

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2710 OF 2023

Tabrez Azim Shaikh ...Applicant

vs.

The State of Maharashtra and Anr. ...Respondents

Mr. S.R. Mishra, for the Applicant

Mrs. Geeta Mulekar, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.

DATE : OCTOBER 05, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 87 of 2023 registered at Panvel City police station for the offences punishable under sections 420, 465, 467, 468 and 471 of Indian penal Code, 1860.

3. Agriculture land bearing Survey No. 86 situated at Mosare, Tal. Panvel belongs to Waqf Board. An application to extract minor mineral from the said land was filed in the office of Tahsildar, Panvel on behalf of M/s. N.J. Bhoir through its Director Santosh Bhoir, accused No. 1. A 'no objection certificate' purportedly issued by Waqf Board was annexed to the said application. It was addressed to Rakhe Trust of which the accused Nos. 2 and 3

claimed to be trustees. As the NOC appeared to be suspicious, it was sent for verification to the Chief Executive Officer, Maharashtra State Board of Waqfs. It was reported that the said NOC was not issued by Maharashtra State Board of Waqf and it was a forged document. Thereupon, the Circle Officer lodged the report.

4. During the course of investigation, particularly interrogation with Akib Rakhe, the co-accused, it transpired that the applicant had procured the allegedly forged NOC from Maharashtra State Board of Waqf. Apprehending arrest, the applicant approached the Court of Session. As the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicant, the applicant has approached this Court.

5. The learned counsel for the applicant submitted that there is no material apart from the statement of the co-accused. Inviting the attention of the Court to an order passed on an application for pre-arrest bail filed by the co-accused, the learned counsel for the applicant submitted that there is no clarity about the person who has allegedly procured the forged NOC.

6. It is trite a statement of a co-accused does not constitute a substantive piece of evidence. However, at the stage of investigation, the investigating officer is justified in relying upon the leads given by the co-accused. Therefore, it can not be submitted

that the statement of the co-accused is of no relevance at all even at the stage of investigation. It is imperative to note that the allegedly forged NOC dated 20th August, 2022 has all the trappings of a certificate issued by the Maharashtra State Board of Waqf. In his statement, Akib Rakhe, the co-accused, has given a vivid description of the circumstances in which the applicant agreed to procure and, in fact, procured the NOC.

7. At this stage, the Court can not loose sight of the fact that the forgery of certificate purported to be issued by a statutory authority is a grave matter. It can not be equated with preparation of a false document inter partes. Relying upon the certificate issued by the statutory authority, further actions are authorized and orders are passed. From this stand point, custodial interrogation of the person who allegedly procured the forged NOC is indispensable for an effective and complete investigation. Lest the investigation would reach a dead end, and the identity of person who forged the certificate, the manner of forgery and the persons who were privy to the alleged forgery cannot be unearthed.

8. For the foregoing reasons, I am not persuaded to exercise the discretion in favour of the applicant.

Hence, the following order.

ORDER

- 1] The application stands rejected.
- 2] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

(N. J. JAMADAR, J.)