Nalawade

FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1323 OF 2017
Megha Rahul Gavare vs. State of Maharashtra
WITH
ANTICIPATORY BAIL APPLCIATION NO.1491 OF 2017
Vikram D. Sapate vs. The 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. Uday Warunjikar for the Applicant in ABA No.1323/2017.
Mr.Ajinkya Murumkar i/by Arvind Awasarmol and Anand Awasarmol for the Applicant in ABA No.1491/2017.
Mrs. J.S.Lohokare, APP for the Respondent-State.
Mr. Saurabh Bhutula for the Intervener.
Mr. B.S.Tembe, P.I. from Vartaknagar Police Station present.

CORAM : A.S.GADKARI, J.
DATE : 24th July, 2018

P.C.

1. In Anticipatory Bail Application No. 1323/2017 by a well reasoned Order dated 28.7.2017 the applicant Smt. Meghna Gavare was granted interim relief and was directed to attend the concerned police station on stipulated dates with a view to join the process of investigation. The applicant Shri. Vikram Sapate was granted interim relief by Order dated 23.8.2017 and he was directed to attend the

Investigating officer of concerned police station on stipulated dates and to join the process of investigation.

2. Heard the learned counsel for the applicant, the learned counsel for the first informant at great length and the learned APP. Perused the record of investigation.

3. At the out set a disturbing feature is to be noted and placed on record here that, the first informant Shri. Aslam Isak Sharikmaslat has filed an affidavit cum application dated 16.7.2018 with the Public Prosecutor, High Court, Mumbai alleging that, the concerned APP. is not conducting the matter properly and is not representing the Government in proper manner. It is further alleged that the Investigating Officer in the present crime is not investigating the crime properly as the officers from Thane Municipal Corporation are involved in the matter. He has therefore, requested the Chief Public Prosecutor to appoint Special Public Prosecutor to represent his case before the High Court.

It is to be noted here that, this Court did not find that, either the concerned APP. or the concerned Investigating officer are not placing on record the correct facts. As a matter of fact, the Investigating officer is personally present in Court along with the entire record of investigation and it is observed by this Court that, he has properly briefed the concerned APP. in the matter. It appears from the arguments of the learned APP. that she is thoroughly prepared and argued the matter by placing the facts before this Court which are necessary for deciding the present matter.

4. Despite the aforesaid facts, in view of the grievance made by the first informant, Advocate Shri. Butala representing the first informant Shri. Aslam Sharikmaslat was heard at great length till he submitted in open Court that his arguments are over and he is satisfied in arguing the matter. The concerned Advocate raised certain contentions which are germane for decision of the present case.

5. The learned counsel appearing for the first informant

in opposition has submitted that, the list submitted by the police does not consist his name as one of the person from whom the alleged amount of Rs.15,000/- is accepted by Smt. Gavare. He submitted that, this is a wide spread conspiracy by the applicant to dupe the needy persons from the lower economic strata of the society. He submitted that the applicant by using logo of Thane Municipal Corporation has misrepresented the concerned persons accepted huge amounts and subsequently defalcated it. He submitted that the FIR is self eloquent and needs no further corroboration and therefore this application may be dismissed in limine

6. In this background, I personally verified the record of investigation. The record of investigation clearly indicates that the said NGO M/s. VRP Association was in fact granted permission and the contract by the Thane Municipal Corporation to conduct survey in the said locality in the year 2009. A Work order dated 27.2.2009 was issued in that behalf. During the course of investigation, it

is revealed that, as a matter of fact, the applicants were permitted to use the logo of Thane Municipal Corporation along with heading as 'Thane Municipal Corporation, Thane', 'House Survey Questionary' and accordingly the applicants have used the same for the concerned persons. The record of investigation further indicates that, the amounts accepted by the applicant from the concerned slum dwellers have in fact been invested by way of fixed deposit in Thane District Central Co-op. Bank, Thane. As far as the amount of Rs.15,000/- paid by the applicant is concerned, the record indicates that the applicant Smt. Gavare had in fact forwarded the said amount to the first informant Mr. Aslam Isak Sharikmaslat by way of money order however, the first informant did not accept the same and therefore his name is not appearing in the list of persons in whose names the fixed deposit receipts are drawn by the applicant Smt. Gavare in Thane District Central Co-op. Bank Ltd. The record further prima facie indicates that, the statement made by the informant in the first information report that bogus receipt was issued by the applicant to to him having logo of Thane Municipal Corporation has no substance in it and in fact the said statement is incorrect.

7. Mr. Warunjikar, the learned counsel appearing for the applicant Smt. Gavare pointed out various documents on record, such as public interest litigation filed by Mr. Vikrant Chavan a sitting Corporator of the said Corporation, the intervention application filed by the first informant, reply filed by the Corporation in the said PIL and other documents and submitted that it indicates the present crime as lodged by the first informant is a bogus crime and is a sheer abuse of process of law and has been lodged to harass the applicant herein.

It is to be noted here that, in the affidavit in rely filed by the Dy. Municipal Commissioner of Thane Municipal Corporation in Public Interest Litigation a categorical statement was made that, while carrying out the survey of respondent No.2 Corporation, directions were issued to respondent No.5, VRP Association, to refund the said money to the concerned citizen. That, in pursuance of the said directions the respondent No.5 therein has reported that, it has returned the amount to the concerned citizens and has invested amounts in fixed deposit in the name of the concerned citizens. It has been further stated that in view of the enquiry conducted by the Corporation and in the circumstances of the said case, no further action was required to be taken in the matter.

The said statement made by the concerned Dy. Commissioner of Municipal Corporation has basis and it has been revealed in the investigation that, the applicant Smt. Gavare has in fact invested the said amount with Thane District Central Co-op. Bank as noted herein above. Mr. Warunjikar on instructions from the applicant Smt. Gavare submitted that though the informant has returned the said money order sent to him, his client is still ready and willing to pay the amount to the informant in presence of Investigating officer. The said statement is accepted.

8. After perusing the entire record of investigation and after taking into consideration the peculiar facts of the present case, this Court is of the considered view that, the

custodial interrogation of the applicants for further investigation of the present crime is not necessary and the applicants are entitled to be protected by pre-arrest bail.

9. In view of the above, the interim relief granted by Orders dated 28.7.2017 in ABA No.1327/2017 and dated 23/8/2017 in ABA No.1491/2017 are hereby confirmed. However, the condition to attend the Investigating Officer is waived.

10. Applications are allowed in the aforesaid terms.

(A.S.GADKARI, J.)