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

Criminal Application [ABA] No.58 of 2015

(Sunil Kumar Madhavsingh Yadav and another
vs.
The State of Maharashtra, through P.S.O. Ajni, Nagpur,)

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Mr. Abdul Matin, Advocate for the Applicant.
Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 24, 2015.

Heard.

The applicants are before this Court seeking protection in the nature of pre-arrest bail apprehending their arrest in Crime No.10/2015, registered at Police Station Ajni, Nagpur for the offences punishable under Sections 420 and 406 of the Indian Penal Code read with Section 34 of the Indian Penal Code.

This Court by order dated 06/02/2015 while issuing notice protected the applicants by interim orders. On 3rd March, 2015, the reply was filed by the State on the backdrop of the submission of the learned Counsel for the applicants that the applicant no.1 is willing and ready to clear outstanding balance of Rs.1,50,000/- due and payable to the complainant within two weeks. This Court permitted the applicants to undertake the exercise and also directed the learned A.P.P. to take instructions and make a statement before this Court. Now on the backdrop of this fact, certain other facts necessary to refer are, the report lodged at the instance of one Kiran Mahale stating that the complainant/ informant was in need of some amount, the applicant no.1 was introduced to the complainant through one Kiran Sawarkar. The applicant nos.1 and 2 then approached the complainant and submitted that the applicant no.1 is a Chartered Accountant and is a panel member of Akola Urban Bank. The applicants then submitted that the applicant no.1 runs office under the name and styled as J.S. Finance Consultants. The applicant no.1 then made an enquiry with the complainant about his need of the finance. The complainant replied that he may meet the financial assistant to the tune of Rs.2.00 crores by way of loan. The applicants assured that they will do the needful and for this purpose, they requested to part away with an amount of Rs.2.50 lakhs as shares and processing fees. Impressed with the assurances of the applicants, the complainant/informant parted away an amount of Rs.45,000/-. The applicants then told him that his loan proposal is sanctioned and asked him for the part payment. The informant then issued two cheques to the tune of Rs.1.00 lakh and cash amount to the tune of Rs.42,000/- and thereafter Rs.30,000/-. The informant was then waiting for the disbursement of the loan amount and when there was no progress, he approached the applicants. On continue approached to the applicants, he only received the evasive replies. Apprehending some mischief, the informant approached said Akola Urban Bank and found that there was no such proposal at all forwarded to it. Thus, the informant to gather that a mischief was played and subjecting to this mischief, he had parted away an amount of Rs.2,17,000/-. It was the submissions of the learned Counsel for the applicants that there was purely a civil transaction between the parties and only with some ulterior motive, the civil transaction is turned into a criminal act.

The learned A.P.P. presented the material collected by the investigating agency. In the process of investigation, the investigating agency has collected various documents i.e. a memorandum of understanding between the parties, the material from the State Bank of India on the backdrop of the cheques issued by the informant/ complainant. Not only that, the extract of bank account also supports the case of the informant about issuing cheque of Rs.1.00 lakh.

The investigating agency is in the process of investigation. There are the aspects, which are to be unearthed as claimed by the applicant no.1, whether he was associated with the bank, whether he carries any degree or any academic qualification such as Chartered Accountant, whether any document was obtained so as to prepare the alleged loan proposal to the bank. There are the statements recorded by the investigating agency to show that the applicant no.1 opened an office under the name and style as M/s. J.S. Finance Consultancy and the applicant no.2 was attending this office. These two applicants for assuring the visitors that they would be in a position to provide them loan, there is also a statement of a person, who fell in fray to the similar act of the applicants. Apart from this, when this Court on the submission of the learned Counsel for the applicants that the applicants would make efforts to clear the outstanding balance permitted the applicants to undertake such exercise, the statement of the informant collected by the investigating agency reveals a different story. The applicants initially approached the informant and submitted that they are ready and willing to clear the outstanding balance and as an part payment, cheque of Rs.50,000/- was issued to the informant submitting that rest of the amount would be delivered in cash on 15/03/2015. The informant, under an impression that the proposal of the applicants is a bona fide proposal, expressed his willingness and accepted the cheque of Rs.50,000/-. On 15/03/2015, the applicants again approached the informant and told him that the cheque given by them is of no use as there is no amount in the account and asking the informant to return the cheque with an assurances that cash amount of Rs.1,50,000/- would be paid by 16th i.e. on the next day and till recording of the statement i.e. on 23/03/2015, the applicants never turned back. Thus, it clearly shows that the applicants, who made statement before before this Court, were not even ready to maintain their undertaking before this Court and it was just an eyewash approaching the informant and assuring him that the applicants would clear the outstanding balance. The applicants, who were protected by the interim order by this Court and made a statement before this Court, have shown a total disregard of this Court. Apart from the merit, the act of the applicants itself is of such a nature to say that the applicants are not entitled for any protection by this Court.

The application, thus being meritless, deserves to be rejected and the same is rejected accordingly.

Needless to state that the interim protection granted by this Court stands vacated.

JUDGE

**sdw*