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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 2832 OF 2016

1. Gulabrao s/o Raghunath Patil,
Age: 48 years, Occu: Social Worker,
R/o : Village Paldhi, Taluka: Dharangaon,
District Jalgaon ..APPLICANT

VERSUS

1. State of Maharashtra
2. The Superintendent of Police,
Jalgaon ..RESPONDENTS

Mr R. S. Deshmukh, Advocate for applicant;
Mr S. D. Ghayal, Addl. Public Prosecutor for respondents;
Mr A. N. Nagargoje, Advocate to assist additional Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 13th June, 2016

ORDER :

Heard Mr Deshmukh, learned Counsel appearing on behalf of the applicant at length, Mr Ghayal, learned Additional Public Prosecutor appearing for respondent/State and Mr Nagargoje, learned Counsel appearing on behalf of complainant.

2. Mr Deshmukh, learned Counsel appearing on behalf of the applicant invited my attention to the first information report in crime No. 273 of 2012, registered with M.I.D.C. Police Station, Jalgaon, Tq. & Dist. Jalgaon, for offences punishable under Sections 420, 463, 464, 465, 468, 471 read with

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Section 34 of the Indian Penal Code, registered on 6th November, 2012, for the incident alleged to have taken place between 20th April, 2008 and 29th June, 2012. Mr Deshmukh then submits that, the applicant, who is a social worker and a chairman of the trust namely, Padmalaya Shikshan Prasarak Mandal at Mhasawad, Tq. and Dist. Jalgaon, in relation to which alleged offences have been committed, is entitled to be released on pre-arrest bail for following reasons :

(a) that, the investigation in crime in question is already completed and the chargesheet is filed. According to him, custodial interrogation of the applicant is not necessary.

(b) that, in view of the notice issued by the Investigating Officer pursuant to the provisions of Section 41-A(1) of the Code of Criminal Procedure, custody of the applicant is not necessary and even otherwise, the applicant is not required to be taken into custody and is entitled for pre-arrest bail; and

(c) that, in view of the provisions of Section 438(3) of the Code of Criminal Procedure, in case, if the applicant is required to be arrested by a Magistrate before filing of chargesheet, same can only be by issuance of bailable warrant. He then submits that since, the applicant, will be available for Court proceedings and not likely to run away from prosecution, is entitled to be protected.

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3. While trying to canvass his substantive points for releasing applicant on bail, he invited my attention to the response shown by the applicant to the notice under Section 41-A(1) of the Code of Criminal Procedure, so as to substantiate that the applicant has respect for Court proceedings.

4. Learned Additional Public Prosecutor opposed the application on the ground that the applicant's custodial interrogation is very much necessary, having regard to the allegations and the material, as is collected by the Investigating Agency against him. He then submits that the notice under Section 41-A(1) of the Code of Criminal Procedure was issued, however it is to be read in the background of the material that is available against present applicant, which causes for his custodial interrogation. According to him, prior to filing of chargesheet, Criminal Application No. 5448 of 2012, preferred by the applicant, came to be dismissed by this Court on merits and thereafter, upon investigation, sufficient material is found against present applicant, which demonstrates his prima facie involvement in the crime in question. As such application be rejected.

5. With the assistance of the respective Counsel for the parties, I have perused the observations made by this Court in the order passed in Criminal Application No. 5448 of 2012, on 19th December, 2012, the application for pre-arrest bail preferred by the applicant, prior to the filing of the chargesheet. This Court, by a detailed order, has noted reasons for rejection of pre-arrest bail of the present applicant, having regard to the

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allegations made against him and the material, as was available on record at that point of time. It is also required to be noted that, while deciding earlier bail application, the prosecution i.e. through its Investigating Officer has opposed bail application, whereas the same Investigating Officer, after filing of chargesheet, has caused to issue notice to applicant under Section 41-A(1) of the Code of Criminal Procedure. Present applicant, in response to the same appeared before the Investigating Officer, who has not taken him in custody. When confronted with, the learned A.P.P. could not justify the act of the Investigating Officer, of issuance of notice under Section 41-A(1) of the Code of Criminal Procedure. It is required to be read between the lines, particularly in the background of status of the applicant, in my opinion, which has prompted the Investigating Officer to change his stand, after rejection of the earlier bail application, thereby issuing notice under Section 41-A(1) of the Code of Criminal Procedure.

6. Though it is brought to the notice of this Court that the change report in relation to the trust in question, which is the subject matter of crime in question, was accepted in favour of applicant on 22nd July, 2012, still in my opinion, the same has hardly any bearing over the claim of the applicant for releasing him on pre-arrest bail, particularly when said fact was very much available and has been appreciated by this Court, while rejecting the pre-arrest bail application made before filing of chargesheet, by an order dated 19th December, 2012.

7. It is because, there is no chargesheet against applicant, in my

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opinion, that does not entail applicant as of right to get pre-arrest bail almost after 4 years of filing of first information report, when his earlier attempt of getting pre-arrest bail, either from this Court or from the Court below remained unacceptable. This Court should take judicial note of the fact that when the earlier application of the present applicant, bearing Criminal Application No. 5448 of 2012 was rejected on 19th December, 2012, the applicant had sought extension of interim protection granted by this Court, perhaps with a view to approach the Hon'ble Apex Court for pre-arrest bail. The fact remains that though his application was rejected on merits, he had sought continuation of interim protection for further 2 weeks, however, infact not chosen to appear before the Hon'ble Apex Court, for the reasons best known to him and continued on interim protection, though his bail application was rejected.

8. Furthermore, the conduct of the applicant, as a part of his reply to evaluate under various fact that after rejecting his application on 19th December, 2012, after around 3 and 1/2 years, the Investigating Officer had not taken any efforts to take him into custody, however, has promptly issued notice under Section 41-A(1) of the Code of Criminal Procedure against him.

9. Apart from above, the reasons as are mentioned by this Court in the order dated 19th December, 2012, for rejection of bail application, still hold the field as even after investigation, the said reasons are neither watered down nor any manner are helpful to the applicant.

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10. For the reasons stated aforesaid, in my opinion, no case for interference is made out. Criminal Application fails and stands rejected.

11. With regard to above referred order, Mr Deshmukh, learned Counsel appearing on behalf of the applicant submits that subsequent attempt on the part of applicant that he is not getting pre-arrest bail after a period of 4 years, after rejection of his earlier bail application, before the learned Sessions Court was not pressed only on the ground that the specimen handwriting of the applicant is required to be obtained and to be sent for verification and expert's opinion. According to him, the applicant volunteers to give his specimen signatures and for this purpose his custody is not required.

13. This Court has already dealt with the approach and the conduct of the Investigating Officer in the matter of issuance of notice under Section 41-A(1) of the Code of Criminal Procedure. One more aspect of which this Court must take note of is that, while pressing pre-arrest bail application before filing of chargesheet, an attempt of getting the specimen signatures of applicant had failed.

14. This Court cannot overlook the reason as cited above and in my opinion, govern the field for rejection of the bail application on the earlier occasion and in any way conduct of the Investigating Officer.

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15. The act of the Investigating Agency is immaterial for the Court while dealing with the pre-arrest bail application when the conduct of the Investigating Officer while opposing such bail application, appears to be teasing. The cruxes as are provided by the Investigating Officer will be of hardly any assistance in the present matter, particularly in view of observations made by this Court in the matter of issuance of notice under Section 41-A(1) by the Investigating Officer.

(N.W. SAMBRE, J.)

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