

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 186 OF 2017

Dr. Avinash Vithal Lokhande. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Niranjana Mundargi i/b. Mr. Kunal D. Ambulkar, advocate for Applicant.

Mr. S.V. Marwadi a/w. Ms. Trupti Khamkar, advocate for original complainant.

Mr. R.M. Pethe, APP for State.

Mr. Sandeep B. Patil, API, Kasarwadavli Police Station.

CORAM : SMT. SADHANA S. JADHAV, J
DATE : FEBRUARY 1, 2017

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused papers.

2 Leave to add/amend. Amendment to be carried out forthwith. The learned Counsel Mr. S.V. Marwadi waives service for the added respondent.

3 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 302 of 2016 registered at Kasarwadawali on 20/11/2016 for offence punishable under section 429, 406, 506 read with section 34 of the Indian Penal Code.

4 It is the case of the prosecution that on 28/11/2016 Dr. Rajendra Kelkar lodged a report at the police station alleging therein that he wanted his son to take admission in Walawalkar Medical Hospital, District Ratnagiri. He was acquainted with the present applicant. He had informed the present applicant that he wants to take admission for his son in Walawalkar Medical college. The present applicant had given him a reference of one Mr. Mahesh

Adate. He had also informed the complainant that he is an honest man and he will do his job. That Mahesh Adate was able to get admission for the nephew of the applicant in medical college. Accordingly, the complainant had approached Mahesh Adate. He parted with Rs. 17 Lakhs for obtaining admission in Walawalkar Medical College. However, the work was not done. Son of the complainant did not get the admission and therefore, as agreed between them, he had asked Mahesh Adate to return the amount. It appears that Mahesh Adate was evading to respond the complainant. He has given evasive answers from time to time and therefore, the complainant was constrained to file FIR. On the basis of the said report, Crime No. 302 of 2016 came to be registered.

5 The applicant has placed on record the text messages exchanged between the complainant and Mahesh Adate. It is clear from the messages that the transaction was between Mahesh Adate and the complainant. In the message dated 19/10/2016, the complainant had

threatened Mahesh Adate that he(Mahesh) shall abide by his word or else he would be constrained to take the last step and the same would cause Mahesh Adate and Dr. Avinash Lokhande thereafter.

6 The learned Counsel for the applicant vehemently submits that in fact, he had only given reference of Mr. Mahesh Adate, as he was able to get admission for his nephew and he had no vested interest in the monetary transaction. As against this, the learned Counsel for the complainant submits that in fact, Mr. Lokhande i.e. brother of the present applicant had not paid Rs. 17 Lakhs to Mahesh Adate and the same was to be adjusted after he would be able to secure admission for the son of the complainant.

7 It is also submitted that after registration of the FIR, the applicant has called upon the complainant and asked him as to why he has been arraigned as an accused, despite the fact that he is not concerned with the same. This is a personal communication between

the complainant and the applicant and would have no bearing on the merits of the matter. It cannot be said that the applicant had attempted to tamper with the evidence. He was acquainted with the complainant and therefore, he had questioned him as to why he has been implicated.

8 The learned APP submits that the applicant had given assurance to the complainant that Mahesh Adate is an honest man. The learned Counsel for the applicant rightly submits that in all good faith, the applicant had praised honesty of Mahesh Adate and the same cannot be construed to be a link between Mahesh Adate and the present applicant.

9 Be that as it may. It prima facie appears that Mahesh Adate was introduced to the complainant by the applicant. The learned Counsel submits that it can be an error of judgment in assessing the character of Mahesh Adate and the same cannot be construed as an element of

cheating.

10 Taking into consideration the nature of allegation levelled against the applicant and the submission advanced across the bar, this Court is of the opinion that the applicant deserves to be granted pre-arrest bail.

11 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973 and shall not be considered at the time of deciding the application for discharge or quashing of FIR or at the time of trial.

12 Hence following order is passed

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 302/16, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- and one or more sureties in the like amount.

(iii) The applicant shall report to the police station as and when called after issuing notice under section 160 of the Code of Criminal Procedure, 1973 and cooperate with the investigating agency to the best of his capacity.

13 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)