

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 1088 OF 2023

Kadar Sattar Solanki

Age : 65 Years, Occu. : Practicing Advocate,

R/at : House No.71, 1st Floor,

Patel Compound, Dhamankar Naka,

Bhiwandi, District : Thane.

...Applicant

vs.

State of Maharashtra

[Through Narpoli Police Station]

...Respondent

Mr.Ganesh K. Gole a/w Mr.Aarif Ali M. Ali – Advocate for Applicant.

Mr.Mateen Shaikh – Advocate for Intervenor.

Mr.H.J.Dedhia – APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 4th MAY, 2023

P. C. :-

1. Heard learned Advocate Shri.Gole for the Applicant and learned APP for the Respondent-State.

2. It is true that yet the Intervention Application filed by one Imran Ramzan Nirban is not registered, his learned Advocate prayed for audience. Its Office copy is shown to me along with the Annexures. Learned Advocate Shri.Gole opposed for giving him a

right of audience, because, he is not the First-Informant. He also opposed the conduct of the Applicant in filing the Application belatedly.

3. While hearing the learned APP, a query is made to learned APP as to whether the investigation papers consists of complaint filed by said Imran Ramzan Nirban with Bhiwandi Nizampur Municipal Corporation. He submitted that it is not there in investigation papers. Even, he has echoed his resentment about the conduct of the officials of Narpoli Police Station. He submitted that even though he had talked with Senior Police Inspector to send the Investigating Officer of this offence, he is not present but other officer was sent.

4. Even he submitted that there was one Anticipatory Bail Application No. 951 of 2023 which was on yesterday's board and in that case also, the Investigating Officer of Narpoli Police Station was not present. He also reminded me about one order passed by this Court in Anticipatory Bail Application No.89 of 2023 wherein Section 41-A notice was not issued and it is from the same Police Station. He submitted that the Senior Police Inspector from Narpoli Police Station is not cooperating to the learned prosecutors and that is why, they find it difficult to assist the Court by placing necessary

materials.

5. It is true that in Anticipatory Bail Application No.89 of 2023, this Court has directed the learned APP to bring the notice of Commissioner of Police about the conduct of A.P.I. V. B. Baddhe. So, if there is repeated grievance against the particular Police Station, this Court must make some observation. Hence, learned Commissioner of Police – Thane is requested to look into all these grievances against the Senior Police Inspector - Madan Ballad – Narpoli Police Station.

6. At this juncture, learned APP submitted that the Senior Police Inspector – Madan Ballad – Narpoli Police Station has come. As he was busy in destroying some muddemal, he could not come in time. This Court has explained to him what is the importance of presence of either Investigating Officer or if he is not there, then the Officer at least who can assist the learned APP to place proper materials before the Court. He is also apprised about the provisions of Section 41-A of Cr.P.C. He assured that he will instruct all his Officers to be careful in attending the Court and giving instructions to the learned APP – In-charge of the case. In view of that, let learned Commissioner of Police be not informed.

7. During investigation papers, the complaint filed by Imran Ramzan Nirban to Corporation is not there. Whereas, learned Advocate for the said Imran has annexed the copy of the complaint to his Intervention Application. Even though the said Imran is not the First-Informant but he is the occupant of the building in which it is painted that it is dilapidated. In view of the facts and circumstances, I have given audience to learned Advocate. Interim Application is treated as disposed of.

ANTICIPATORY BAIL APPLICATION NO. 1088 OF 2023

8. Learned APP from the investigation papers pointed out that the Police have tried to serve a notice under Section 41-A of the Code of Criminal Procedure, 1973 [“Cr.P.C.”] but the Applicant was not found on the address and even they tried through mobile but not successful. Even learned Advocate Shri.Gole has not made any grievance about the said non compliance. Hence, no further enquiry is warranted.

9. Considering the case for anticipatory bail, this Court finds that the said Imran is having allegations against the present Applicant, whereas, the present Applicant is also making allegations against

him. There is no dispute that this building is declared as dilapidated by the Corporation and there is a notice dated 14th December, 2020 issued by the Corporation. It is addressed to in all 32 persons. Out of them, the complainant Imran is there, so also, the present Applicant. This is issued as per the provisions of Section 264 of the Maharashtra Municipal Corporation Act. It says about the condition of the building as dilapidated. It is also true that if the building is declared as dilapidated by following the procedure, it is the Corporation officials only who can paint on that building that it is dilapidated.

10. So, the issue is whether this Applicant has painted that remark. According to learned Advocate for the complainant and learned APP, they have got C.C.T.V., footages taken from the cameras installed on the ground floor of the building. Certain photographs are pointed out to me from the investigation papers. In one of the photographs, presence of a person is seen from the backside thereby painting on that building. According to learned Advocate Shri.Gole, it does not suggest that it is the present Applicant.

Complaints against Applicant

11. Apart from that, learned Advocate for the complainant has invited my attention to the several Annexures to his Application. I

have perused the complaint dated 14th February, 2023 lodged by the complainant to Narpoli Police Station. It is true that the said complainant had not seen the Applicant painting on that building. What he has mentioned is that he got the knowledge from the occupants of the building. Those occupants have confronted with the Applicant about that painting remark and the Applicant has threatened them.

12. Apart from that, my attention is invited to N.C. complaint registered with same Police Station on 14th February, 2023 against the present Applicant. The Applicant has obstructed the Police officials. There is one FIR registered at Shantinagar Police Station against the present Applicant under Section 384 read with 34 of IPC. The contention is that earlier the Applicant has worked as an official in the Corporation and after retirement, he is trying to misuse his position and extracting the amount. My attention is invited to past criminal cases registered against the present Applicant. One of them is under Section 52 of Maharashtra Regional Town Planning at Narpoli Police Station.

Complaints by Applicant

13. Whereas, learned Advocate Shri.Gole invited my attention to

unauthorized construction carried out by said Imran. It says that third floor construction is illegal. There is one more complaint lodged with Narpoli Police Station in respect of an attempt to dispossess the present Applicant from the shop situated in other building. Some of the officials of corporation are also involved in it. However, they have not been named. They have been named in a subsequent correspondence dated 31st January, 2023 and out of them, the present First-Informant Somnath Soste is one of them.

14. There is one N.C. complaint lodged by the Applicant with Narpoli Police Station on 14th February, 2023 against 4 persons and out of them, present complainant is one of them.

15. It may be true that there are allegations and counter allegations against each other. It may also be true that there are offences registered against the present Applicant. The law provides remedies in such an eventuality. There are two options available. One is to deal with the prayer for anticipatory bail in an offence in question. Second is to look into what are the other remedies available. Both cannot be mixed up.

16. This Court will have to consider what are the allegations in the present offence. So far as rest of the offences are concerned, law will

take its own course. Furthermore, if the acts are repeated, law also provides remedies for that. Parties can avail of those remedies. But, when the allegations in present offence are considered, this Court feels that the anticipatory bail can be granted to the Applicant.

17. It is for the reason that still from the photographs one can not say that his face is visible. Secondly, there are allegations made by the Applicant against the complainant – Imran Ramzan Nirban as well as against the First-Informant – Somnath Soste. Furthermore, for what purpose, custodial interrogation is required. So, considering all these circumstances, case for anticipatory bail is made out. Hence, following order is passed :-

ORDER

- (i) In case of an arrest in connection with C.R.No. 202 of 2023 registered at Narpoli Police Station – Bhiwandi – Thane for the offences punishable under Section 170 of IPC, the Applicant be released on furnishing personal bond and surety bond of Rs.25,000/-.
- (ii) Applicant is directed to give attendance to Narpoli Police Station – Bhiwandi – Thane on Tuesday from 10.00 to 12.00 until filing of charge-sheet.
- (iii) Applicant not to threaten the Prosecution witnesses or to allure them in any manner.

18. These are my prima facie observations. Let the learned

trial Court need not be influenced by them.

19. Application is disposed of in the aforesaid terms.

20. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]