

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

Criminal Application [ABA] No.102 of 2015

(Akshay Kisan Sawant

vs.

The State of Maharashtra, through P.S.O. Sonegaon, Nagpur)

=====

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

=====

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 11, 2015.

Heard Mr. D.V. Chauhan, the learned Counsel for the applicant.

The applicant apprehending his arrest in connection with Crime No.203/2013, registered at Sonegaon Police Station, Nagpur for the offences punishable under Sections 420, 467, 468, 471, 120-B of the Indian Penal Code is before this Court seeking protection in the nature of pre-arrest bail.

Mr. Chauhan, the learned Counsel for the applicant fairly submits before this Court that the applicant had approached the learned Sessions Judge seeking relief in the similar nature and the learned Sessions Judge by order dated 17/01/2014 rejected the application. On the backdrop of this fact, the submission of the learned Counsel Mr. Chauhan is, though the applicant is approaching after span of a year on rejection of the application before this Court, this so called delay

would be immaterial and inconsequential, as the apprehension of the applicant is faced now. The learned Counsel submits that the aspect of the apprehension of the applicant would be the important material aspect for consideration of the application. The learned Counsel in his detail submission placed reliance on the judgment of Apex Court in the matter of M.C. Abraham and another vs. State of Maharashtra, reported in (2003) 2 Supreme Court Cases 649, and on the the judgment of the Calcutta High Court in the matter of Sambhu Haldar vs. State of West Bengal. On the backdrop of the above referred facts, it will be now useful to refer to the factual aspect of the present application.

A complaint came to be lodged at the instance of one Mrs. K. Sitamahalaxmi against five unknown applicants/accused namely Aditya Desai, Ratnesh Vinayak Pande, Akshay Sawant (the present applicant before this Court), Pritosh Pawale and Rajiv Sir. The sum and substance of the report is, the daughter of the complainant, who is a student secured 81% of marks in her 12th Standard examination, was desirous of seeking admission in some reputed college imparting education in the stream of medicines aligned and allied subjects. One Aditya Desai, who was the student of B.A.M.S. course, was introduced to the complainant and he impressed upon the complainant submitting that there are certain vacant seats available in Datta

Meghe College at Sawangi, Wardha. He assured admission to the ward of complainant. He told that she will have to deposit Rs.25,00,000/- as capitation fees, Rs.4,75,000/- as college fees and Rs.1.30,000/- as a mess/hostel fees. He assured the complainant that the said college is a reputed college imparting education in medical course and many students were successful in their career by taking education of medical science from the said college. Then, he informed that as an advance deposit, she will have to deposit Rs.27,000/- and only on such confirmation of the deposit, her seat would be secured. Accordingly an amount of Rs.27,000/- was deposited in the account of the applicant's bank i.e. SBI, Charkop Branch, Mumbai. Then the complainant refers to the role played by other non-applicants. The complaint then reflects a story of mischief played to the complainant and when she made attempts to receive her amount back, the same resulted in only in no response from the accused/non-applicants. Thus, the complainant reported that the she was cheated to handsome amount of Rs.31,32,000/-. The applicant, who was apprehending his arrest, approached the learned Sessions Judge. The say filed by the Investigating Officer, in opposing to the application, referred to certain grounds, namely, the amount was deposited in the account of the applicant etc. It was revealed that the applicant and another accused lodged at same hotel accommodation. It further reveals

that there was a transfer of amount from one accused to another accused. Various documents were fabricated documents. Thus, the investigating agency wanted the custodial interrogation of the applicant. The learned Sessions Judge observed initially at the stage of protecting the applicant by an interim order that since the date of lodging of F.I.R., the Investigating Officer was unable to interrogate the applicant. The learned Sessions Judge, then considering the fact that the applicant was a student and was to attend examinations, thought it fit that the applicant can be protected by interim protection for a limited period with certain conditions. The learned Sessions Judge then observed that this interim protection would also safeguard the interest of the prosecution. The learned Sessions Judge as such posted the application for final adjudication on 07/01/2014 and in the meanwhile the protection was granted on condition that the applicant shall attend Economic Offences Wing, Crime Branch at Nagpur, 5 days commencing from 28/12/2013 since morning around 10:00 a.m. to 02:00 p.m. for the purpose of interrogation by the concerned Investigating Officer. When the applicant came up before the learned Sessions Judge for final orders, the learned Sessions Judge then referred to the allegations in the report. On the submission advanced on behalf of the applicant and the opposition by the learned A.P.P. on the ground that the applicant is one of the beneficiaries and the other accused are

yet to be arrested and the investigation is in progress, the learned Sessions Judge then observing that the custodial interrogation of the applicant would be necessary, and rejected the application.

The learned Counsel for the applicant vehemently submitted that in spite of complying with the conditions imposed upon the applicant while granting the interim protection and attending the Investigating Officer, the application was rejected on 17/01/2014. The applicant was under impression that investigation being the domain of the investigating agency, the investigating agency would take necessary steps including effecting the arrest of the applicant. The applicant was carrying impression that as there was no progress shown on behalf of the investigating agency, the applicant continue with his academic career. He submits that now the applicant sensing that the agency is behind him, there is an apprehension of the applicant and as such the applicant is before this Court. The submission of the learned Counsel for the applicant looks attractive. It *prima facie* leads to carry an impression as if the apprehension on rejection of the application on 17/01/2014 was submerged and as the investigating agency was acting in Snail pace, the applicant was not suppose to bother and his apprehension only revives when the investigating agency started acting with some speed and sensing that the agency is now woke up, the applicant

is before this Court. The facts reflected and revealed from the documents placed on record are the learned Sessions Judge while protecting the applicant by ad interim order made it clear that there was an oppose from the investigating agency to the application of the applicant. The learned Sessions Judge further made it clear that the protection was granted to the applicant on the fact that the applicant is a student and prosecuting his studies and he was to attend examination. The learned Sessions Judge also observed that by imposing some conditions, the interest of the prosecution can be safeguarded.

Now taking this aspect in consideration, what impressed upon the learned Sessions Judge, was the status of the applicant as a student prosecuting his studies and probably the learned Sessions Judge with a broader prospective that the the applicant should not be deprived of his academic career, protected the applicant with conditions. This interim protection granted by the learned Sessions Judge can by no way be presumed as if the learned Sessions Judge was of the opinion that there was no case made out against the applicant. It is also interesting to note that the learned Sessions Judge directed the applicant to attend the Economic Offences Wing, Nagpur for 5 consecutive days commencing from 28/12/2013. Though the applicant made an attempt to submit before this Court that he attended the investigating agency complying the directions of

the learned Sessions Judge and though material is placed on record, the perusal of the material shows that the attendance is for three days i.e. 2nd, 3rd and 4th of January, 2014. Thus, at least the material, which is placed on record, shows that the attendance is not that for consecutive days as directed by the learned Sessions Judge, but it is for 3 days after the order of grant of interim protection was passed in favour of the applicant.

Now coming to the order of rejecting the application, the learned Sessions Judge referred to the material, namely, the amount was deposited in the account of the applicant to the tune to Rs.27,000/-. On the face of the report lodged at the instance of the mother of a student, who was securing admission to medical course in a reputed college, the applicant himself was prosecuting the studies, in that event, the acceptance of the amount and the amount being deposited in the account of the applicant would have certainly needed some material to be unearthed. If the applicant was merely a student and in no way concerned with the institution, the amount accepted by him and deposited in his account certainly needed further probe. The investigating agency while opposing the application, it was submitted that these aspects are needed to be probed in detail, such as there were fabricated documents, there was a transfer to amount from one accused to another accused. Such aspects certainly need a deep probe and thorough investigation. The

applicant, who was well aware of the fact that an interim protection was granted to him, considering the status and considering the ground that he is prosecuting the studies in academic course and when the application is rejected on merits, cannot certainly take a specious plea submitting that it was for the Investigating Officer to take necessary steps and if the investigating agency failed to effect arrest of the applicant, it is not the fault of the applicant. Such a plea on the face of record and on the backdrop of the material in the report and the orders passed by the learned Sessions Judge is certainly unacceptable.

The learned Counsel for the applicant placed reliance on the judgment of the Apex Court in the matter of *M.C. Abraham and another vs. State of Maharashtra*. The learned Counsel placed heavy reliance on paragraph 15 of the judgment, which was the direction of the Hon'ble High Court for arrest of the applicant. The Apex Court, while not approving the directions of the High Court, observed that the High Court proceeded on the assumption that since petitions for anticipatory bail had been rejected, there was no option open for the State but to arrest those persons. The Apex Court then observed that a person whose petition for grant of anticipatory bail has been rejected may or may not be arrested by the Investigating Officer depending upon the facts and circumstances of the case, nature of the offence, the background of the accused, the facts disclosed

in the course of investigation and other relevant considerations.

Needless to state that the Apex Court kept open the consideration to each case on its own merits and backdrop. Therefore, in the present case, wherein the applicant, who had approached the learned Sessions Judge and whose application was opposed by the investigating agency and the protection was granted on the backdrop of peculiar circumstances, cannot submit that there was no apprehension to the applicant since the application of the applicant was rejected. His mere compliance of an ad interim protection order was sufficient enough for him to say that even though his application was rejected, there is no apprehension to him.

In the present case, the apprehension was on the face of the material that the protection was granted only considering the peculiar grounds. The learned Counsel for the applicant referred to the judgment of the Calcutta High Court in the matter of *Sambhu Haldar vs. State of West Bengal*. The submission was, on the backdrop of this judgment, the delay of the applicant in approaching this Court is immaterial and inconsequential. It will not be out of place to refer that even in the judgment of the Calcutta High Court, the Calcutta High Court in clear and unambiguous terms observed that the conduct of an accused is a relevant consideration in the matter of grant of anticipatory bail. However, it is not the only consideration.

Various factors are to be considered so that a balance may be struck between the necessities of fair and proper investigation and trial on the one hand and the preservation of liberty of an individual on the other. The facts of the matter is already referred on the backdrop of that fact. While considering the liberty of the applicant, this Court also will have to consider the other consideration of various factors, namely, the deep and thorough investigation of a matter, wherein a student was misled with a misrepresentation of facts giving assurance of securing admission in the medical course by accepting handsome amount of Rs.31,32,000/- and part of the amount as an advance payment was deposited in the account of the applicant. Therefore, the probe and investigation by the investigating agency is must and necessary.

Considering all these aspects, in my opinion, the application being meritless deserves to be rejected at the threshold and the same is accordingly rejected.

JUDGE

**sdw*