

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 582 OF 2016
WITH
ANTICIPATORY BAIL APPLICATION NO. 583 OF 2016

Smt. Seema Kishor Mohitkar ...	Applicant
Vs.	
The State of Maharashtra & Anr. ...	Respondents

Mr. Vikram Chavan, Advocate for the applicant.
Mr. Vinod Chate, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 26th September, 2016.

P.C.

1. Heard. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending her arrest in Crime No.114 of 2011 registered at Narayangaon Police Station for the offence punishable under Section 420 read with Section 34 of the IPC.

2. It is the case of the prosecution that on 14.5.2011, Mangesh Padhir lodged a report at the police station alleging therein that in the month of April, 2010, one Pandurang Gagare with whom he was acquainted informed him that close acquaintance of his i.e. Amar Sahane helps the unemployed to get employment in the Railway Department as he

is closely acquainted with the officials in the Railway Department. The complainant was advised to meet Amar Sahane. Accordingly, he met him. Amar Sahane had informed him that he would have to pay Rs.3 lakhs for the purpose of being employed in the Railway Department. The complainant was also advised that he would have to pay Rs.1 lakh towards advance and rs.2 lakhs subsequently. Within a week, Pandurang and Amar had taken the complainant to the house of the present applicant. She was annoyed with the fact that although an advance of Rs.1 lakh was to be given, they had brought only Rs.50,000/- along with him. The complainant had assured that he would pay within a short while. The applicant herein had informed the complainant that he would be called for an interview on 5.5.2016 and that he should pay the amount to Pandurang Gagare. Mr. Pandurang Gadare was informed by the complainant that he has paid that amount to Amar Sahane. The complainant did not receive any call for the interview. He kept on calling upon Amar Sahane and others. They evaded to answer and at that time the complainant had realized that he has been cheated by all three persons i.e. Pandurang Gagare, Amar Sahane and the present applicant. hence, he had lodged the report.

3. By an order dated 6.4.2016, when the matter came up for hearing, the applicant had assured that she would deposit a sum of Rs.1

lakh in the Registry as the complainant had alleged that the applicant had received an amount of Rs.1 lakh. Considering the said submission, this Court (Coram: Revati Mohite Dere,J.) by an order dated 6.4.2016, had granted interim relief in favour of the applicant. The order dated 20.4.2016 reads as follows :-

“1. Learned Counsel for the applicants submits that she will deposit a sum of Rs.1,00,000/- in Anticipatory Bail Application No.582 of 2016 and a sum of Rs.3,00,000/- in Anticipatory Bail Application No.583 of 2016, during the course of the day in the Registry of this Court. As far as Anticipatory Bail Application No.584 of 2016 is concerned, she seeks time of one week to deposit a sum of Rs.4,25,000/- in the Registry of this Court.

2. Accordingly, in Anticipatory Bail Application No.584 of 2016, time of one week is granted to deposit the amount of Rs.4,25,000/-.

3. Learned APP in Anticipatory Bail Application No.583 of 2016, states that the amount in the said C.R is Rs.33,45,000/- and not Rs.3,00,000/-.

4. Learned Counsel for the applicants seeks time to take instructions with regard to the said amount of Rs.33,45,000/-.”

4. The learned counsel for the applicant submits that the applicant

has complied with the said conditions and hence as on today, the applicant deserves to be granted pre-arrest bail.

5. It appears from the records that the applicant is an accused in Crime No.114 of 2011 and in Crime No.111 of 2011, and as per the directions of the Court, the amount has been deposited. It is further submitted that the co-accused Pandurang Gagare and Amar Sahane were arrested and were in custody. The learned counsel submits that investigation is completed and charge sheet is filed and, therefore, custodial interrogation would not be imperative.

6. It appears from the records that the present applicant is a co-accused in C.R. No.37 of 2011. The learned counsel for the applicant has placed on record the order dated 29.4.2016 in Anticipatory Bail Application No.581 of 2016 by which the applicant was granted pre-arrest bail in Crime No.37 of 2011. The learned counsel submits that in view of this, the present application also deserves to be allowed. Para 5 of the order dated 29.4.2016 reads as follows :-

“Considering the same and the fact that the

complainant has received the said amount of Rs.3,40,000/- and there are no other persons from whom money was taken by the applicant on the assurance of providing a job in the Railway Department, the application is allowed and the applicant is granted anticipatory bail.”

7. The learned counsel for the applicants submits that the present applications were also tagged along with Anticipatory Bail Application No.581 of 2016. However, the Court has observed that there are no other people who have been cheated and the complainant in the present case has received the amount.

8. Initiation of criminal proceedings is not a recovery proceeding. In the present case, what needs to be seen is as to whether the applicant has committed an offence punishable under Section 420 of the IPC in connivance with the co-accused. Today, the learned APP has placed on record a report which shows that besides the complainant in Anticipatory Bail Application No.581 of 2016, the applicant herein is an accused in Crime Nos.111 of 2011 and 37 of 2011 and besides the same, there are many other people who have been cheated in a similar manner. It is submitted by the learned APP that in the said investigation, it is revealed that the applicant and the co-accused have cheated almost 175 young boys

and girls on the assurance of providing job in the Railway Department.

9. It is pertinent to note that the applicant was residing in the Railway quarters at Matunga as she is an employee of the Railway Department. It is clear from the records that by taking advantage of being an employee of the Railway Department, the applicant in connivance with the co-accused, has cheated young boys on the assurance of providing a job in the Railway Department. The applicant happens to be a public servant and the conduct of the applicant does not befit the conduct of a public servant. A signal is given to the society that corrupt officers can manipulate opportunities in employment, by back door entry. It reflects on the department as a whole.

10. The learned APP submits that besides the offence punishable under Section 420 read with Section 34 of the IPC, the applicant, in all probabilities, may be liable for prosecution under the provisions of the Prevention of Corruption Act also as the act of the applicant would be that of criminal misconduct under Section 13(10)(a), 13(1)(ii) and Section 13(2) of Prevention of Corruption Act. Young candidates who belong to lower middle class and the middle class who are in search of employment get

cheated by the rackets run by the people like the present applicant. In many cases, they sell their hard-earned assets only to seek regular permanent employment in the public department and hence the applicant in such a case would not be entitled to the discretionary relief under Section 438 of Cr.P.C. In any case, the co-accused who are arested, were enlarged on regular bail. The applicant does not deserve grant of pre-arrest bail. The interim relief granted by this Court vide order dated 6.4.2016 in both the Applications is vacated.

11. At this stage, the learned counsel for the applicant prays for extension of the interim relief. The same is denied by taking into consideration the very magnitude of the offence.

12. The learned APP vehemently submits that custodial interrogation of the applicant would be imperative as the co-accused have also stated that the racket was run by the applicant and the employee of the Indian Railways.

Both the Applications are rejected.

(SMT.SADHANA S.JADHAV, J.)