

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD

CRIMINAL APPLICATION NO. 2566 OF 2014

The State of Maharashtra,
through Police Station Chakur,
District Latur ...Applicant

VERSUS

Naresh Rajeshwarrao Patil,
age 48 years, occ. Agril.,
R/o New Adarsh Colony,
Ausa Road, Latur ...Respondent

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Smt. P.J.Bharad, A.P.P. for the applicant/State
Shri R.S.Deshmukh, advocate for respondent

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WITH

CRIMINAL APPLICATION NO. 4430 OF 2014

Shivhar s/o Manmath Swami,
age 42 years, occ. Service,
R/o Chakur, Tq. Chakur,
District Latur ...Applicant

VERSUS

- 1] The State of Maharashtra,
through Police Station Chakur,
District Latur
- 2] Naresh Rajeshwarrao Patil,
age 48 years, occ. Agril.,
R/o Chakur, Tq. Chakur,
District Latur ...Respondents

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Shri B.R.Kedar, advocate for the applicant
Shri P.J.Bharad, A.P.P. for respondent
Shri R.S.Deshmukh, advocate for respondent

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CORAM : V.M.DESHPANDE, J.

DATED : 25th March, 2015.

ORAL JUDGMENT :-

Rule. Rule is made returnable forthwith.
Heard finally by consent of all parties.

1] These two applications can be disposed of by this common order, since both are questioning the correctness of the order, passed by the learned Ad hoc Additional Sessions Judge, Latur, dated 24.2.2014 in Criminal Miscellaneous Application No. 73 of 2014, by which anticipatory bail was granted by the learned trial court in favour of Naresh Patil for the offence punishable under Section 420, 467, 468, 471, 201 of the Indian Penal Code.

Criminal Application NO. 2566 of 2014 is filed by the State; whereas Criminal Application No. 4430 of 2014 is filed by Shivhar Manmath Swami, who has lodged the first information report, dated 5.2.2014 bearing Crime No. 33 of 2014 against Naresh Patil who was granted anticipatory bail.

2] I have heard Smt. Pratibha Bharad, learned Additional Public Prosecutor for the State; Shri

B.R.Kedar, learned counsel for the first informant for the applicant Shivhar in Criminal Application No. 4430 of 2014; and Shri R.S.Deshmukh, learned counsel in both the applications for Naresh Patil, in extenso.

3] According to the learned Additional Public Prosecutor and Shri Kedar, learned counsel for the applicant, the learned court below has committed error in granting anticipatory bail in favour of accused Naresh Patil. According to them, the offence is very serious and custodial presence of the accused was absolutely essential. According to the learned counsel, who wish to cancel the bail, accused Naresh Patil is the Secretary of J....., which runs two D.Ed. Colleges. According to them, he forged the documents for showing the persons as teachers who are already in service with some other colleges, and thereby committed misappropriation. It is further stated that accused Naresh Patil asked one Raju Honkar to lodge a false report on 30.11.2013 to the effect that the record is destroyed due to fire that took place due to short circuit.

4] It is not in dispute that fire took place in the

college and the electrical inspector has given report, dated 3.1.2014 that the fire broke due to short circuit because of old wire and weak insulation. The electrical inspector's report is available on record. Though Shri Kedar, learned counsel and Smt. Bharad, learned Additional Public Prosecutor have seriously questioned about the said report, they admitted that the wisdom of the electrical inspector was never questioned either by the first informant or by the prosecution by taking out any proceedings.

5] It is also not in dispute that previous offence was registered on the basis of the complaint lodged by the present first informant for the offence punishable under Sections 420, 467, 468, 471, 201 of the Indian Penal Code against the trustees of the trust including the present accused Naresh Patil vide Crime No. 62 of 2013 on the same allegations. The said first information report was challenged before this court by filing Criminal Writ Petition No. 507 of 2013 and the first information report was quashed on 22.8.2013.

It is also not in dispute that the present first informant thereafter challenged the quashment before Hon'ble Apex Court, however, without any success. The

present first information report is lodged thereafter.

Further it is also in dispute that both the colleges are on no grant basis and they are not recipient of the grants from the Government. According to the learned counsel appearing for the applicants the colleges are run on donations and in spite of the fact that the register of the donars is available, the same is shown to have been burnt by accused Naresh Patil in the fire.

It is worth to note that the father of the present first informant was treasures in the trust, however, in the change which occurred on 1.3.2013 the father of the present first informant is removed from the post of treasurer and matter is pending before the trust authorities.

6] It is strenuously urged before me that the learned court below while granting anticipatory bail has not considered the seriousness and the case of the prosecution.

With the assistance of the learned counsel for the parties, I have gone through a detailed order passed by the learned Additional Sessions Judge granting anticipatory bail in favour of Naresh Patil.

Perusal of the order impugned shows that the learned Judge of the court below has elaborately discussed the prosecution case, its prayer for rejection of anticipatory bail, various documents which were made available to him at the time of consideration of the bail application and thereafter on the evaluation, the learned Judge has exercised his discretion in favour of accused Naresh Patil.

7] Two basic principles has to be kept in mind while considering the prayer for grant of anticipatory bail. They are :-

(i) There should be no likelihood of accused absconding.

(ii) There should be no likelihood of accused misusing his liberty.

Apart from the afore said two principles, the court has also to take into account :-

(i) the nature of seriousness of the accusation,

(ii) the nature of the prosecution evidence,

(iii) severity of the likely punishment in the case the prosecution succeeds, and

(iv) the status of the accused.

By now, it is established that elaborate discussion by the courts and the detailed examination of the evidence needs to be avoided while considering the bail application. Suffice to say, the court should have closure view as to whether the accused has made out prima facie case in his favour for grant of anticipatory bail or regular bail, as the case may be.

8] In the present case, the learned Additional Public Prosecutor Smt. Bharad submitted that for investigation and interrogation purpose the custodial presence of the accused is absolutely necessary. She further submitted that the specimen hand writing and signature of the accused is also essential.

In so far as specimen hand writing and signature is concerned, the learned counsel Shri R.S.Deshmukh, on instructions from his client, submitted that the said is already obtained by the investigating officer.

In so far as presence of the accused for investigation purpose is concerned, it cannot be the ground to claim custodial presence as observed by this court in the case of J vs State of Maharashtra, reported in 1981 Mh.L.J. 791. This court has

considered in the said reported case the aspect and has ruled that anticipatory bail should not be refused merely because prosecution claims that they want police custody of the accused for the purpose of investigation. Further, the impugned order shows that accused was directed to make available himself before the investigating officer for the purpose of interrogation and investigation as and when required by him till the investigation is over. It is not the case of the prosecution that the accused has not cooperated the investigating officer.

9] In the totality of the circumstances, I see no reason to interfere with the well reasoned order, by which discretion is exercised by the court below in favour of the accused.

10] Hence, both the Criminal Applications are rejected. Rule is discharged.

(V.M.DESHPANDE, J.)