

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.298 OF 2023
WITH
INTERIM APPLICATION NO.2565 OF 2023
IN
CRIMINAL APPLICATION NO. 298 OF 2023
(order corrected as per order dated 15/04/2024).**

Farheen Khan

.. Appellant/
Applicant

Versus

Shahnawaz Mamodo Issofo Dauda Alias
Shahnawaz Yusuf Shaikh and anr.

.. Respondents

...

Ms. Farheen Khan, applicant in person present.

Mr. Siddharth Jaiswal for respondent no.1.

Ms. A.S. Pai, PP a/w Mr. S.R. Agarkar, APP for the State.

CORAM: BHARATI DANGRE, J.

DATED : 4th SEPTMBER, 2023

P.C:-

1 The present Criminal Application is filed under Section 482 of Code of Criminal Procedure, being aggrieved by rejection of an application filed by the applicant/the victim under Section 340 of Code of Criminal Procedure, alleging that the accused has played fraud on the Court.

On the last occasion, I had requested Ms. Pai, the Public Prosecutor, present in the Court, to assist the applicant, since the applicant in person was advancing arguments, contrary to the position of law and despite an Advocate being provided to her through legal aid, she insisted that it is she, who should be

permitted to advance her arguments.

With the able assistance of Ms. Pai and in presence of the applicant, I have perused the impugned order.

The application filed by the applicant under Section 340 of the Code of Criminal Procedure specifically alleged that, the accused has falsely given his name as Shahanawaz Shaikh, whereas his original name is Shahanawaz Dawudu as mentioned in his Portugal Identity Card, and it was also alleged that he had tendered forged Indian Government documents in judicial proceedings and misused the same to conceal his true name and identity and he had also travelled without permission of the Court.

The learned Additional Sessions Judge considered the provision as contained in Section 340 of the Code in reference to Section 195 (1)(b) and arrived at a conclusion that, the charge-sheet nowhere indicates that the Investigating Officer has annexed the forged Ration Card, Election Card, Aadhar Card, RSP Certificate in the charge-sheet filed before the Court. Hence, since the alleged documents were never produced before the Court or in the course of judicial proceedings, it definitely did constitute an offence under section 193 to 196, 199, 200, 205 to 211 and 228 of the Indian Penal Code.

As far as the fake identity is concerned, the learned Judge has recorded that this ground was not raised or agitated before the Court and therefore, no case was made out for

initiating the proceedings under Section 340, hence it was rejected.

2 My attention is also invited to an order dated 21/12/2022 passed by this Court in Interim Application No. 3560 of 2022 filed in Criminal Application No. 901 of 2018, where the Court has recorded as under:

“An affidavit has been filed by the accused explaining the circumstances under which such wrong statement was made. The accused has tendered an apology. The accused is personally present in the Court. Learned counsel for the accused on instructions makes a statement that till the trial is over, the accused will not leave the Country nor make any visa application for travelling abroad. Statement is accepted. He further submits that the applicant shall attend the trial regularly. The victim stated that the trial is at the stage of framing of charge over which there is some debate. Learned APP to take instructions about the stage of the trial.”

In the wake of the aforesaid statement, the concern of the applicant that, the accused shall not attend the trial is taken care of and even a restriction is imposed on accused that, he shall not leave the country nor make any visa application for travelling abroad. It is informed by learned Public Prosecutor that the passport of the accused is in custody of the Investigating Officer of Khar Police Station.

3 In the wake of the above, reserving the liberty in the applicant to take appropriate proceedings, which shall include

approaching the concerned Police Station, for redressal of her grievance that, certain documents have been forged by the respondent, present application is disposed off.

(SMT. BHARATI DANGRE, J.)