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

Criminal Application [ABA] No.646 of 2014
(Samit Swaraj Mukherjee vs. State of Maharashtra, through P.S.O. Sadar, District 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. Gautam Chatterjee, Advocate for the Applicant.
Mr. M.J. Khan, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.
DATE : FEBRUARY 02, 2015.

Heard Mr. Chatterjee, the learned Counsel for the applicant and Mr. Khan, the learned A.P.P. for the non-applicant/State.

By this application, the applicant is before this Court seeking protection in the nature of pre-arrest bail in connection with Crime No.315/2014, registered at Sadar Police Station, Nagpur for the offences punishable under Sections 380, 420, 465, 467, 468, 471 read with Section 120-B of the Indian Penal Code.

The learned Counsel for the applicant has placed on record a copy of report today lodged at the instance of one Hemant Wanare, the Joint Commissioner, Income Tax Department, Nagpur. The same is taken on record and marked as “X” for identification.

The sum and substance of the report lodged at the instance of the Joint Commissioner of Income Tax is, on a communication from the Branch Manager, State Bank of India, Central Avenue Branch, Nagpur, dated 26/06/2014 requesting to verify the reliability the refund cheques and informing that certain cheques, namely seven cheques of 19/04/2014 and a cheque of 05/04/2014, were not encashed. On verifying of the office record, it reveals that nearly 3501 cheques were issued during the period from 26/11/2009 to 07/06/2010 and 276 cheques were cashed out for the period from 01/04/2010 to 25/06/2014. It further reveals that the cheques were bearing signature of one of the Officers. It reveals that the said Officer was not officiating in that period in the office of Range-V. The Joint Commissioner, therefore, arrived at a conclusion that a mischief was played and approximately 38 persons were the beneficiaries of this mischief and along with these persons, there may be some other persons, who were the beneficiaries of the act of fabricated refund cheques, who are utilising the same as the refund cheques issued by the department, and by encashment of the cheques causing loss to the Income Tax Department.

The learned Counsel for the applicant submits that in this report, neither the applicant is named nor any act is attributed to the applicant, but being an ex-employee of the Income Tax Department and presently working as a Senior Tax Assistance, the applicant approached the learned Sessions Judge seeking the protection in the nature of pre-arrest bail. The application was rejected. The learned Counsel for the applicant though made submission on merits and attempted to submit that the allegations against the applicant are far-fetched, his other submission was, the applicant is falsely implicated at the instance of some earlier colleagues in the office or by some dissatisfied persons, who might have a grudge against the applicant in the process of discharging his official duties. The learned Counsel for the applicant invited my attention to the documents placed on record, namely the certificates issued by the renowned physicians and the private hospitals. He submits that the applicant, whose health condition is precarious, due to his peculiar ailment, requires to have haemodialysis thrice in a week for survival till successful renal transplantation is done. He submits that though the renal transplantation is suggested, but due to financial constraints, the applicant is unable to arrange anything to that effect. He further submits that the applicant was protected by an *ad interim* order of this Court dated 17/12/2014 and the applicant is extending his cooperation to the investigating agency.

The learned A.P.P. vehemently opposes the application. The learned A.P.P. by inviting my attention to the reply filed by the State submits that though the investigating agency is at the initial stage of investigation, the material collected so far spells out the role played by the applicant, who was an employee of the department. He further submits that there is other material also, namely the amount being received and transferred to the account of the applicant. He also submits that the investigating agency will have to proceed in the investigation so as to unearth various links as the mischief is nothing but a sort of scam causing heavy loss to revenue to the State.

On this rival submissions, considering the application, in my opinion, the application will have to be considered on the backdrop of the ill-health of the applicant. The documents placed on record clearly reveal that the applicant is under the treatment of various experts at least for a period of one year. The certificates issued by Dr. A.K. Bhalla refers to the ailment of the applicant. The other certificates namely the Consultant-Nephrologist Department of Wockhardt Hospitals, dated 08/01/2014 shows that the applicant had admitted in the hospital on 28th December, 2013. It further refers that the applicant is suffering from end stage renal disease with uremic syndrome with severe metabolic acidosis with uremic encephalopathy with initiated on maintenance haemodialysis with bilateral pneumonia with systemic hypertension with acute kidney injury. The further certificate issued by Sir Ganga Ram Hospital shows that the applicant, who is suffering from end stage renal disease, requires early kidney transplantation. Then again the applicant was admitted in Wockhardt Hospital, Nagpur. The certificate issued by Wockhardt Hospital, dated 18/02/2014, shows that there was no positive change in the health of the applicant and on the contrary the applicant was admitted in emergency. There was a Catheter insertion. The latest certificate issued by Wockhardt Hospital dated 17/12/2014 shows that the applicant requires hemodialysis three times in a week for survival till successful renal transplantation.

Considering this aspect of the matter, in my opinion, the applicant, who requires a constant monitoring through the medical experts and is in a precarious stage, no purpose would be served by detaining the applicant for custodial interrogation, when the applicant requires dialysis three times in a week. On the other hand, the purpose of the progress in the investigation can be achieved by directing the applicant to attend the Investigating Officer periodically and extend his assistance to the Investigating Officer. In view of this fact, the application is allowed.

The interim protection granted by this Court by order dated 17/12/2014 is confirmed with the condition that the applicant to attend the Economic Offences Wing, Crime Branch, Sadar Police Station, Nagpur on each Sunday of the month from

09:00 a.m. to 12:00 noon and maintain the diary of his attendance duly countersigned by the Police Station Officer till filing of the charge-sheet.

In case there is some hindrance in the investigation for non-cooperation of the applicant, the State is at liberty to approach this Court immediately.

The applicant is disposed of as such.

JUDGE

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