Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1063 OF 2017
Yatesh P.Soni vs. State of Maharashtra

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

Mr. S.R.Karnik with Mr. H.V. Pradhan for the Applicant.
Mr. R.M. Pethe, APP for the Respondent-State.

CORAM :A.S.GADKARI, J.
DATE : 14th February, 2018

P.C.

1. By an order dated 22.6.2017 the applicant is protected by this Court.

2. Heard the learned counsel for the applicant and the learned APP. Perused the record.

3. The first information report is lodged by Shri. Dhiren Khoda. It is stated that the first informant is an entrepreneur and was in need of substantial quantity of funds/finance for his business. The co-accused Shri. Hemant Vyas and Shri. Hathisingh Solanki informed the first informant that co-accused Shri. Nikjunja Kanojiya and his boss Mr. Mehta are in the business of providing funds of huge amount at the rate of 18% per annum to the needy. That accordingly a meeting was

arranged at Baroda, State of Gujarat wherein the informant, accused Hemant Vyas, Hathisingh Solanki, Nikunj Kanojiya, Ashish Patel and Mr. Mehta were present. Mr. Mehta informed the first informant that an amount of Rs.1000 Crores will be provided as finance for his enterprise for which an amount of Rs.8.00 Crore will have to be paid as advance towards the professional charges. When the first informant expressed his inability for the same, the accused persons told him to pay Rs.4.00 Crores as advance and balance amount of Rs.4.00 Crores after receipt of loan from Mr. Mehta. The first informant was further represented that, the accused persons herein have earlier on various occasions provided huge loans/finance to various companies and the Income Tax Department neither asked nor raised any query about it. When the said assurance was given to the first informant by Shri. Mehta, the other accused namely Shri. Ashish Patel, Shri. Nikunj Kanojiya and Hathisingh Solanki were present. On the basis of the said information and due to the need of the first informant, the first informant paid a sum of Rs. 3.50 Crores to the accused from time to time, the details of which are narrated in the first information report. It is stated that in the month of July,2015 the applicant took a bunglow on rent under the pretext of keeping funds at Mumbai. It is stated that, the accused persons whenever used to visit Mumbai, used to reside in the said bunglow. As the accused persons failed to comply with their promise of advancing finance to the first informant and when the first informant asked the repayment of the said amount of Rs.3.50 Crores, it is alleged that the applicant threatened him with dire consequences. In the premise, the first information report is lodged.

4. The learned counsel for the applicant submitted that the name of the applicant is Shri. Yatesh Soni and he is not Shri. Ashish P Patel. He submitted that there is mistaken identify and there is no material on record to even remotely connect the applicant with the said Shri. Ashish Patel. He submitted that the receipt dated 6.1.2015 for receipt of payment of amount from the first informant is signed by Shri. Ashish Patel wherein the other accused persons are witnesses, however, there is no material to show that it is the applicant who signed the said receipt. He submitted that the applicant was granted interim relief by this Court on 22.6.2017 and thereafter the applicant has attended the Investigating Officer on several occasions and therefore, his custodial interrogation is not necessary. He therefore, prayed that the applicant may be granted pre-arrest

bail.

5. The record of investigation clearly indicates that during the course of investigation, it is revealed to the Investigating Agency that the applicant represented himself before the informant as Shri. Ashish Patel and has signed the said receipt dated 6.8.2015 as Shri. Ashish Patel. The representation by the applicant as Shri. Ashish Patel and not disclosing his real name as Yatesh Soni itself is a serious allegation and considering the nature of crime, the applicant needs to be thoroughly interrogated by the Investigating agency. Apart from the first information report, the record further clearly indicates that the applicant is recipient of proceeds of crime to the tune of Rs.50.00 lakhs and the said amount is yet to be recovered by the Investigating Agency.

6. As far as the contention of the applicant that the applicant has attended the Investigating Officer on serveral occasions under the order of Court is concerned, a useful reference can be made to the decision of the Supreme Court in the case of State Rep. by the C.B.I. vs. Anil Sharma reported in (1997) Supreme Court Cases (Cri.) 1039. In the said decision the Hon'ble Supreme Court has held that custodial interrogation is qualitatively more elicitation-oriented than

questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

7. In view of the above and after taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that the custodial interrogation of the application is imperative for further investigation of the present crime without which the investigation cannot be taken into its logical end and therefore, the applicant does not deserve to be protected by pre-arrest bail.

8. Application is accordingly rejected.

(A.S.GADKARI, J.)