

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

CRIMINAL WRIT PETITION NO. 5545 OF 2024

Asif Umar Shaikh

...Petitioner

Versus

The State Of Maharashtra

...Respondent

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Adv. Aadesh Konde Deshmukh a/w. Adv. Sainath S. Garade, Adv.
Yogesh A. Sukale, Advocate for the Petitioner.

Ms. R. A. Ambekar, APP for the State.

Mr. S. S. Shinde, ASI Phalat City Police Station.

**CORAM : RAVINDRA V. GHUGE &
RAJESH S. PATIL, JJ.**

DATE : 7th JANUARY, 2025

P.C. :-

1. This Petition has been filed by Accused No.2-Asif Umar Shaikh, in F.I.R. No.0245 of 2024, dated 23rd May, 2024, registered at Police Station Phaltan City, District Satara. A prayer put forth by the Petitioner is in terms of the clause 9 (b), which reads as under :-

2. The learned Advocate for the Petitioner has vehemently

canvassed that although the F.I.R. at issue mentions his name as Accused No.2 and indicates his presence at the spot where the offence allegedly took place, he was not at the said spot and was elsewhere. He relies upon another F.I.R. No.0247/2024 registered with the same Police Station Phaltan City, District Satara, at 23.33 hours. The First F.I.R. was registered at 02.08 hours. The Complainant is Mohmmad Salim Mehbub Khan, who is not the Accused in the F.I.R.0245/2024.

3. We have adverted to the following judgments :

1. *Meenabai Deepak Mahale & Ors. vs. the State of Maharashtra*, reported in *2024 SCC OnLine Bom 952*.
2. *State of Haryana & Ors. vs. Ch. Bhajan Lal & Ors.*, *AIR 1992 SC 604*,
3. *Rajeev Kourav vs. Baisahab & others*, (2020) 3 SCC 317
4. *Kaptan Singh vs. State of Uttar Pradesh and others*, (2021) 9 SCC 35
5. *CBI vs. Aryan Singh*, *AIR 2023 SC 1987*,
6. *State of Odisha vs. Pratima Mohanty and others*, (2022)

16 SCC 703.

4. It is well settled that while entertaining an Application under Section 482 of the Cr.P.C., this Court is not to assess as to whether the offence against a particular accused can be said to be proved or not. A mini trial cannot be conducted at this stage. If the F.I.R. contains certain allegations of having committed an offence, and the offence is seen to be serious, this Court is expected to be very slow in entertaining an Application for quashing the F.I.R.

5. In this context, the F.I.R. has been registered by a lady, Heena Altab Sayed, who is not added as a respondent in the present Petition. She has narrated the entire incident in details, which took place at 7.30 hours on 22nd May, 2024. She had confronted Salim Mehbub Khan since he was alleged to have created a misunderstanding between the Complainant and her husband and it was the apprehension of the Complainant that there were frequent domestic quarrels between her husband and herself on account of the role played by Salim Khan. When she requested him not to create any misunderstanding between the parties, he had uttered certain atrocious statements, which are as under :-

“ तो मला म्हणाला तुझ्या म्हाताऱ्या नवऱ्यापासून तुला काय भेटते तू माझ्यापाशी एक रात्र झोप असे अश्विल भाषेत बोलून त्याने माझ्या हात धरून वाईट हेतूने अंगावर ओडून घेऊन माझे अब्रवर हात टाकून माझे पोटात पाठीत लाथाबुक्यांनी मारहाण करून माझे डाव हाताचे बोटातील १ तोळ्याची पिळ्याची सोन्याची अंगठी काढून घेतली आहे तसेच तू माझे ऐकले नाही तर तुला तुझ्या भावाला बहिणींना दाजींना सगळ्यांना खोट्या केस मध्ये गुतविन अशी धमकी दिली त्यावेळी त्याचसोबत असलेले असीफ उमर शेख हा मला म्हणाला तुम्हाला सलीम भाईचे ऐकावेच लागेल नाहीतर याचे परिणाम वाईट होतील अशी धमकी दिली व माझे हात वरपर्यंत पोहचले आहेत। तसेच सलीम खान हे माझे अंगाशी झटत असल्याने मी सलीम खान यास भिंतीवर ढकलून निघून आले। तरी माझी सलीम महेबुब खान इ असीम उमर शेख याचेविरुद्ध तक्रार आहे”

6. It is, thus, obvious that Salim Khan taunted the Complainant by saying that she will not get any benefit from having married an old man and that she must come and sleep with Salim Khan and he would make her happy. He caught her hand and pulled her to his chest and held her in his arms. Thereafter, he physically assaulted her with fists and kicks. It is alleged that he stole a ring from the left hand ring finger of the Complainant. The Petitioner is alleged to be present at the scene and was watching the said incident. It is alleged that he told the Complainant that she should follow the instructions given by Salim Bhai, and if she did not obey him, she would have to face dire consequences. He also stated that he has connections with “higher ups”.

7. Considering the above contents of the F.I.R., it is quite

apparent that the offence alleged to have occurred, will have to be investigated and for which trial is required. In such a trial, the role of the present Petitioner would also figure. It is not the case that there are no attributes to his conduct, as has been tried to be canvassed. Hence, for this reason, we do not find that this Petition can be entertained.

8. The Petitioner has claimed that he was not at the said place and he refers to the F.I.R. No.0247/2024, dated 23rd May, 2024 registered at 23.30 hours with the Phaltan City Police Station. In short, he claims an alibi. The law on alibi is now well settled in the light of the following judgments :

1. *Brijendra Singh & Others Vs. State of Rajasthan, (2017) 7 SCC 706.*
2. *Kamal Prasad and Others Vs. State of Madhya Pradesh, (2023) 10 SCC 172.*
3. *Mahesh Vasant Chilwante Vs. State of Maharashtra, Criminal Appeal No.452 of 2016, dated 25th February, 2021 (Bombay High Court Bench at Aurangabad).*
4. *XYZ C/O. Naziya Zahiruddin Shaik Vs. State of Maharashtra & Ors. Criminal Writ Petition No.426 of 2021, dated*

07th April, 2021, (Bombay High Court Bench at Aurangabad)

9. Since a case of alibi requires strict proof, we do not find that this Petition can be entertained to delete the present Petitioner from the F.I.R. No.2045/2024 by presuming that he has proved alibi.

10. In view of the above, **this Petition is dismissed.**

(RAJESH S. PATIL, J.)

(RAVINDRA V. GHUGE, J.)