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

CRIMINAL APPLICATION (ABA) NO.688 OF 2016

Shri Jagdish S/o Vajirchand Sehgal and anr
..vs..
State of Maharashtra, through Officer Incharge, Kalmeshwar Police Station, Tahsil Kalmeshwar, District Nagpur

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

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Shri Harish Dangre, counsel for the applicants.
Shri S.S. Doifode, Addll.P.P. for the non-applicant/State.

CORAM : P.N. DESHMUKH, J.
DATED : JANUARY 31, 2017.

This application is filed for anticipatory bail by applicants involved in Crime No.564 of 2016 registered for the offences punishable under Sections 468, 471, and 420 read with Section 34 of the Indian Penal Code.

Heard learned counsel for the applicants and learned Additional Public Prosecutor for the non-applicant/State.

It is the specific case of applicants that complainant Harshal is applicant No.1's nephew. During the period of August 2016, applicant No.1's elder brother Subhash, who is father of complainant Harshal, had demanded Rs.2.00 lacs from him for the purpose of securing job to complainant in the railway department. Accordingly, applicant No.1, on obtaining details of account in which said amount was to be deposited from complainant's father, made payment. It is further contended that applicants on the instructions of father of complainant, accompanied him and one Sachin Shrikhande friend of complainant with his father Shashikant Shrikhande to Kolkata where some transaction of payment of money to co-accused Valmik Kushwah and Joswa John came to be done and applicants returned back along with complainant, Sachin, and his father. It is a specific case of applicant No.1 that before expiry of period of three years when he started demanding back Rs.2.00 lacs provided by him from his elder brother, on 31.8.2016 false report came to be lodged with intention to avoid said repayment by falsely implicating present applicants in the present crime. The applicants are stated to be small businessman and agriculturists respectively. It is, therefore, prayed that applicants since are falsely involved, interim protection granted to them by this Court by its order dated 21.10.2016 be confirmed by imposing necessary conditions, if found to be necessary.

In support of the application, learned counsel has also filed with the application, statement of account of applicant No.1 establishing transfer of amount of Rs.2.00 lacs in the month of January 2013 to the account of which details were provided to applicant No.1 by his elder brother, which account however revealed to be account of co-accused John and has concluded submission contending that co-accused Joswa John and Valmik Kushwah are already released on bail by the Trial Court.

It is further contended that even on considering contents of report, no provisions of Sections 468 and 471 of the Indian Penal Code can be said to be attracted against applicants as it is no case of complainant that applicants at any point of time forged any documents and has further contended that on grant of interim protection applicants till the date attended the investigating officer for more than 25 occasions and it is no case of the prosecution that they have not cooperated with the investigating officer.

Lastly, it is pointed out that learned Trial Court rejected the application vide impugned order on considering the fact that involvement of applicants is seen from statements of co-accused. It is, therefore, prayed that since limited evidence is available against applicants, which is not admissible in law, the application be allowed.

Learned Additional Public Prosecutor has opposed the application as per reply on record and has contended that in view of the fact that complainant Harshal is admittedly related to applicant No.1 as his nephew, there is no reason for complainant to falsely implicate applicants. Then, by referring to the contents

of report it is further submitted that applicants have played active role in commission of present crime along with co-accused and has, therefore, prayed that the application be rejected, as there is ample material against them establishing their involvement in this crime. Learned Additional Public Prosecutor however has not disputed fact of release of co-accused on bail by the Trial Court and has contended that considering involvement of applicants as aforesaid, as their interrogation is necessary, application is prayed to be rejected.

In the light of the case of applicants as aforesaid, from the statement of account of applicant No.1 it is established that in the month of January 2013, said applicant has deposited amount of Rs.2.00 lacs in the account, details of which were provided to him by his elder brother which *prima facie* establish that said transfer was effected by applicant No.1 on the request of his elder brother and during course of investigation said account came to be revealed to be of co-accused Joswa John. It is material to note that report is lodged on 31.8.2016. Considering the date of report as aforesaid, it is found that the case put forth on behalf of applicants of their false implication is probable that elder brother of applicant No.1 with intention to not to make repayment of Rs.2.00 lacs borrowed from applicant No.1 in January 2013 appears have falsely

involved him by lodging such report.

Contents of report would reveal that applicants, in the month of December 2012, met complainant's father Subhash and Shashikant, father of complainant's friend Sachin and had informed them that they would arrange for job to complainant as well as Sachin on their paying Rs.9.00 lacs each. It is further stated that as complainant's father as well as father of Sachin were willing for the same, both of them arranged for initial payment of Rs.1.00 lac each and thus paid Rs.2.00 lacs to applicant No.1 which amount is stated to be deposited by applicant No.1 in the account of co-accused Joswa John. Though from the statement of applicant No.1 it is found that said amount is deposited in the account of Joswa John by said applicant, in view of his specific case, of his elder brother Subhash demanding Rs.2.00 lacs from him for securing employment to his son in the railway department, case of applicants *prima facie* appears to be reliable, about his depositing Rs.2.00 lacs on say of his elder brother in the account which turned out to be of co-accused Joswa John.

It is material to note that date of payment by applicant No.1 to his brother and the date of report on the basis of which present crime is registered also supports the case of applicants of their false implication on applicant No.1 demanding back Rs.2.00 lacs from his

elder brother.

On perusal of rest of the contents of report reveals that thereafter in the month of January 2013 applicants along with complainant and Sachin had gone to Kolkata where in one hotel they met to co-accused Joswa John and were then taken to house of co-accused Walmik Kishwah where he got some forms filled in from complainant and Sachin and got their medical examination done in the hospital. From further contents of report, complainant has in clear terms stated that on 11.1.2013 at 9.00 p.m. co-accused Joswa John met complainant in the hotel to whom in the presence of applicants he made payment of Rs.8.00 lacs for himself and further amount of Rs.8.00 lacs for Sachin totaling to Rs.16.00 lacs.

Considering the contents of report as aforesaid, it is specifically alleged by complainant that it is he who himself paid Rs.16.00 lacs to co-accused Joswa John in the hotel in the presence of applicants. In that view of the matter, it is material to note that there was no reason for applicants to inform complainant's father that they have any connection to provide job in the railway department to Harshal or for his friend Sachin. Similarly, in the entire report no overt act is attributed to applicants, during their visit to Kolkata with complainant and Sachin. Moreover, it is no case of the prosecution that any such offences

similar in nature are registered against applicants earlier. Thus, case of applicants of his initially providing amount of Rs.2.00 lacs to the father of complainant, who though requested refused to repay the same within a period of three years, complainant's father in connivance with son Harshal have lodged false report involving the applicants, when in spite of payment as aforesaid, no appointments were given either to complainant or his friend Sachin.

Considering involvement of applicants as aforesaid, and *prima facie* as it is found that as there is no material to invoke provisions of Sections 468 and 471 of the Indian Penal Code, interim protection granted to applicants is liable to be confirmed, since applicants have attended the investigating officer as stated aforesaid for 25 dates.

In that view of the matter, the following order is passed:

Order dated 21.10.2016 stands confirmed on same terms and conditions.

Applicants shall however attend the investigating officer, if called by the investigating officer before filing of the charge-sheet.

JUDGE

!! BRW !!

CERTIFICATE

I certify that this Order/Judgment uploaded is a true and correct copy of original signed Order.

Uploaded by : Bhushan R.Wankhede. **Uploaded on :- ..../2/2017**
(Personal Assistant)