IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2505 OF 2024

Faruk Bhaiyya Saheb Gulab Patel ...Applicant

Versus

The State of Maharashtra ...Respondent

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- Mr. Mukesh Vashi, Senior Counsel (Through V.C.) a/w Panthi Desai and Jaineel Vashi i/b M.P. Vashi & Associates, for Applicant.
- Mr. Balraj B. Kulkarni, APP for Respondent.
- Mr. Pratapsing Bohare, Police Inspector, Malegaon Police Station.

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SHRIKANT SHRINIVAS MALANI
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Date: 2024.09.19 15:15:04 +0530

CORAM : MANISH PITALE, J.

DATE : 19th SEPTEMBER, 2024.

P. C. :

1. Heard, Mr. Vashi, learned senior counsel appearing for the applicant and Mr. Kulkarni, learned APP for the respondent – State.

2. The applicant is apprehending arrest in connection with First Information Report No.0161 of 2024, dated 27.05.2024, registered at Police Station Malegaon City, District Nashik, for offences under Section 336 of the Indian Penal Code, 1860 (IPC); Sections 25(3) and 27(2) of the Arms Act, 1959 and Section 135 of the Maharashtra Police Act, 1951.

3. The allegation against the applicant is that he was riding a motorcycle and alongwith the pillion rider, they were seen to be armed with pistols and that shots were fired. As per the offences registered against the applicant it is really offence under Section 27(2) of the Arms Act, 1959, which

provides for minimum sentence of imprisonment of 7 years and which can extend to life imprisonment.

4. The learned senior counsel appearing for the applicant submits that there is a background to the incident, in the sense that an earlier FIR bearing No.0160 of 2024 registered on the same day concerns an incident where certain unknown persons had fired upon the Ex-mayor of Malegaon and it is claimed that the applicant and the pillion rider actually chased the assailants and there is no question of any criminality being foisted on the applicant and the pillion rider.

5. It was further brought to the notice of this Court that the pillion rider was granted anticipatory bail by the Magistrate. It was submitted that even if the material on which the investigating authority is relying is taken into consideration, essential ingredients of the offences are not made out and since the applicant is ready to cooperate with the investigation, appropriate relief may be granted. It was submitted that the applicant does not have any criminal antecedents.

6. On the other hand, learned APP has vehemently opposed the present application. He submitted that the statement of the informant, who is a police officer, sufficiently makes out the ingredients of the alleged offences. Reliance is placed on a statement of an alleged eye witness to claim that the

applicant who was wearing blue shirt had actually fired from the pistol in his hands. Reliance is also placed on the CCTV footage to oppose the present application.

7. This Court has considered the documents filed along with the application, as also the investigation papers produced for perusal of this Court.

8. Since much emphasis was placed on the CCTV footage, this Court has perused the CCTV *panchanama* in order to understand as to what could be said to be the overt act on the part of the applicant in the present case. Apart from the background that has been highlighted on behalf of the applicant, if the material relevant only for the present FIR is taken into consideration, the CCTV *panchanama* indicates that according to the CCTV footage, the applicant wearing a blue shirt alongwith the pillion rider wearing a yellow shirt were seen at the spot of the incident. They were riding a motorcycle, and at worst, the allegation against the applicant and the pillion rider was that they had flashed pistols in their hands. *Prima facie* there does not appear to be any recording of the CCTV *panchanama* about shots being fired by the applicant.

9. In that sense, the claim made by the alleged eye witness that the applicant had fired shots *prima facie* appears to be contradicted by the CCTV footage itself. If the entire material is taken into consideration, there is some

substance in the contention raised on behalf of the applicant that while they could be said to be present at the relevant place, but they were in the process of chasing assailants, who had fired upon the ex-mayor of Malegaon, which had led to registration of the FIR No.0160 of 2024, on the same date.

10. Therefore, it can be said *prima facie* ingredients of serious offence under Section 27(2) of the Arms Act are not made out. The rest of the offences are minor and bailable. So long as the applicant is ready to cooperate with the investigation, a case is made out for granting anticipatory bail.

11. It is to be noted that during the initial stage of investigation, the applicant was called upon and he did appear before the concerned police station, proof of which is annexed alongwith the application at Exhibits "I-1 to I-3". This is another factor taken into consideration by this Court while granting relief to the applicant.

12. 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.0161 of 2024, dated 27.05.2024, registered at Police Station Malegaon City, District Nashik, he shall be released on bail on furnishing PR Bond of ₹ 25,000/- with one or two sureties in the like amount, to the satisfaction of

the Trial Court.

(B) The applicant shall remain present before the Investigating Officer on 23rd September, 2024 and 24th September, 2024 between 10:00 a.m. and 12 noon and thereafter as and when called by the Investigating Officer.

(C) The applicant shall cooperate with the investigation.

(D) The applicant shall not tamper with the evidence in any manner. He shall not influence the informant, witnesses or any other persons concerned with the case.

13. Needless to say, violation of any of the aforesaid conditions would make the applicant liable to face proceedings for cancellation of anticipatory bail.

14. 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 and that the Trial Court shall proceed further, without being influenced by the observations made in this order.

15. The application is disposed of.

(MANISH PITALE, J.)