

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 485 OF 2015

Major General Ajay Saxena (Retired)	Applicant
V/s.	
The State of Maharashtra	Respondent

WITH
CRIMINAL APPLICATION NO. 574 OF 2015
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 485 OF 2015

Mangesh Saudagar Naik	Intervener
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IN THE MATTER BETWEEN

Major General Ajay Saxena (Retired)	Applicant
V/s.	
The State of Maharashtra	Respondent

Mr. Satish Maneshinde i/b Ms. Anandini Fernandes for Applicant
Mr. J. S. Kini i/b Mr. Suresh Dubey for Intervener
Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : AUGUST 6, 2015.

PC :

Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 336 of 2014 registered at Sahar Police Station for offence punishable under sections 420, 406, 409 r/w 34 of Indian Penal Code.

2) Applicant herein was granted interim relief was granted by this Court (Coram : Revati Mohite Dere, J.) vide order dated 06/04/2015, had taken into consideration the fact that applicant was protected by way of interim relief before the Sessions Court and directed the investigating agency not to arrest applicant. By an order dated 16/06/2015, order dated 06/04/2015 was modified. Applicant was directed to report to the concerned police station from 22/06/2015 to 25/06/2015 and co-operate with the investigating agency to the best of his capacity. There is no dispute that applicant has co-operated with the investigating agency. On 15/07/2015, learned counsel for the applicant has made a statement that during the pendency of his application, investigation was completed and charge-sheet was filed. Interim relief was continued on the ground that it was necessary to see the incriminating material against applicant as well as the conclusion drawn by Investigating Officer at the time of filing of charge-sheet.

3) Today, copy of the proforma under section 173 of Code of Criminal Procedure, 1973 is placed before this Court. Investigating Officer, after thorough investigation has arrived at a conclusion that there is no incriminating material against present applicant. Investigating Officer has

specifically observed in coloumn no. 12 of the charge-sheet that there is no sufficient incriminating material against present applicant to file charge-sheet under section 173 of Code of Criminal Procedure, 1973.

4) Sufficive to say that in the absence of any material against applicant, it would not be proper to give custodial interrogation of the applicants.

5) Learned counsel appearing for the complainant has vehemently urged that although it is true that applicant has not been charge-sheeted in the present case, there are three other offences registered against the applicant. That applicant is not charge-sheeted in crime no. 230 of 2013 in which the allegations are the same. Applicant is shown accused in crime no. 115 of 2015 and 268 of 2015.

6) The said cases cannot be considered along with present application for the simple reason that investigation in the said two offences is still in progress. However, in the present case at least, applicant is not charge-sheeted.

7) Learned counsel for the complainant further submits that investigation in the present case is tainted and that he has filed a substantive writ petition challenging the manner of investigation in the present case, however, that

may be considered at appropriate time by the appropriate Court. At present, since there is no incriminating material against applicant, applicant deserves pre-arrest bail. It is made clear that the observations made herein above shall not be considered while considering the applications arising out of crime no. 115 of 2015 and 268 of 2015 as well as quashing of F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report to concerned police station as and when called.
- (iv) Intervention application is heard, allowed and disposed of.
- (v) Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)