

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

CRI. APPLICATION (ABA) NO. 18 OF 2017

(YOGESH MAROTRAO REHAPADE...VS.. STATE OF MAH. THR. P.S.O. PS BRAMHAPURI)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri P.S.Wathore, Advocate for applicant.
Shri T.A.Mirza, A.P.P. for Non-applicant.

CORAM : Z.A.HAQ, J.

DATED : JUNE 13, 2017.

Heard.

The applicant has sought pre-arrest bail apprehending arrest in Crime registered against him and others for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code. According to the applicant, he seized to be in the employment of the company since 24th November, 2011 and the complaint on the basis of which the crime is registered against the applicant is lodged on 8th July, 2016 by one of the disgruntled employee of the company. It is submitted that the accusations made against the applicant do not constitute any offence. It is further submitted that the claim of the Investigating Agency that the applicant is involved in embezzlement/ misappropriation of the amount collected from the investors is also not correct and to support the contention the learned advocate for the applicant has relied on the copy of the certificate alleged to have been issued by the Authorized Signatory of the company on 5th December, 2011 to the effect that nothing is due from the applicant. It is argued that this Court has granted interim protection to the applicant by the order passed on 13th

January, 2017 and it is not the complaint of the Investigating Agency that the applicant has misused the protection granted by this Court. It is further submitted that though according to the Investigating Agency the investigation is under progress, the Investigating Agency has not been able to show that the custody of the applicant is required for further investigation.

The investigation is in progress and the chargesheet is not yet filed. Though the applicant contends that offence punishable under Section 420 read with Section 34 of the Indian Penal Code is registered against him, in the reply filed by the Investigating Agency it is stated that offence punishable under Sections 3 and 4 of the Maharashtra Protection of Interests of Depositors (Into Financial Institutions) Act, 1999 is also registered against the applicant and other accused. Undisputedly, the applicant was terminated by the company on 24th November, 2011 finding that he had not deposited the amount of Rs.2,76,878/- collected by him. Though the applicant relies on the alleged certificate issued by the Authorized Signatory of the company to contend that he has paid the amount on 5th December, 2011, there is no explanation why the certificate was not produced before the Sessions Court when the applicant sought pre-arrest bail from the Sessions Court. The copy of the certificate is produced before this Court after the Sessions Court recorded in its order that the above amount was found outstanding against the applicant.

While granting interim protection by the order passed on 13th January, 2017, this Court directed the applicant to attend Police Station, Bramhapuri on 14th and 15th January, 2017 and thereafter as and when called and to

co-operate with the investigation. There is nothing on record to show that except for attending on 14th and 15th January, 2017, the applicant was either summoned or he attended the Police Station. This application was listed on 27th January, 2017 and then the application is also not listed and interim protection granted by this Court to the applicant continues. The applicant having obtained the interim order, in my view, it was his duty to get the matter circulated for disposal. Similarly, there is lapse on the part of the Investigating Agency also in not getting the application circulated for disposal when interim protection operated in favour of the applicant. The manner in which things have progressed creates doubt regarding fair investigation by the Investigating Officer.

In the facts of the case, I am not inclined to confirm the interim order granted on 13th January, 2017.

The application is **dismissed**.

As the applicant has enjoyed the interim protection granted by this Court, the applicant shall surrender within two weeks, failing which the conduct of the applicant shall be taken note of in all the subsequent stages of the proceedings.

The Superintendent of Police, Chandrapur shall look into the matter about laxity in the investigation in the light of the observations made above and submit action taken report to this Court within four weeks.

The learned Additional Public Prosecutor shall intimate this order to the Superintendent of Police, Chandrapur.

JUDGE

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