

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

950 BAIL APPLICATION NO.1641 OF 2023

**SYED SOHAIL SAYED FAROOQUE AND OTHERS  
VERSUS  
THE STATE OF MAHARASHTRA**

...

Advocate for Applicants : Mr. Prashant Prabhakar Giri  
APP for Respondents: Mrs. P.V. Diggikar.

**CORAM : S.G. CHAPALGAONKAR, J.**

**DATE : 29TH SEPTEMBER, 2023**

**ORDER :-**

The applicants seek regular bail in connection with Crime No. 360 of 2023 dated 23.8.2023, registered with police station Vazirabad, District Nanded for the offences punishable under Sections 399, 402 r/w. 34 of IPC.

2. Heard learned advocate for the applicants and learned APP for State.

3. At the outset, learned advocate for the applicants, on instructions, seeks permission to withdraw the application so far as applicant Nos. 3 and 4 are concerned, with liberty to move afresh after filing of charge sheet. The application stands disposed of withdrawn so far as applicant Nos. 3 and 4 with aforesaid liberty.

4. The investigation was set in motion on the basis of the complaint filed by Shri Shivajirao Jamdhade, who is the Police Sub

Inspector posted at police station, Vazirabad, Dist. Nanded. He alleges that on 22<sup>nd</sup> August, 2023, he received secret information that 8 to 10 persons have gathered with criminal intent on cement road behind Khadakpura Water Tank. Their movements are suspicious. Accordingly, the police raid was arranged alongwith panch witnesses. The police party reached the spot, where, they found two cars are parked on the road. On seeing the police party, the accused who were boarded in a car made attempt to flee away, however, they are apprehended. It is further alleged that immediately on their arrest, the weapons like axe, screw-driver and nylon rope were recovered from them. On the basis of the aforesaid information, the crime in question was registered and the investigation further progressed. The applicants moved Court of Sessions for grant of regular bail. However, their prayer has been rejected. Hence, this application.

5. Mr. Giri, learned advocate for the applicants would submit that the applicants are behind bars on 23<sup>rd</sup> August, 2023 and they are arrested only because of suspicion. He would submit that the offences punishable under sections 399 and 402 would not attract in the facts of the present case. By inviting attention of this court to remand report, he would submit that the applicants were apprehended under suspicion that they committed theft of cattle. He would further submit that during the police custody, nothing incriminating could be found against the applicant. Hence, he urged to release them on bail.

6. Learned APP strongly opposes the applicant he would submit that the applicants were apprehended alongwith incriminating articles which clearly shows their intention to commit the offence. He would

submit that the injections, syringes are seized from vehicle alongwith some bottles containing the liquid having label of XYLAXIN. Those are sent for chemical analysis and report is awaited. He would submit that the investigation is in progress and release of the applicants would hamper further investigation.

7. Having considered the submissions advanced, apparently, applicants have been apprehended on the spot. Certain articles have been seized immediately at the time of arrest of the applicant alongwith vehicles. However, on the basis of the contents of the FIR so also articles seized, it would be difficult to presume that offence punishable under Section 399 of the IPC would attract against them. Even during police custody, nothing incriminating could be found against the applicant Nos. 1, 2 and 5. The remand applications plus news reports published at the instance of police shows that accused were arrested with suspicion that they are likely to commit theft of cattles and not preparing for dacoity. There are no criminal antecedents against these applicants. The applicant Nos. 1, 2 and 5 are behind bars from 23.8.2023. In that view of the matter, further detention of these applicants would not be necessary. Hence, a case is made out for release of these applicant Nos. 1,2 and 5. Hence, the following order :-

: O R D E R :-

[i] The application, so far as applicant Nos. 3 and 4 are concerned, stands disposed of as withdrawn with liberty to move after filing charge sheet.

[ii] The applicant No. 1 – Syed Sohail s/o. Sayed Farooque,

applicant No.2 - Abdul Rahim s/o. Abdul Karim Qureshi and applicant No.5 – Abdul Kalam S/o. Abdul Salam, be released on bail in connection with Crime No. 360 of 2023 dated 23.8.2023 registered with police station, Vazirabad, Dist. Nanded for the offence punishable under Sections 399 and 402 r/w. 34 of IPC, on furnishing P.B. and S.B. of Rs. 50,000/- each, with one solvent surety in like amount.

[a] The applicant Nos. 1, 2 and 5 shall visit the police station, Vazirabad, once in a week i.e. on every Friday, between 10.00 a.m. and 2.00 p.m. till filing of charge sheet.

[b] They shall not tamper with the prosecution evidence.

[c] They shall cooperate with the investigation.

[d] The observations made hereinabove, are on prima-facie consideration of the material on record and only for the purpose of deciding this application.

[e] Application stands disposed of accordingly.

**[S.G. CHAPALGAONKAR]**  
**JUDGE**

grt/-