

Order below Exh. 1 in, Cri. Bail Application No. 318/2022
(Moinoddin Rafiq Shaikh & Ors Vs. State)

By this application, the applicants seeks pre-arrest bail under section 438 of the Cr.P.C. from being arrested in Crime No.I-59 of 2022 registered with Bhadrakali Police Station, Nashik u/ss. 395,452,504,506 of The Indian Penal Code(IPC).

2. The learned counsel Mr.F.A. Inamdar for the applicants submits that,applicants are innocent person and they have been falsely implicated. Applicants are ready to abide by any of the terms and conditions to be imposed by this Court. They have got fix place of residence at Nashik and has got no criminal anticident.

3. Learned APP Mr. R.M. Baghdane, by filing pursis (Exh.7) adopted say filed by Investigating officer (I.O.) (Exh.6) and strongly objected this application. I.O. is present.

4. Perused record. Prosecution's case is that while the informant was present near his house at stall, accused person namely Pappi,Bablu, Guddu @ Butkya, Saijuddin, Sultan and Rimya came there. Pappi asked informant, as to where is his son Badshaha to which informant told that, he did not know. Bablu told informant to tell his son Badshaha that he is going to contest election of Municipal Corporation and tell him to do his work only. Pappi slapped informant and pushed him aside and without consent of the informant forcibly took away Rs. 1,200/- from his cash counter. Thereafter, all the five accused persons entered into the house of Firoz, the elder son of the informant, abused in filthy language and slapped three daughters-in-law of the informant and threatened.

5. Applicants' case is that informant's son Samir @ Badshaha is a habitual criminal and various cases are pending against him. He had demanded extortion amount of Rs. 3,00,000/- from Samir Rafiq Shaikh the younger brother of applicants 1& 2. As he refused, on 06.03.2022 at about 7.30 p.m., Samir @ Badshaha, his brother Riyaj Bochya, Yakub Shaha, Firoz Shaikh, Atik @ Gendya Ansari, Sadab @ Saddu Shaikh, Imran Kureshi @

Ghoshwala accosted Samir Rafiq Shaikh, brother of applicants 1 & 2 started abusing pushing and beating him , as he did not satisfy extortion amount. Hence, he lodged FIR bearing C.R.No. 58/2022 u/s.307,143,147,148,149, 504, 506 of IPC against them.

6. Investigating officer is silent on registration of FIR bearing No. 58/2022 dated 06.03.2022 in same police station but, applicants have filed its copy of FIR in support of their above contention. Thus, crime against the applicants have been registered after registration of crime at the instance of younger brother of applicants 1 and 2 against son of informant in present Crime No. 59/2022.

7. This application is strongly objected by learned APP on the grounds that, the offence is serious in nature and exclusively triable by Court of Sessions. Investigation is incomplete and property is yet to be recovered. The applicants may tamper or hamper prosecution witnesses or evidence.

8. According to Mr.Inamdar, all the applicants have got lean and clean record to their credit having no criminal antecedent. Applicant 1 is social worker, and applicant 2 his brother. Applicant 3 is a labour. In the above facts and circumstances of the case, as present crime No. I-59/2022, is lodged after registration of Cr. No. 58/2022 at the instance of younger brother of applicants 1 & 2 and considering the role of the applicants, custodial interrogation is not all required for the purpose of investigation on the above grounds. By imposing conditions, investigation can be carried out. Alleged offences levelled against them are not punishable with death or life imprisonment conjunctively. Thus, apprehension in the mind of applicants of being harassed, manhandled, and arrested seems to be reasonable, warranting pre-arrest protection. In the result, I pass the following order.

ORDER

1. This application stands allowed.
2. In the event of arrest in connection with the investigation of Crime No.I-59/2022 registered with Sarkarwada Police Station, Nashik u/ss.395, 452, 504, 506

of The Indian Penal Code(IPC), the applicants (1) Moinoddin Rafiq Shaikh,(2)Aasif AbdulRafiq Shaikh & (3) Shahjoddin Safhit Shaikh shall be released on executing Personal bond of Rs.25,000/-, with solvent surety in the like amount, each.

3. Applicants shall not leave India without prior permission of the Court.

4. Applicants shall not tamper with the prosecution witnesses.

5. They shall attend the police station on each Monday for one month between 11 a.m. to 01 p.m. or as and when called by I.O. under prior written intimation.

Date : 11.03. 2022.

(S.T. Tripathi)
Additional Sessions Judge,
Nashik.