

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL APPLICAITON NO. 5645 of 2017.**

SMT. ASHA W/O NAWALCHAND JAIN.

VERSUS.

STATE OF MAHARASHTRA

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Advocate for the Applicant : Mr. R.V. Gore.

APP for Respondent/State : Mr. K.N. Lokhande.

Assist to PP : Mr. G.P. Shinde.

CORAM : V.L. ACHLIYA, J.

DATE : 24th November, 2017

ORAL ORDER :

1 The applicant apprehending arrest in connection with Crime No. 266/2017 registered at Bhagyanagar Police Station, District Nanded, for the offences punishable under sections 465, 420, 467, 468, 471, 420 r.w. section 34 of the Indian Penal Code, has preferred this application seeking anticipatory bail.

2. Heard learned counsel for the applicant, learned APP for the respondent/State and learned counsel representing the informant. Perused the papers of investigation.

3. In short it is the contention of the learned counsel for the applicant that applicant has nothing to do with the commission of the offence. He submits that

the entire allegations of collecting money on the pretext to provide employment have been made against the husband of the applicant. Only for the reason that applicant has signed as a attesting witness to undertaking (हमीपत्र), executed by her husband i.e. co-accused, she has been made co-accused in the present case. He further submits that as per the statement made before the Court, husband of the applicant has withdrawn the application seeking anticipatory bail and surrendered before the officer in-charge of concerned police station on 23.11.2017. He submits that applicant is having 15 years old daughter. Her husband is in jail. There is no one in her family to take care of her daughter. There is no evidence to prima-facie connect her with the offences registered. She has no criminal antecedents.

4. On the other hand learned APP and counsel representing the informant opposed the application with contentions that in the first information report the complainant has stated that the act complained i.e. cheating and forgery has been committed by both the accused. It is contended that by deliberately making false assurance to get them employed with M.S.E.B. amount to the tune of Rs. 50,50,000/- was collected

from 14 persons by the husband of the applicant. The husband of the applicant also made false representation that he is owner of agricultural land. When the informant and other persons approached to husband of applicant he executed agreement of sale in respect of land bearing Gat No. 72/2 towards part repayment of amount. Subsequently it was discovered that said land was never owned by him. Cheques given by him also dishnoured. It is contended that, the offence has been committed by both the accused infurtherance of their common intention.

5. On due consideration of the submissions advanced in the light first information report and papers of investigation, I am of the view that, the allegations of cheating, forgery etc. are primarily made against accused No. 1, who is the husband of the applicant. Although it is stated that both the accused made representation to informant and others they would get them employed with M.S.E.B., but the allegations against applicant are vague. If overall allegations made in the first information report are taken into consideration then prima-facie it reveals that accused No. 1 Navalchand i.e. husband of applicant represented the people that he is working with M.S.E.B. and he has

a good contact with higher officials. By making false representation to get them secure employment in M.S.E.B. he induced them to part with amount to secure job. Subsequently it was revealed to informant and others that the husband of the applicant was not working with M.S.E.B. and they have been cheated by him. When the informant and other person approached Navalchand Jain seeking return of their money, he executed agreement of sale in respect of land, which was never owned by him. Similarly, cheques issued by him also dishonoured. Thus all these allegations are primarily against husband of applicant.

6. If we consider the evidence as gathered, then the present applicant has not executed alleged agreement of sale. The cheques which were return dishonoured were issued by accused No.1. The applicant is only shown as a attesting witness to undertaking (हमीपत्र) executed by Navalchand. By the undertaking executed, accused No. 1 has agreed to pay them the amount of Rs. 46,00,000/- in three installments. The present applicant is only shown as attesting witness to said undertaking, which is not sufficient to establish her complicity in commission of the offence.

7. Considering the overall allegations against the applicant, I am of the view that the applicant deserves to be granted anticipatory bail on certain conditions.

8. It is clarified that the observations as made above are made for limited purpose of deciding the present application seeking anticipatory bail. None of the observations made above be treated as expression of view of this Court as to merit of case against the applicant.

9. In the result, following order is passed.

ORDER

1. Application is allowed.
2. In the event of arrest of the applicant in connection with Crime No. 266/2017 registered at Bhagyanagar Police Station, District Nanded, for the offences punishable under sections 465, 420, 467, 468, 471, r.w. section 34 of the Indian Penal Code, the applicant be released on her furnishing bail in the sum of Rs. 40,000/- with one or two sureties in the like amount, on following conditions.

- (i) Applicant shall appear before the Investigating officer from 27.11.2017 to 30.11.2017 between 11 a.m. to 3 p.m. and cooperate in investigation.
- (ii) Applicant shall attend Bhagyanagar police station District Nanded on every Sunday in between 10 to 11 a.m. to record her appearance before the officer in-charge of the police station till filing of the charge-sheet.
- (iii) The applicant shall not indulge into any act amounting to tampering the prosecution witnesses.
- (iv) The applicant shall not leave the local limits of Nashik City without seeking prior permission from this Court, except for attending the police station as directed above, till conclusion of investigation. at 11 a.m. as and when directed on receipt of written intimation and cooperate in investigation.

3. Authenticated copy be supplied.

10. Criminal application stands disposed of in above terms.

(V.L.ACHLIYA, J.)

mkd/-