

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

Criminal Application [ABA] No.514 of 2014

(Sachin Ganpatlal Sharma

vs.

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

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

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Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : JANUARY 14, 2015.

Heard Mr. Anil Mardikar, the learned Senior Counsel for the applicant, Mr. D.P. Patel, the learned A.P.P. for the non-applicant/State and Mr. Shashibhushan Wahane, the learned Counsel, who is assisting the prosecution.

The applicant apprehending his arrest in Crime No. 267/2013, registered at Sadar Police Station, Nagpur for the offences punishable under Sections 420, 465, 408, 468 and 471 read with Section 34 of the Indian Penal Code is before this Court seeking the relief in the nature of his pre-arrest bail.

The learned Senior Counsel appearing for the applicant, by inviting my attention to the copy of F.I.R. placed on record as Annexure A-1, submits that though not admitting, but assuming a mischief played as alleged in the report, the mischief basically revolves around an act of the supervisor of the informant/complainant viz. Kishor Asnani. He further submits

that the report states that the supervisor Kishor Asnani, by playing mischief like overwriting the cheque, sought withdrawal of the amount to the tune of Rs.40,11,500/- and the allegations against the applicant firm is only “the cheque is with Karan Hardware and that cheque may be mis-utilised”. The submission of the learned Senior Counsel is, the report is as vague as it could be against the present applicant and the report is a belated attempt to implicate the present applicant. It is submitted that the applicant was protected by an interim order of this Court dated 01/10/2014 and the applicant extended his full cooperation to the investigating agency. He further submits that the applicant is ready to abide by any condition imposed upon the applicant and on the backdrop of this fact, the custodial interrogation of the applicant is not at all necessary.

The learned A.P.P. and the learned Counsel assisting the prosecution vehemently oppose the application. The learned A.P.P. submits that as the report discloses an act of the applicant possessing the cheque and apprehension of mis-utilising the same, and as at the subsequent stage, the applicant took a somersault stating that the cheque is not with him, whereas there is a contra material collected by the investigating agency through the bank account and, therefore, the custodial interrogation of the applicant would be necessary.

It will be interesting to note that the informant-

complainant, who is running a firm dealing in engineering and in contract associated business, alleges that his supervisor Kishor Asnani, who was looking after all the affairs, was accepting the amount from the complainant/informant so as to pay the labour charges etc. in turn. It is stated in the report that sometime in the month of March, 2012, the supervisor informed the complainant that he will be in need of an amount to the tune of Rs.40,115/- for purchase of material. Accordingly, the cheque to the tune of Rs.40,115/- was parted away. It is further stated that though the material reached the destination, where the work was going on, in spite of a repeated queries made to Kishor, he just avoided to give any satisfactory reply in respect of the cheque. Subsequently, Kishor left the job and on finding from the bank statement, it reveals to the informant/complainant that there was an overwriting on the cheque and the amount of Rs.40,115/- was made to Rs.40,11,500/-. The apprehension is expressed in the report that as the cheque was issued in the name of the applicant firm viz. Karan Hardware, there is an apprehension of mis-utilisation of the cheque.

The learned Counsel assisting the prosecution submitted that a written report was made to the Police Authority of Sadar Police Station sometime in the month of November, 2012. As there is no such reference in the reply filed by the State, what reflects from the record is the report i.e. F.I.R.

lodged at Sadar Police Station on 3rd of May, 2013. If the written complaint was made to Sadar Police Station sometime in the month of November, 2012 as per the submission of the learned Counsel assisting the prosecution, it is the sorry state of affairs for the police machinery and interesting question for all of us to know what the police machinery was doing for long six months, if at all the written report was made to the police authority and if it is so, for the casual and lethargic approach of the police machinery, the applicant cannot be held responsible. It will be also interesting to note that if the State is opposing the application on the ground that the investigating agency wants to collect some material from the applicant and such exercise is necessary, in that case, the agency could have replied in a way showing attempt of the agency to lead the investigation in a positive way to unearth the missing link, but what reflects from the record is, this Court by order dated 01/10/2014 protected the applicant and also balanced the interest of the investigating agency by directing and permitting the investigating agency to call the applicant as and when it required, and in spite of such direction, the agency is unable to state even a single instance of calling the applicant and seeking recording of his statement or any attempt, which would help the investigating agency in the process of investigation.

It is the settled position of law that the investigation is the domain of the investigating agency and in what way it should be carried is the complete domain of the investigating agency. Even this court is not expected to interfere in that domain. Therefore, it is a minimum requirement that the agency should act in that way so as to satisfy the Court and the public at large that the investigation proceeds in a proper way. What reflects from the record is totally otherwise. In spite of giving an opportunity to the investigating agency, the investigating agency comes before this Court only with a statement that there is a *prima facie* evidence against the applicant and the application be rejected.

It is interesting to note that in the additional reply filed by the State on 5th of January, 2015, a statement of bank official is annexed. The said statement is recorded on 22nd November, 2014. Apart from this statement, there is absolutely no material to show that the investigating agency even made an attempt to call upon the applicant, though it was permitted to do so in view of the order passed by this Court on 1st October, 2014.

Considering all these facts, in my opinion, it will not be in the interest of justice to deny the protection to the applicant. The learned Senior Counsel for the applicant has made out a case. The apprehension of the State can be taken

care of by imposing conditions on the applicant. The application thus deserves to be allowed.

In the result, the application is allowed. The interim order passed by this Court on 1st October, 2014 is confirmed with a condition that the applicant to attend Sadar Police Station, Nagpur on fourth Sunday of this month and hereinafter in every month on every second and fourth Sunday between 09:00 a.m. to 12:00 p.m. till the charge-sheet is filed.

The application is disposed of as such.

JUDGE

**sdw*