrants have been issued against him for securing his presence.

6. Relying on the judgment of the Apex Court in case of **Ms. X Vs. The State of Maharashtra & anr. [Criminal Appeals No.822-823 of 2023]**, it was submitted that, nature and gravity of offence, financial status, position and standing of the accused need to be considered. The mere fact that no custodial interrogation is warranted cannot be a ground for grant of anticipatory bail. Relying on the judgment of the Apex Court in case of **Sumitha Pradeep Vs. Arun Kumar C.K. & anr. [2022 SCC OnLine SC 1529]**, it was submitted that, the Apex Court has observed thus :

“16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of law that

if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail.”

7. The learned A.P.P. would submit that, the weapon used in commission of the crime is to be recovered. The learned Additional Sessions Judge has passed certain directions. Further investigation is in progress.

8. Considered the submissions advanced. Perused the F.I.R. and the related police papers. The crime dates back to 29/10/2020. The applicant has not been attributed with any overt act. Admittedly, he was not present at the scene of offence. He is alleged to have hatched a conspiracy to eliminate the informant. He is further alleged to have engaged his servant to open fire on the informant with a view to eliminate him. Admittedly, there is a family feud between the applicant on one hand and the informant and his family on the other. A civil suit is pending between them in respect of the ancestral property. At the instance of the applicant, a crime was registered against the informant in the past.

9. Moreover, on investigation of the crime, charge sheet has been filed against two persons. Name of the

applicant figures in the column, "Not sent for trial". It has been concluded by the investigating officer that no involvement of the present applicant was found in the crime in question. It has further been concluded that, accused No.1 Shaikh Babar had taken a contract of construction of Masjid. The informant and his brother had been to the construction site in August 2019. They had asked him (Shaikh Babar) to stop the construction work. Both of them had even assaulted Shaikh Babar. To take a revenge of the said incident, Shaikh Babar and his associate (accused No.2) conspired to eliminate the informant. An attempt on the life of the informant was pursuant thereto.

10. True, the investigating officer did not file 'B' Summary report. The fact, however, remains that, the informant was keeping watch on the progress of the investigation. When the charge sheet was filed, before the Court of Judicial Magistrate, First Class, the informant on his own appeared through Advocate. It appears that, the learned Judicial Magistrate, First Class, vide his order dated 16/3/2021, refused to direct the investigating officer to make further investigation. The Court thereafter committed the case to the Court of Sessions.

11. The informant then preferred application (Exh.35) for taking cognizance against the applicant in the Sessions Case (No.126/2021). It was an application under Section 193 of the Code of Criminal Procedure. No prayer for further investigation was solicited. The learned Additional Sessions Judge, vide order dated 21/4/2022, took cognizance of the offence and even issued process against the applicant. The order passed by the learned Additional Sessions Judge needs to be reproduced below :-

“1) Application Exh.35 is allowed.

2) The cognizance of offence in Crime No.343/2020 registered under Section 307, 341, 504 r/w 34 of IPC and under Section 2 punishable under Section 25 of Arms Act and Section 135 of Mumbai Police Act, 1951 registered with Satara Police Station, Aurangabad is taken against Shaikh Younus Shaikh Chand, as accused No.3 in the crime.

3) Issue process against accused Shaikh Younus Shaikh Chand for commission of offence under Section 307, 341, 504 r/w 34 of IPC and under Section 2 punishable under Section 25 of Arms Act and Section 135 of Mumbai Police Act, 1951 in Crime No.343/2020 registered with Satara Police Station, Aurangabad.

4) Investigating Officer in Crime No.343/2020 registered under Section 307, 341, 504 r/w 34 of IPC and under Section 2 punishable under Section 25 of Arms Act and Section 135 of Mumbai Police Act, 1951 registered with Satara Police

Station, Aurangabad is directed to take appropriate steps accordingly.

5) Inform Ld. Trial Court accordingly.”

12. It is not known as to whether the learned Additional Sessions Judge has issued a summons or warrant for securing presence of the applicant in the Sessions Case, wherein the cognizance of the offence has been taken. This Court has a doubt as to whether now a clock can be put back, when after taking cognizance of the offence and issuing process against the applicant in the Sessions Case, whether the applicant could be arrested for the purpose of further investigation, particularly when the cognizance of the offence has already been taken by issuing process. No arguments were advanced on this point. As on today, the status of the matter is that, on due investigation of the crime registered pursuant to the F.I.R. lodged by the informant, a charge sheet has been filed. The involvement of the applicant in the crime was not disclosed. On the contrary, the investigating officer concluded that the applicant was not involved in the crime in question. As such, the averments in the F.I.R. and the statements under Section 164 of the Code of Criminal Procedure, besides the statements of witnesses, if any, who have supported the informant, stood

thoroughly investigated and thereafter conclusion was arrived at that the applicant was not involved in the crime. The report submitted by the investigating officer to the learned A.P.P. indicates that he proposes to make a further investigation only in view of clause (4) of the order passed by learned Additional Sessions Judge, Aurangabad on 21/4/2022. Until there is some material post order dated 21/4/2022 indicating the involvement of the applicant in the crime in question and his requirement for custodial interrogation, till then the applicant needs to be protected. This Court is, therefore, inclined to grant the applicant protection for a limited duration. Pursuant to the order of issuance of process against the applicant, he may appear before the Court seized of the Sessions case and do the needful for assuring his presence to face the proceedings of the said case. Needless to mention, the investigating officer was within his powers to conclude that involvement of the applicant in the crime has not been found. So far as regards other pending cases against the applicant are concerned, law will take its own course.

13. In view of the above, the application is disposed of in terms of the following order :

ORDER

(i) For a period of six months from today, in the event of arrest of the applicant in connection with Crime No.0343/2020, registered with Satara Police Station, District Aurangabad for offence punishable under Sections 120-B, 307, 341, 201, 504 read with Section 34 of the Indian Penal Code, Sections 3, 25 of the Arms Act and Section 135 of the Bombay Police Act, the applicant be released on his executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(ii) The applicant shall not tamper with the prosecution evidence and shall appear the investigating officer as and when required for the purpose of investigation.

(R.G. AVACHAT, J.)

fmp/-