

Shaikh Wasim Shaikh Samad And Anr vs The State Of Maharashtra on 9 February, 2021

Equivalent citations: AIRONLINE 2021 BOM 1703

Author: Mangesh S. Patil

Bench: Mangesh S. Patil

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.42 OF 2021

1. Shaikh Wasim s/o Shaikh Samad,
Age : 29 years, Occu. Labour,
R/o at Post Sajapur,
Taluka and District Aurangabad

2. Raju s/o Husen Patel,
Age : 28 years, Occu. Labour,
R/o at Post Sajapur,
Taluka and District Aurangabad

APPLICANTS

VERSUS

The State of Maharashtra,
through Daulatabad Police Station,
District Aurangabad

RESPONDENTS

Mr. Nilesh S. Ghanekar, Advocate for the applicants
Mr. V.M. Kagne, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 09.02.2021 PER COURT :

Heard the learned Advocate for the applicants.

2. This is an application under Section 438 of the Code of Criminal Procedure as the applicants are apprehending their arrest in connection with Crime No.223 of 2020 registered with Daulatabad Police Station, District Aurangabad for the offences punishable under Sections 2 ABA42-2021 307, 353, 328, 188, 273, 279, 427 read with Section 34 of the Indian Penal Code and Section 59 of the Food Safety and Standards Act.

3. Briefly stated, the allegations as can be made out from the FIR are to the effect that a police party intercepted a truck being driven by a co-accused. It was found carrying gutkha. In a shortwhile, the applicants arrived there in a car. Applicant No.1 is stated to have started questioning the police party their right and authority to detain the truck. When the police party informed them that the officers under the Food Safety and Standards Act were to arrive in a shortwhile, asserting that the police party had no right to intercept the vehicle, applicant No.1 is stated to have asked the driver of the truck to leave the spot and also instigated him that even if the police party tried to physically intercept the vehicle, he may run over them. Saying so, the driver of the truck as well as the applicants fled from the spot.

4. The learned Advocate for the applicants would submit that the FIR contains concocted version. It is only in order to attract serious crime under Section 307 of the IPC that false allegations have been levelled about applicant No.1 having instigated the driver of the truck to leave the spot and even to run over the police party. The learned Advocate would further submit that even the ingredients for the offence punishable under Section 353 of the IPC cannot be made out. No criminal force was used to deter a public servant from discharging his duties.

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5. The learned A.P.P. opposes the application.

6. I have carefully considered the contents of the FIR and gone through the order passed by the learned Additional Sessions Judge while refusing anticipatory bail to the applicants.

7. At the outset, it is necessary to emphasize that the names of the applicants appear in the FIR and specific role is attributed to applicant No.1. Apart from questioning the authority of the police to intercept the truck, he also instigated the driver of the truck to leave the spot and if necessary, even to run over the police party. It is thereafter alleged that at his instigation, the truck, allegedly containing the substance, left the spot. It is further stated that even the applicants fled from the spot and the hot-pursuit was unsuccessful.

8. Considering the aforementioned facts and circumstances, when a specific role is attributed to applicant No.1 of instigating the driver of the truck, he is not entitled to claim anticipatory bail.

9. The application to the extent of applicant No.1 - Shaikh Wasim s/o Shaikh Samad is rejected.

10. Issue notice only to the extent of applicant No.2. The learned A.P.P. waives service of notice and seeks time. Stand over to 26.02.2021.

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11. In the event of arrest of applicant No. 2 Raju s/o Husen Patel, till the next date, in connection with Crime No. 223 of 2020 registered with Daulatabad Police Station, District Aurangabad for the offences punishable under Sections 307, 353, 328, 188, 273, 279, 427 read with Section 34 of the

Indian Penal Code and Section 59 of the Food Safety and Standards Act, he shall be released on bail on his executing personal recognizance for an amount of Rs.15,000/- (Rupees Fifteen thousand) and furnishing a solvent surety in the like amount subject to following conditions :

a] He shall attend the concerned Police Station as and when called by the Investigating Officer and shall cooperate him.

B] He shall not tamper the evidence or influence the witnesses.

[MANGESH S. PATIL] JUDGE npj/ABA42-2021 5 ABA42-2021