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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1766 OF 2017

Gorakh Sahebrao Bhosale

..Applicant

Vs

The State of Maharashtra

..Respondents

Mr. B.R. Deshmukh for Applicant.

Mr. Amit Patil, APP for State.

CORAM : A.S.GADKARI, J.

DATE : 22nd November 2018.

P.C.:

1] This is an application under section 438 of Cr. P.C for pre-arrest bail in CR No. 51 of 2015 registered with Indapur Police Station, District Pune (rural) under sections 420, 465, 468 and 471 of the Indian Penal Code.

2] Heard the learned counsel for the applicant and the learned APP. Perused the record of investigation. Also perused affidavit dated 8.1.2018 filed by Shri Mahendra S. Nimbalkar, Assistant Police Inspector attached to Indapur Police Station, Pune (Rural).

3] The first information report is lodged by the Police Inspector attached to Indapur Police Station. The prosecution case in brief is that,

without following due process of law and in connivance with Civil Surgeon, Pune the applicant got manufactured a bogus registration certificate under Section 5 of the Bombay Nursing Home Regulation Act, 1949 and established Suvidha Hospital and I.C.U. Centre at Baba Chowk, Indapur, District Pune.

4] The learned counsel for the applicant submitted that, the applicant submitted his proposal to the concerned Authority as per the procedure of law. That, other authorities such as Pollution Control Board and local authorities have issued necessary certificates in favour of applicant and thereafter the Civil Surgeon, Pune has issued the said certificate which is alleged to be bogus by the prosecution. He submitted that, as a matter of fact, the applicant has stopped running the said hospital since 12.5.2015 and therefore as of today the custody of the applicant for investigation of the present crime which alleged to have taken place on 23.2.2015 does not survive. He submitted that, the documents received by the applicant under Right To Information Act, demonstrate that there are two inward entries at Sr.No. 440 dated 3.4.2013 and 18.5.2013. That entry dated 18.5.2013 having inward No.440 is relevant entry accepting the said proposal by the Medical Officer, Sub-District Hospital, Indapur, Pune and in

furtherance of acceptance of the said proposal the applicant ultimately got registration certificate dated 23.2.2015. He submitted that, Atulkumar Bhosale is instrumental in setting the criminal law into motion and therefore at his instance the present crime is registered by the police. He submitted that, ultimately it is question of life and liberty of the applicant and therefore this Court “must” grant protection to the applicant by way of pre-arrest bail.

5] Perused the record of investigation, and the affidavit filed by the Investigating Officer. The record indicates that, the applicant without submitting his proposal through proper channel has procured the alleged permission dated 23.2.2015 under Section 5 of Bombay Nursing Home Regulation Act, 1949. The record further indicates that, the Civil Surgeon without following necessary mandate of law has signed and issued the said certificate. The said Civil Surgeon is also involved in the crime and has been implicated as an accused in the present crime.

6] Perusal of the alleged proposal sent on 4.4.2013 by the applicant would indicate that, there is no acknowledgment by the Medical Officer, Sub-District Hospital, Indapur, Pune on it and the said proposal is directly forwarded to the Civil Surgeon, Pune having inward entry No.440

dated 18.5.2013 which indicates that the proposal which was received by the concerned Department was for registration of Sonography Centre and not for Hospital and I.C.U. Centre. This clearly shows that, there is manipulation in the Government record while manufacturing and/or issuing the certificate in question. The Investigating Officer has recorded statement of Doctors attached to the Sub-District Hospital, Indapur who have stated that, no proposal was submitted by the applicant for opening of the said hospital at Indapur. It is also stated that, the said Doctors never signed any documents in that behalf. It is to be noted here that, running or conducting a hospital without lawful permission and particularly on the basis of bogus registration certificate is indubitably a serious allegation and requires thorough investigation in that behalf. The record of investigation clearly indicates that, the applicant is the main perpetrator of the present crime.

7] As far as the contention of the learned counsel for the applicant that, by rejecting the application for pre-arrest bail, life and liberty of the applicant will put to stake is concerned, the said submission is recorded only for its rejection at its threshold, as the liberty of the applicant is being curtailed by following due process of law duly established under the

Constitution and statutes enacted therein. The Constitution Bench of the Honourable Supreme Court in the case of Gurubksh Singh Sibbia Vs. State of Punjab reported in 1980 (2) SCC 565 while testing the validity of Section 438 of Cr. P.C in the context of Article 21 of the Constitution of India has held that, the procedure established by law for depriving a person as contemplated under section 438 of Cr. P.C must be fair, just and reasonable. It is held that, The High Court and the Court of Session to whom the application for anticipatory bail is made ought to be left free in the exercise of their judicial discretion to grant bail if they consider it fit so to do on the particular facts and circumstances of the case and on such conditions as the case may warrant. Similarly, they must be left free to refuse bail if the circumstances of the case so warrant, on considerations similar to those mentioned in Section 437 or which are generally considered to be relevant under Section 439 of the Code.

In view thereof, the said contention of the applicant does not hold any substance in it.

8] After taking into consideration the aforestated facts and the serious allegations against the applicant and the gravity of the offence, this Court is of the view that applicant does not deserve to be protected by pre-

arrest bail.

Application is accordingly rejected.

9] At this stage, Mr. Deshmukh, the learned counsel for the applicant submitted that, he is intending to test the correctness of the present Order before the Honourable Supreme Court and therefore interim relief granted by an Order dated 31st October 2017 may be continued for a period of three weeks from today. In view thereof, interim relief granted by Order dated 31st October 2017 to remain in force for the period of three weeks from today.

(A.S.GADKARI, J.)