

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3248 OF 2024
Arshad Hussain Daruwale ... Applicant
Versus
The State of Maharashtra ... Respondent

Ms. Vidhya Mangavde for the Applicant.
Mr. Sagar R. Agarkar, APP for Respondent-State.
Mr. Asif Atar, Head Constable, Tembhurni Police Station, Solapur.

CORAM: MANISH PITALE, J.
DATE : 5th DECEMBER 2024

P.C. :

. Heard learned counsel for the applicant and learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No. 0245 of 2023 dated 22nd April 2023 registered at Tembhurni Police Station, Dist. Solapur, for offences under Sections 285, 286 and 338 of the Indian Penal Code, 1860 (IPC) and Sections 5, 9(b) of the Explosive Substances Act, 1908.

3. In the present case, the FIR was registered on the basis of an incident where an explosion took place, when fire crackers were being manufactured and in that process, the named accused person himself was severely injured and subsequently he died. The investigation led to registration of the offences and the co-accused persons being arraigned as accused.

4. The investigation was completed and charge-sheet was filed.

5. The learned counsel for the applicant submits that even in the charge-sheet, there was reference to the name of the applicant, but it was specifically stated that the applicant had cooperated with the investigation and upon completion of investigation, the Investigating Officer found that the applicant could not be said to be involved in the present case.

6. It was submitted that as against another accused person, the same observations were made in the charge-sheet and yet, he was arrested on 29th October 2024, due to which the applicant has apprehension that even he may be arrested. Reference is made to remand report dated 30th October 2024, in which the applicant is shown as absconding accused and it is stated that his custody is necessary for further effective investigation into the aspect as to why the applicant did not verify the credentials of the original accused persons before selling material pertaining to explosives to him. On this basis, it is submitted that the anticipatory bail may be granted, as the applicant undertakes to cooperate with the investigation.

7. The learned APP has relied upon the remand report and he submits that the role of the applicant is the same as that of the accused-Idris Yahaya Sayyed, in respect of whom also in the charge-sheet the aforesaid observation was made, but subsequently it was found that the said accused person, along with the applicant, could be said to be involved in the offence and hence, for further effective investigation, the custody of the applicant is

necessary.

8. This Court has perused the papers in the light of the rival submissions. There is substance in the contention raised on behalf of the applicant that in the light of the observations made in the charge-sheet in respect of the applicant, even if further investigation is to be conducted, as the applicant is ready to cooperate, his physical custody may not be insisted upon.

9. The documents show that on 28th October 2023, when the charge-sheet was filed, the Investigating Officer specifically observed that the applicant had cooperated with the investigation, his statement was recorded and upon verification of the documents, it was found that the applicant could not be said to be involved in the present case. Yet, after one year, in the remand report dated 30th October 2024, the Investigating Officer has now claimed that the involvement of the applicant appears to be evident and his custody would be necessary to examine the angle as to why he, along with the co-accused person, sold material pertaining to explosives, without verifying the credentials of the original accused, who is now deceased. This Court is of the opinion that when the applicant had indeed cooperated with the investigation and produced all necessary documents at the stage of investigation itself and the charge-sheet dated 28th October 2023 records positive findings in favour of the applicant, at this stage, the custody of the applicant cannot be insisted upon, so long as he is ready to cooperate with the investigation.

10. In view of the above, the application is allowed in the following terms :

(a) In the event the applicant is arrested in connection with FIR No. 0245 of 2023 dated 22nd April 2023 registered at Tembhurni Police Station, Dist. Solapur, he shall be released on bail on furnishing PR Bond of Rs.25,000/- and one or two sureties in the like amount.

(b) The applicant shall remain present before the Investigating Officer on 7th December 2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when called by the Investigating Officer. The applicant shall cooperate with the investigation.

(c) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses or any other person concerned with the case.

11. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail. It is also clarified that the observations made in this order are limited to the question of grant of anticipatory bail to the applicant in the present application.

12. The application is disposed of.

MANISH PITALE, J.