

Talwalkar

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.196 OF 2018**

Mantappa Basappa Chenigund ... Applicant.

Versus

The State of Maharashtra ... Respondent

Mr. Nitin P. Dalvi, for the applicant.

Mrs. P.P.Shinde,APP, for the State.

**CORAM : SMT. SADHANA S.JADHAV, J.
DATE : FEBRUARY 1, 2018.**

P.C. :

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

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in C.R. No. 474 of 2017 registered under Sections 420, 471, 403, 406, 409 read with Section 34 of the Indian Penal Code and under Sections 7, 12 and 13

of Prevention of Corruption Act, 1988.

3 This is a subsequent application seeking pre-arrest bail. The applicant had approached this Court by filing Anticipatory Bail Application No. 1635 of 2017. The matter was argued at length and when the Court was inclined to grant pre-arrest bail, the learned Counsel for the applicant, upon instructions, sought liberty to withdraw the application on 5.1.2018. The learned counsel had submitted that the applicant would surrender before the Special Court at Baramati on 15.1.2018. In view of this, the applicant was protected till 5 p.m. of 15.1.2018. Upon failure to surrender on 15.1.2018, the investigating agency was at liberty to arrest the applicant.

4 The applicant had not complied with the said order and had filed the present application on 31.1.2018. The learned counsel for the applicant had submitted that although the application was withdrawn, the applicant seeks an order on merits of the matter. The applicant desires to challenge the order before the Hon'ble Apex Court.

5 It is the contention of the learned counsel for the applicant that the

application seeking pre-arrest bail is filed afresh in view of change in circumstances so also on the ground that prima facie the allegations levelled against him do not fall within the parameters of Sections 420, 406 and 409 of the Indian Penal Code or the provisions of the Prevention of Corruption Act. In fact, there is no change in circumstances. According to the learned counsel, the previous Advocate had not pointed out the charges levelled against the applicant in the departmental charge-sheet.

6 In the present case, one Sangita D. Patil and another had filed Criminal Public Interest Litigation (ST.) No. 28 of 2015. That Dnyaneshwar Shriram Patil vide his letter dated 28/1/2013 had made a representation to the Director General of Police, Maharashtra in respect of the malpractice committed in the matter of carrying out selection of the Class IV employees, which according to him was principally on the basis of the acceptance of illegal gratification by the present applicant and his accomplice. To verify the allegations levelled in the said representation, the then Director General of Police Shri Sanjiv Dayal had directed the Additional Superintendent of Police, Baramati Division to conduct an enquiry. The Additional Superintendent of Police was assisted by 6

persons. The report was submitted on 15/8/2013. In the said report, the present applicant was seriously indicted.

7 The said report on the basis of the material collected in the course of enquiry discloses not only the acceptance of the illegal gratification by one person but had also established money trail. The report concludes by observing that the allegations in the representation were correct and that there was a mal-practice in the recruitment to the said class IV posts. A charge-sheet was issued to the applicant who was holding the rank of the Superintendent of Police. The said charge-sheet was served upon the applicant on 25/7/2017. The Division Bench of the High Court had asked the State Government to make a statement as regards the action taken on the basis of the enquiry report. It is pertinent to note that the applicant was to retire on superannuation on 31/7/2017. It is further pertinent to note that despite several directions from the Division Bench of this Court directing the APP to file affidavit in respect of the action taken against the applicant on the basis of the enquiry report, no affidavit was filed and finally, on 8/6/2017 learned APP had submitted that there were no instructions. On 22/6/2017 a statement was made by the APP that charge-sheet would be filed within four weeks. The matter was adjourned

to 20/7/2017 and the charge-sheet was served upon the applicant on 25/7/2017 i.e. only a week prior to the superannuation of the said officer.

8 On 28/7/2017 Division Bench of this Court had observed as follows:

“having regard to the seriousness of the matter, we expect the State to take appropriate action against the said officer on the basis of the report which prima facie discloses that there is more than sufficient material to indicate that Shri Chenigund had indulged into corrupt practice in the course of the said recruitment. The conclusion drawn by the Additional Superintendent of Police, Baramati, Pune Rural is on the basis of the detailed enquiry in respect of the recruitment of each of the candidate. The Additional Superintendent of Police had recorded the statements of all concerned. Despite that today the statement is made before this Court that the proposal for open enquiry is under consideration. We therefore, direct the State to take appropriate action either under the Prevention of Corruption Act or as the State would be advised by its law officers.

9 On 4/8/2017 learned APP had submitted brief notes prepared on behalf of the State. The sum and substance of the said note was

as follows :

- (i) the State would consider framing of additional charges or amending the charges already framed;
- (ii) the State has issued communication on 2/8/2017 to expeditiously conduct and complete the inquiry;
- (iii) the State has instructed the Director General of Police, Maharashtra State to register an appropriate FIR against the person in question namely Mr. M.B. Chenigund and
- (iv) the compliance report in that regard is forthwith sought by the State from the Director General of Police, Maharashtra State.

10 On 8/9/2017, the Public Interest Litigation was disposed of with an observation that the FIR was registered with Daund Police Station. On 21/8/2017 Crime No. 474 of 2017 was registered at Daund Police Station against the applicant for offence punishable under section 420, 471, 403, 406, 409 read with section 34 of the Indian Penal Code and section 7, 12, 13 of the Prevention of Corruption Act, 1988.

11 Upon perusal of the FIR, it is clear that the Additional

Superintendent of Police had conducted meticulous enquiry and had submitted the report that there was corruption in the course of recruitment. It was reported by the Additional Superintendent of Police that 9 candidates were recommended and recruited from district Solapur. Out of 9 candidates, 8 of them hail from village Khanapur, taluka Akkalkot, district Solapur. It had transpired that the applicant was in constant contact with head constable Basargikar. That on behalf of the applicant, Basargikar had accepted Rs. One Lakh from each of the candidate and had transferred the said amount to the present applicant. That the father of the candidate Allauddin Jakatdar happened to be a good friend of the present applicant. That as far as the candidate Bhausahab Bapu Shinde, resident of Saltadi, is concerned, it had transpired that on 8/5/2012 since the examinations were over, the applicant herein had received a phone call from an officer from the SRPF and thereafter the applicant herein had personally torn the answer paper of the said candidate. One of the candidate whose serial number was 22 had absented from the examination. The said answer sheet

was used for candidate No. 9 and the paper was re-written for candidate No. 9. As far as candidate Sagar Chavan is concerned, his cousin V.T. Chavan was working in the office of the applicant. Although Chavan was rank junior, he had obtained promotion by illegal means. The recommendation/appointment of Akshay Namdeo Shinde was also doubtful.

12 There was cogent and convincing material to clearly indicate that the applicant herein has taken recourse to malafide practices in the process of recruitment. It is pertinent to note that the State Government/Police had a strong affinity with the applicant and since he was working as police personnel, no coercive steps were taken against the applicant. In the present case also, the applicant has in fact misguided the Court for seeking protection. On 5/1/2018 the application was withdrawn with liberty to the applicant to surrender before the Special Court at Baramati on 15/1/2018 and hence the applicant was protected upto 15/1/2018. Without complying with the undertaking given to the Court, the applicant has

stayed at large and has once again approached this Court seeking pre-arrest bail. There is no change in circumstances.

13 The learned Counsel for the applicant has submitted that the departmental charge-sheet is served upon the applicant in the month of July, 2017 and the FIR is filed later on. According to the learned Counsel for the applicant, the FIR is ill-motivated and there is no reference to acceptance of ill-legal gratification and therefore, charges under the provisions of the Prevention of Corruption Act, 1988 are baseless. That the registration of the case against the applicant at the instance of the original complainant is malafide and improper. That there were four persons with the applicant in the selection committee and the applicant could not have single handed and selected the candidate. That Mr. Basargikar is not made an accused. That there is nothing which attributed mens rea on behalf of this applicant.

14 In fact, the Division Bench (to which this Court is a member)

had read the enquiry report submitted by the Additional Superintendent of Police and had arrived at a conclusion that there is more than sufficient material which would clearly indicate that the complicity of the applicant in the process of recruitment. The enquiry report clearly indicates that the applicant who happens to be the Principal of the training center and all candidates were recruited on the basis of the recommendation of the present applicant.

15 In view of the above observations, needless to say that the applicant does not deserve grant of pre-arrest bail. By virtue of his post at the rank of Superintendent of Police, it was apparent on the face of the record that departmental charge-sheet was served upon the applicant only four weeks before the date of superannuation. Rather it was so manipulated that he would honourably retired on superannuation. There is material to show that out of 8 candidates who hailed from village Khanapur, four candidates had studied in Kannada medium. There is nothing on record to satisfy that they would be well versed with Marathi language so as to work in the

police department in the State of Maharashtra. There was sufficient material to show that the applicant herein was in constant touch with the candidates Akshay Shinde and Nandkishor Gaikwad and was guiding them from time to time. Moreover, the conduct of the applicant stands deprecated so much as giving an undertaking to the Court that he would appear before the Special Court on 15/1/2018 and thereafter, applying for pre-arrest bail without there being any change in circumstances.

16 It is a sorry state of affairs that the recruitment in the police department i.e. executant of law and orders has been processed through ill-legal and unethical means. The recruitment is not fair and smacks of partiality and correct means.

17 Hence, the applicant does not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973. The application being sans merits stands rejected.

18 However, it is made it clear that the observations are restricted

to the application under section 438 of the Code of Criminal Procedure, 1973 and the same shall not be considered at the time of trial.

19 The application is disposed of accordingly.

(SMT. SADHANA S.JADHAV, J.)