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

Criminal Application [ABA] No.671 of 2014

(Ranjan Lamuel Timothy
vs.
The State of Maharashtra, through P.S.O. Kalmeshwar, 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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CORAM : PRASANNA B. VARALE, J.
DATE : FEBRUARY 10, 2015.

Heard P.G. Thombre, the learned Counsel for the applicant.

The applicant is before this Court seeking protection in the nature of pre-arrest bail apprehending his arrest in Crime No.231/2014, registered at Kalmeshwar Police Station, District Nagpur for the offences punishable under Sections 419, 423, 471, 473, 420 and 467 of the Indian Penal Code.

The report was lodged at the instance of one Salim Jakir Husain on behalf of the Trust viz. Anjuman Hami-A-Islam Trust, Sadar, Nagpur. The sum and substance of the report is, the Trust is having an agricultural land and it is having all the ownership and possessory rights over that land. In pursuant to some administrative formalities for development of the land, an application was filed to the revenue authority. It was found that the record was carrying the name of one Sheikh Irfan Sheikh

Abdul, Hariprasad Shaha and Smt. Sushmadevi Saraf, the Director for M/s. Saraf Brothers Pvt. Ltd., in stead of the name of the Trust. On further enquiry, it reveals that in the year 2003, by impersonation as Mr. M.A. Aziz, the President of Trust, mischief was played by preparing a forged and fabricated sale-deed. It was further revealed that the then President Mr. M.A. Aziz expired on 15/09/2003 itself and the fabricated documents were prepared on 06/12/2003 showing a impostor of Mr. Aziz. It further reveals that the price money shown towards transactions was too less and the documents were prepared showing that the amount was deposited in the office of the Trust. The report further reveals that the Trust never wanted to sell-out any land of the Trust. The Trust itself wanted to develop the land. But the forged and fabricated documents were prepared showing that the land of the Trust was sold to private parties. The report further states that the documents were prepared in Marathi, the official language for the transactions of the Trust was not Marathi. It was necessary for seeking permission of the Charity Commissioner for any such transaction being a registered Trust, but neither there was such an application moved to the Charity Commissioner nor there was any sanction or permission granted by the Office of Charity Commissioner.

The learned Counsel for the applicant vehemently submitted that the applicant is an innocent person and his only role was to stand as a witness to the transaction, which took place sometime in the year 2003. The learned Counsel further submits that the applicant himself was misled by one Sheikh Irfan Sheikh Abdul. The learned Counsel also submits that the applicant was not beneficiary of the trust. The learned Counsel then invited my attention to the application submitted by the applicant to the Senior Police Inspector, Kalmeshwar Police Station on 19/11/2014. The learned Counsel by referring to this application submits that the applicant himself came to know that some mischief was played by one Jafar Alam Lari and at that relevant time as the applicant was carrying cordial relation with Jafar Alam, under a *bona fide* belief, the applicant stood as a witness. The learned Counsel then submits that the applicant approached the learned Sessions Judge for the protection in the nature of pre-arrest bail. The applicant was initially protected by an interim order. The applicant complied with the directions of the interim order, committed no breach of any condition and extended his co-operation to the investigating agency. The learned Counsel for the applicant then submits that the learned Sessions Judge, though accepted in the order that it is not an heinous crime, but only referring that the crime is a serious crime, rejected the application of the applicant.

The learned Counsel for the applicant then refers to various judgments of this Court and of the Apex Court in support of his submission that as the alleged crime is not the crime of a nature like murder or other heinous crime, the applicant is entitled for the protection in the nature of pre-arrest bail. He further submits that the applicant, who had extended his cooperation to the investigating agency, is ready to extend his cooperation. The learned Counsel then placed reliance on the judgment of this Court reported in ***2014(3)ABR (Cri) 626*** in the matter of ***Dipak Desai vs. State.*** The learned Counsel invited my attention to paragraph 14 of the said judgment. Perusal of paragraph 14 shows that there is a reference of the Apex Court's judgment reported ***AIR 1984 SC 372*** in the matter of ***Bhagirathisinh Judeja vs. State***, wherein the Apex Court observed that, '*But even where a prima facie case is established, the approach of the Court in the matter of bail is not that the accused should be detained by way of punishment and the trend today is towards granting bail because it is now well-settled by a catena of decisions of this Court that the power to grant bail is not to be exercised as punishment before trial is being imposed*'. The judgment referred to by the learned Counsel for the applicant was in the matter, where the prayer for enlargement of the applicant on bail was for consideration. The learned Counsel also submitted that the alleged offence being not a heinous or serious offence like murder, rape, dacoity etc., the applicant be protected by order of pre-arrest bail.

The learned Counsel then placed reliance on the judgment of the Apex Court reported in ***(2012) 10 SCC 303*** in the matter of ***Gian Singh vs. State of Punjab and another***. In the matter of ***Gian Singh vs. State of Punjab and another***, the Apex Court was considering the prayer for quashment of the report and those observations were reflected as *heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. cannot be fittingly quashed even though victims or victim's family and the offenders have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc. cannot provide for any basis for quashing criminal proceedings involving such offences*.

The report reveals a mischief played, wherein the property of the Trust was sold to private parties. The President of Trust expired on 15/09/2003, whereas the document was prepared showing a person as Mr. M.A. Aziz, the President of the Trust on 06/12/2003. In the process of investigation, certain material was collected.

Mr. M.J. Khan, the learned A.P.P. presented the material for my perusal. The resolution to the effect of sale of property seems to have been prepared. The resolution bears the date 15/10/2003. Then a document is prepared styled as “No Objection Certificate” is also dated 15/10/2003. The perusal of the copy of sale-deed refers to the name of purchaser as Sheikh Irfan Sheikh Abdul and the seller is Mr. M.A. Aziz, President of Anjuman Hami-A-Islam Public Trust. A reference is made in the said deed of the applicant and Mr. Jafar Alam Lari as witnesses to the sale-deed. The material collected by the agency also shows that there are two statements. Pausing here, though it is not necessary to refer to the material collected by the investigating agency at this stage, being the investigation is at a preliminary stage, the reference is made for the purpose that certain links are revealed. These statements clearly show that the applicant was participating actively. Some of the employees of the Trust were called upon by the applicant and Sheikh Irfan. A derire of selling-out the property of the Trust was expressed in presence of the employees of the Trust. The employees of the Trust objected their desire saying that such a transaction cannot take place in absence of the approval of the President of the Trust. At that relevant time, the President of the Trust was not keeping good health and even this fact was referred to in the discussion on the objection raised by the employee of the Trust.

Similar is the version of an another employee of the Trust. His statement reveals certain facts also viz. that the affairs of the Trust for sometime were being looked after by the administrator of the Trust.

Thus, though an attempt was made by the applicant to submit that he was the person acting *bona fidely* and was instructed by some other person, the material prima facie shows that the role of the applicant is not limited to that aspect only. The applicant was actively approaching the field. A desire was expressed and that was objected by the employees of the Trust. All these facts were within the knowledge of the applicant. On this backdrop, the applicant stood witness to the transaction of which the President of the Trust was shown as one of the party, whereas prior to that transaction, the President of the Trust was expired. Thus, the investigating agency will have to take further steps in the process of the investigation. The investigation would require the other links to explore and the links, which would reveal the further exposition of the material in the explored link. For a deep probe, the investigation will have to be carried extensively and for such an extensive investigation, the custodial interrogation of the applicant would be necessary. The crime relates to preparation of forged and fabricated documents and sale of the property of a registered public trust.

Considering these aspects, in my opinion, the custodial interrogation of the applicant would be necessary.

In the result, the application is rejected.

JUDGE

**sdw*