

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1344 OF 2014

Vispy Bahadur Kapadia. ... Applicant.

Versus

The State of Maharashtra & anr. ... Respondents.

Mr. Amit Desai, Sr. Advocate a/w. Mr. Mahesh Vaswani, Mr. Girish Kulkarni, Shishir Hiray, Mr. A.M. Soddar, Mr. Edith Dey, Mr. Joseph Soddar, Ms. Anushree Kulkarni, Ms. Shama Mulla i/b. Ms. Dharini Nagda and Ms. Maitreya Shukla, advocate for Applicant.

Mr. Nikhil Kunal Chaudhari, advocate for intervenor.

Ms. Geeta Mulekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : MARCH 13, 2015

P.C.:

1 Heard the learned Senior Counsel for the applicant, learned Counsel for the intervenor and Learned APP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in M.E.C.R. No. 3 of 2013 registered at Gamdevi Police Station, which is renumbered as M.E.C.R. No. 1 of 2014 as it has been transferred to Crime Branch, C.I.D. Unit II, Mumbai. The applicant is being prosecuted for the offence punishable under Section 420, 465, 468, 471 of the Indian Penal Code.

3 It is the case of the prosecution that one Salauddin Ansari filed complaint before the Metropolitan Magistrate, 40th Court, Girgaon on 27/9/2013 against the present applicant alleging therein that at the time of filing of the complaint, the complainant was President of Maharashtra Karate Association (hereinafter referred as “MKA”). His wife and children are also his students. According to him, in the year 2009, he had learnt that there were irregularities in the functioning of MKA. According to him, he did not wish to be a party to the said irregularities and therefore, he resigned from the said post of Joint Secretary on 20/12/2009. The Vice President and some other office

bearers had also resigned alongwith him. According to the complainant, the present applicant was conferred with an Award known as “Utkrushtha Kreedha Margadarshak Puraskar” by the Government of Maharashtra in the year 2009. This award was previously known as “Dadoji Kondeo Award”.

4 According to the complainant, the applicant had forged and fabricated merit certificates of some persons to show that they were his students and had participated in the national events. That he had fabricated documents to substantiate his eligibility to be a recipient of the said award. The complainant has given the list of the persons, whose merit certificates were forged and fabricated by the present applicant. He has specifically stated that by a letter dated 24/8/2011, the then Joint Secretary of All India Karate Association Sharif Babu had addressed the letter to various authorities complaining about the illegal acts of forgery and fabrication of certificate by the accused in order to manage the points to obtain highest civilian sports award. Shri Sharif Babu addressed a letter to the Then Home Minister Shri

R.R. Patil on 7/9/2011. That Shri R.R. Ptil had directed the D.C.P. to enquire into the said matter. That the President of AIKF had directed that a committee be constituted to inquire into the grievances. That the present applicant had been suspended from primary membership and all posts of AIKF by letter dated 23/11/2011. He was expelled vide letter dated 28/11/2011. Since the police had not taken cognizance of the report lodged by the complainant he was constrained to file a private complaint. The learned Magistrate has passed an order under Section 156(3) of the Code of Criminal Procedure, 1973. Pursuant to which M.E.C.R. No. 3 of 2013 was registered at Gamdevi Police Station and investigation was set in motion. The applicant approached the Court of Sessions seeking pre-arrest bail. The learned Sessions Court has rejected the said application by an order dated 13/10/2014. Hence, this application.

5 Perused the papers of investigation. Heard the respective Counsel at length. Certain admitted positions are as follows :

6 That MKA is a public trust registered with the Charity Commissioner. The present applicant was enrolled as member of MKA and was president of MKA since April, 2008. MKA had resolved to present applicant for being eligible as recipient of Utkrusht Kreedha Margdarshak Puraskar Award conferred upon by the State of Maharashtra. Pursuant to the said resolution on 16/12/2008 first file was submitted to the sports department through MKA. The resolution was passed on 1/12/2008 by MKA. On the date of submission of the proposal, Karate was not enlisted by the sports authority in the list of awards to be conferred. On 20/1/2009 MKA filed a proposal before the sports authority to recognise Karate as sports and the hence, Karate was classified to be one of the sports. An approval was received on 27/1/2009 and on 30/1/2009 Anil Patil, member of MKA had submitted the proposal to the sports department. It is pertinent to note that while submitting fresh proposal the proforma of the earlier proposal was photocopied. The photograph of the present applicant was affixed on the photo copy of the original proforma. On 30/1/2009 the said proposal was sent for scrutiny. The sport

instructor seeking the said award was to give the list of students who have been coached by him and have received awards at the national and international events. In the said list, first name is of the present complainant i.e. Ansari Salauddin Mohd. Wife of the complainant is at serial No. 3. The application/proposal was received in the sports office on 30/1/2009. Alongwith the proposal there were merit certificates of several students accompanied by their letter of assurances (Hami Patra) which were purportedly signed by the recipient of the said Merit certificates. It was revealed that the applicant was falling short of some marks to be eligible for the said award. At that time, one Shri Suhas Patil was officiating as sports officer. He was well acquainted with the present applicant. On the day of the final scrutiny, certain merit certificates were purportedly added to the proposal. Subsequently, the applicant was held eligible and as a result, in August, 2009 the present applicant received the award at the hands of His Highness the Governor of the State of Maharashtra.

7 In 2010 one karate coach namely Raju Thaper and Deepak Mane filed an application under the Right to Information Act seeking details of the merit certificates annexed with the proposal of the present applicant. Thereafter, the matter was discussed in MKA and the officer bearers had suspected foul play. In 2011 the applicant was expelled from AIKF and action was directed to be initiated against him by MKA. Thereafter, it appears that the present applicant had formed his own management body and hence, there were two rival groups in MKA and both of them claim the powers of the management on the said trust.

8 The applicant herein had filed a complaint against Salauddin Ansari, Sharif Bapu and others before the Metropolitan Magistrate. On the basis of the said order M.E.CR. No. 5 of 2013 was registered. The present complainant i.e. Salauddin Ansari filed an application in this Court seeking quashing of the FIR. It is pertinent to note that both the rival groups had contended that there has been forgery of documents in submitting proposal. The said application was

registered as Criminal Application No. 1193 of 2013. The Hon'ble Division Bench by an order dated 26/2/2014 has been pleased to reject the said application. The application filed by Anil Patil was withdrawn.

9 The present complainant had filed complaint on the basis of which M.E.C.R. No. 3 of 2013 was registered against the present applicant. On 27/3/2014 Salauddin Ansari filed an affidavit before the police station and had contended that he had no grievance against Mr. Vispy Bahadur Kapadia i.e. the present applicant and that the enquiry in M.E.C.R. No. 3 of 2013 registered against the present applicant may be closed and he may be acquitted/discharged. The complainant Salauddin Ansari had also filed an application stating therein that he had filed application due to haste and did not wish to pursue the same or give evidence against the present applicant. That he would retract all allegations against him and that he does not wish to lead or give evidence against him. Similarly Sharif Bapu and Anil Patil had also filed affidavits on similar lines and had retracted all

allegations against the present applicant. Despite the fact that the said affidavits were filed on solemn affirmation, the Court cannot be oblivious of the fact that in the present proceedings the complainant has filed intervention application to oppose the grant of relief in favour of the present applicant and seeks to substantiate the offence committed by the present applicant. It appears from the record that in fact, there was dispute over management of MKA. In the year 2011, Sharif Bapu and Anil Patil had filed change report. Both the rival groups have filed an application under Section 41 of the Bombay Public Trust Act before the Charity Commissioner. At present both of them belong to rival groups. The applicant was President of MKA in 2008. Proposal was also submitted in 2008.

10 Learned Senior Counsel submits that in fact, the proposal was submitted by MKA. Anil Patil had presented the proposal and therefore it could not lie in his mouth to say that the forged documents were fabricated and presented for considering eligibility of the present applicant. It is the contention of the Senior Counsel that

right from the inception the applicant has contended that the additional list was also submitted by Sharif Bapu and Anil Patil. The learned Senior Counsel has drawn the attention of this Court to the email sent by Salauddin Ansari to Sharif Bapu. The contents of the email are as follows :

“Dear sharif as per my knowledge it was you who had made and presented the file of kyoshi Vispy Kapadia for the utkursh award and even verified all the document with your signature and stamp and even went to Pune to submit the file, now what happened why are you screaming now, after almost two years you got up from your sleep or in your dreams in the month of ramzan you saw that serious fraud was committed or is it because kyoshi vispy alongwith the treasurer jahangir shroff complain to the charity commissioner office for the misapplied fund against you or for suspending you from the MKA for misapplied funds, definitely brother truth will come out very soon, bother don't be puppet be a man.”

11 The learned Senior Counsel has further drawn attention of this Court to the letter dated 5/9/2011 sent by AIKF to Mr. Salauddin Ansari, wherein it was informed that it has been notified that the

organisation headed by Salauddun Ansari shall stand suspended from all posts in the AIKF including membership until further orders.

12 The matter has been transferred to DCB CID Unit II for investigation. An affidavit has been filed by Assistant Police Inspector, DCB CID, Unit II.

13 It is submitted on behalf of the prosecution that the investigating agency has recorded statements of all concerned, more particularly the students whose merit certificates and letters of assurances have been annexed alongwith proposal for the said award. It is specifically contended that all the students have stated that they had never tendered any such letter of assurances and that therefore, signatures are forged. It is also submitted that the said students had never participated in the events mentioned in the said proposal. That the said certificates are forged. It is specifically submitted that the original proposal submitted before the sports authority could not be

traced and therefore, the award was conferred on the basis of the photo copy of the proforma of the first proposal.

14 It is apparent on the face of the record that the said fraud has been committed in connivance with the officers involved in the sports department. This Court is of the opinion that in the present case, in the interest of justice, it would be necessary to travel beyond the allegations levelled in the complaint and to consider the issue on the whole. Therefore, this Court has enquired not only into the role of offender but in the offence as a whole for the simple reason that the persons/high officials, office bearers and the sports coach claiming high credentials have misled the whole fraternity of sports. As if it is a quarrel between two rival groups in the sports organisation. The noble profession of the sports coach is stigmatized. People would lose faith in the sports. That the students could take disadvantage of the said merit certificates and also claim credentials without being eligible for it. Hence, it is apparent on the face of the record that an offence has been committed in connivance by one and all. It is a

strange factor that the beneficiary of the said award has the courage to say that the MKA had submitted the proposal and he has feigned ignorance about the same. The Investigating Officer has submitted that he has ample evidence to show that on the very day when the applicant had learnt that he falls short of marks to be eligible to the said award, he had managed to get the said award. That Suhas Patil had directed him to submit the additional list and accordingly, he has submitted the list. The incriminating material against the applicant has been categorically averred in the affidavit filed by the Investigating Officer and therefore, the same need not be repeated in this order as it is a part of the record. The conduct of the complainant is also not without any doubt. The Hon'ble Division Bench of this Court had refused to quash the FIR filed against the complainant. That there is infighting between two rival groups of MKA. This is a case where custodial interrogation would be imperative by all means and there are several people involved into it.

15 Learned Senior Counsel appearing for the applicant submits that the credentials of the applicant are extremely high dehorrs the award conferred upon him. According to the learned Senior Counsel, the applicant was not desperate to get the said award as he did not need it. It is further submitted that once the complainant as well as Sharif Bapu and Anil Patil have withdrawn all the allegations against the applicant by filing their affidavits, it does not stand to reason to rely upon their statements at this stage. This Court is of the opinion that the complainant and the people whose statement are recorded under Section 161 of the Code of Criminal Procedure, 1973 showing them as witness to the fraud committed by the present applicant are equally liable for submission of the fraudulent proposal. The sports department was cheated. It is true that the sports officers are also involved in the said act. It is seen that the photocopy of the merit certificates were signed by Tyag Rajan, Anil Patil and P. Ramesh.

16 The learned APP upon instructions from the Investigating Officer submits that in fact, the statement of Kaiwan Phatakia would

show that the merit certificates were photocopied from the original AIKF certificates and were submitted. The Investigating Officer had approached to the Directorate of Sports. The said officer has given instructions in writing that except the proposal of the present applicant all other original proposals are on record. Hence, very filing, scrutiny, approval of the award is shrouded with mystery. This would have effect on sports. Today, the question is not whether the applicant desperately needed the award or not. The question is why a fraud was committed to achieve that award. **Learned APP submits that the awards which is conferred upon the present applicant is stepping stone for achieving Dronacharya Award.** In the eventuality that there is no investigation in the present case, the applicant in all probabilities would settle the dispute with the complainant and other office bearers and may also apply for Dronacharya Award and that would lead to another fraud upon the sports community. In view of this, the applicant herein does not deserve grant of pre-arrest bail. The investigating officer submits that

the present offence needs to be investigated at a large scale as there are influential persons involved.

17 The learned Senior Counsel submits that the applicant was protected by way of interim relief. That he had joined the investigation and cooperated and hence, the applicant deserves grant of pre-arrest bail. To substantiate his contention, the learned Senior Counsel has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Siddharam Satlingappa Mhetre V/s. State of Maharashtra & ors. reported in CDJ 2010 SC 1108.** The learned Senior Counsel has placed specific reliance on paragraphs – 96 and 97 which reads as under :

“96. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined investigation and he is fully cooperating with the investigating agency and is not likely to abscond, in that event, custodial interrogation should be avoided.

97. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.

Whether the powers under section 438 Cr.P.C. are subject to limitation of section 437 Cr.P.C.?”

The Hon'ble Apex Court in paragraph 101 has observed thus :

“101. The proper course of action ought to be that after evaluating the averments and accusation available on the record if the court is inclined to grant anticipatory bail then an interim bail be granted and notice be issued to the public prosecutor. **After hearing the public prosecutor the court may either reject the bail application or confirm the initial order of granting bail.**”

The Hon'ble Apex Court has once again reiterated the law laid down in the case of **Gurubaksh Singh Sibbia & ors. Vs. State of Punjab (1980) 2 SCC 565**. In paragraph 104 of the said order, the Hon'ble Apex Court has observed thus :

“We would, therefore, prefer to leave the High Court and the Court of Sessions to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do.”

18 The learned Senior Counsel has also placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **Mahant Chand Nath Yogi & anr. v/s. State of Haryana report in CDJ 2002 SC 611**. In that case the High Court had set aside the anticipatory bail granted to the applicant. There a distinction was drawn between grant of bail and rejection of bail and that it was held that very cogent and overwhelming grounds or circumstances are required to cancel the bail already granted and the High Court had cancelled the bail in a mechanical manner.

19 In the present case, the application under Section 438 of the Code of Criminal Procedure was rejected by the Sessions Court. The application was circulated before this Court on 14/10/14. This Court was not inclined to grant interim protection. Liberty was granted to

move in vacation. The matter was adjourned from time to time. On 12/11/2014 this Court had granted leave to add/amend. On 21/11/2014, the matter was adjourned at the request of the learned Counsel for the applicant. On 10/12/2014, this Court had perused the statement of the Then Sports officer. The learned APP had placed on record the circular issued by the Special I.G. of the State of Maharashtra dated 6/8/2014 where in the police officers have been directed to be cautious while causing arrest of the accused in M.E.C.R. Cases. The reply was yet to be filed and hence, this Court had granted protection. The affidavit has been filed on 13/1/15. Upon perusal of the affidavit, besides the papers of investigation and after hearing submissions advanced on behalf of the investigating agency, this Court is not inclined to grant protection to the present applicant.

20 This Court is of the opinion that the offence under Section 471 and 420 of the Indian Penal Code has been clearly made out against the present applicant. The letters of assurances annexed alongwith

the proposals are forged documents as the students have clearly stated that they had not signed said documents and hence this Court is not inclined to grant pre-arrest bail.

21 In the facts and circumstances of the present case and for the observations made hereinabove, this Court is not inclined to grant pre-arrest bail to the applicant. The application being sans merit, the same is rejected. The application is disposed of accordingly.

22 At this stage, the learned Counsel for the applicant seeks extension of interim relief for a period of 3 weeks. The interim relief to continue for a further period of 3 weeks from today.

(SMT. SADHANA S. JADHAV,J)