



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

932 ANTICIPATORY BAIL APPLICATION NO. 1229 OF 2023

Anil Gayaji MatadeApplicant

VERSUS

The State of Maharashtra & anotherRespondents

.....

Mr. P. P. Kothari, Advocate for Applicant.

Mr. S. B. Jadhav, APP for the State.

Mr. N. B. Narwade, Advocate for the informant.

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 139 OF 2023

Sharif Khan Rashid Khan PathanApplicant

VERSUS

The State of Maharashtra & anotherRespondents

Mr. N. B. Narwade, Advocate for Applicant.

Mr. S. B. Jadhav, APP for the State.

Mr. S. K. Shinde, Advocate for Respondent No. 2.

WITH

APPLICATION FOR CANCELLATION OF BAIL NO. 140 OF 2023

Sharif Khan Rashid Khan Pathan Applicant

VERSUS

The State of Maharashtra & othersRespondents

.....

Mr. N. B. Narwade, Advocate for Applicant.

Mr. S. B. Jadhav, APP for the State.

Mr. P. M. Salunke, Advocate for Respondent Nos. 2 to 4.

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 142 OF 2023

Sharif Khan Rashid Khan Pathan Applicant

VERSUS

The State of Maharashtra & another Respondents

.....
Mr. N. B. Narwade, Advocate for Applicant.
Mr. S. B. Jadhav, APP for the State.

WITH
APPLICATION FOR CANCELLATION OF BAIL NO. 141 OF 2023

Sharif Khan Rashid Khan Pathan Applicant

VERSUS

The State of Maharashtra & another Respondents

.....
Mr. N. B. Narwade, Advocate for Applicant.
Mr. S. B. Jadhav, APP for the State.
Mr. P. P. Kothari, Advocate for Respondent No. 2.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1316 OF 2023

Sadik Rajjak Shaikh & another Applicants

VERSUS

The State of Maharashtra Respondent

.....
Mr. P. M. Salunke, Advocate for the Applicants.
Mr. S. B. Jadhav, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 8th JANUARY, 2025.

PER COURT :

1. Applicants in Anticipatory Bail Application Nos. 1229/2023 and 1316/2023 apprehend arrest in connection with Crime No. 0527/2023 registered with Sangamner City Police Station, Tq. Sangamner, Dist. Ahmednagar for the offences punishable under Sections 380, 420, 427, 457, 448, 506 read with Section 34 of Indian Penal Code. Other applications are for cancellation of bail granted to the co-accused by learned Sessions Judge in connection with the said crime.

2. First Information Report indicates that the informant is a lawyer by profession. He claims to have purchased a house and plot from Mohd. Suleman Shaikh in January, 2023. In the First Information Report itself, it is mentioned about the suit being filed by Applicant Anil against the erstwhile owner Mohd. Suleman Shaikh in respect of encroachment. It is claimed that the said suit was dismissed by the Court. Informant claims that the subject property was in possession of Mohd. Suleman Shaikh himself and he handed

over possession of the same. He further claims to have kept various articles therein.

3. On 15.05.2023, at about 12.00 to 12.30 am, some boys heard noise of demolition. They, therefore, peeped into the house and found that 7 to 8 persons and 2 women were demolishing the wall of the house. He along with his brother Rizwan went to the spot. He found present Applicants and co-accused taking away articles as mentioned in the First Information Report from the spot. He claims that on the next day, he went to Sangamner City Police Station for lodging complaint and at that time he met Ashfak Patel i.e. son-in-law of Applicant Sadik in Anticipatory Bail Application No. 1316/2023. Ashfak assured him for return of said articles and therefore informant did not lodge complaint. He claims that on 22.05.2023, when he went to Sadik, his wife and children with a request to return the said articles, they refused to do so. Hence, report came to be lodged.

4. Learned counsel for Applicants seeking anticipatory bail contends that the son of Applicant Anil against whom similar allegations are made is granted anticipatory bail by the Sessions

Court. He pointed out registered sale-deed executed by him in favour of accused No. 2 on 29.03.2023. It is his submission that thereafter this Applicant had no concern with the subject property.

5. Learned counsel for Applicant Sadik contends that he is the purchaser of the property in question. It is his submission that there is mention of registration number of the car belonging to him, since it was already known to the informant. It is his submission that there is no reference about registration number of the truck which was found at the spot. This, according to him, indicates that this could be a case of false implication. It is his further submission that the alleged incident had occurred on 11.05.2023 whereas the report is lodged on 24.06.2023.

6. Learned counsel in behalf of informant opposed grant of anticipatory bail and has sought cancellation of bail granted to other accused. It is his submission that there is documentary evidence on record to indicate that he had been to the office of SDPO on 10.06.2023 and which, according to him, sufficiently demonstrates that he approached police but his report was not recorded. It is his submission that merely because report came to be lodged on

24.06.2023, the accused are not entitled to get any benefit thereof. He also seeks cancellation of bail of co-accused on the ground that another crime is registered against Ashfak Patel and Junaid Shaikh vide First Information Report No. 1034/2023 registered with Sangamner City Police Station. It is his submission that no anticipatory bail can be granted to the Applicants as the stolen articles are yet to be recovered. Learned APP also opposed application by referring to the investigation papers.

7. On the previous dates of hearing, a grievance was made by learned counsel for informant about the concerned police not recording his report inspite of the fact that he approached to the police immediately. In this regard report is called which indicates that the presence of the informant is found at the police station on 15.06.2023 itself. It is thus clear that there is no substance in the contention of informant that on the next date of occurrence of the incident he went to the police station or any time thereafter but his report was not lodged. It is pertinent to note that the informant is a lawyer himself. Therefore, his presence on 15.06.2023 cannot be presumed to be for the purpose of lodging report. This inference is inevitable in view of the fact that even in the First Information Report

it is stated that on 22.05.2023, the co-accused flatly refused to return the articles, inspite of this no report was lodged upto 24.06.2023.

8. First Information Report indicates that there is dispute with regard to encroachment in respect of the subject property. There is nothing on record to indicate that he had been to the police station and police refused to record his report. Thus, this Court finds substance in the contention of learned counsel for the Applicants that it could be a case of false implication owing to the property dispute having regard to the delay caused in lodging of report. This Court also finds substance in the contention of learned counsel for the Applicants that registration number of car of Applicant in Anticipatory Bail Application No. 1316/2023 is mentioned in the report however, there is no mention about registration number of truck which was also there. This creates serious doubt about genuineness of the report. Once doubt is created about genuineness of report and possibility of false implication exists, liberty of accused needs to be protected. As a result of this, this Court finds no reason to reject the applications for

anticipatory bail. Hence, anticipatory bail applications are allowed in terms of the interim order.

9. As far as cancellation of bail is concerned, this Court prima facie finds possibility of false implication, hence for the reasons recorded hereinabove, this Court finds no case being made out for cancellation of bail. Hence, applications for cancellation of bail are rejected.

(R. M. JOSHI)
Judge

dyb