

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

CRIMINAL APPLICATION (ABA) NO.42/2018

Smt. Ratnamala Sanjay Borkar ..vs.. State of Maharashtra through PSO P.S.
Kamptee, Tq. Kamptee, Dist. Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. S. Bajwa, Advocate for applicant.

Mr. T. A. Mirza, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 22, 2018

1. Heard Mr. Bajwa, learned counsel for the applicant and Mr. Mirza, A.P.P. for non applicant-State.

2. A very strange position is sought to be raised by the present applicant through her counsel before this Court.

3. Initially, an application bearing Criminal Application (ABA) No.909/2017 was filed before this Court by the present applicant. The said application was filed by the applicant since she was apprehending her arrest in connection with Crime No.403/2017 registered with police Station, Kamptee for an offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

4. This Court had on 18.12.2017 granted ad interim protection to the applicant on a condition that she shall attend Police Station and join the investigation by attending

the Police Station on 22.12.2017, 27.12.2017, 02.01.2018 and 04.01.2018 and was directed to be with the investigating officer in between 11.00 a.m. to 02.00 p.m. and it was directed that she shall cooperate with the investigating officer.

5. The said Criminal Application No.909/2017 was listed on 08.01.2018. On 08.01.2018, the learned A.P.P. Mr.Mirza, on instructions from the investigating officer, made an oral statement that the applicant has failed to adhere with the conditions those were imposed upon her by this Court.

6. Consequently, the learned A.P.P., in order to support his oral statement, sought time till 15.01.2018 to file an additional affidavit. Accordingly, on 12.01.2018, additional affidavit was filed. Copy of the said additional affidavit was served upon the learned counsel for the applicant on the very same day. The affidavit of Police Sub Inspector Sonali Govindrao Meshram, Police Station, Kamptee was filed. It was stated on oath by the said PSI Meshram that the applicant has failed to attend Police Station on any of the dates for the purpose of investigation. Though it was open for the applicant and her counsel to file additional affidavit prior to 15.01.2018, for the reasons best known to them, no such counter affidavit was filed.

7. On 15.01.2018, when the matter came up for consideration, that time only additional affidavit filed by the investigating officer PSI Sonali Meshram was on record. There were no allegations whatsoever made against the said PSI Sonali Meshram by the applicant or her counsel.

8. This Court had on 15.01.2018 rejected the application for anticipatory bail on the ground that though the applicant has enjoyed ad interim relief but has failed to adhere with the conditions imposed upon her and thus for the said breach, the application was rejected.

9. On 17.01.2018, the present anticipatory bail application is filed before this Court. In this application, for the first time, it is being stated by the applicant that she attended the Police Station on the given dates. However, the attendance was not given to the applicant. It is also alleged that the investigating officer demanded Rs.10,000/- by way of bribe and when the applicant refused to pay the same, a false affidavit on behalf of the said PSI Sonali Meshram was filed and consequently, the anticipatory bail application was rejected. On 15.01.2018, the present counsel Mr. Bajwa was not representing the applicant. Therefore, he has no knowledge as to what has happened on the said date. Further, the learned counsel who represented the applicant on 15.01.2018, did not even orally make any submission that PSI Sonali Meshram demanded Rs.10,000/- from the present applicant. It is also stated during the course of

hearing by Mr. Bajwa, Advocate that on 14.01.2018, the applicant has lodged report with Anti Corruption Bureau. However, no such report is filed along with the present application also.

10. It is very easy to make allegations against the investigating officer that she has demanded Rs.10,000/- from the present applicant. When such allegations are made against the investigating officer, the responsibility and the burden firmly rests on the person who makes such wild allegation without there being any iota of proof. Further, at no point of time prior to 15.01.2018, the applicant pointed out the situation that the investigating officer is not giving the attendance, the learned counsel for the applicant has invited my attention to annexure "C" page no. 10 in order to substantiate his claim that the matter was reported to the Police Commissioner on 14.01.2018. No doubt true, annexure "C" is dated 14.01.2018 however page no. 10, the right hand side endorsement shows that the said complaint dated 14.01.2018 was given in the office of the Commissioner of police on 16.01.2018 i.e. after rejection of the application filed on behalf of the present applicant on 15.01.2018.

11. It is further submitted by the present applicant that the Mafinama, which is annexed along with reply in the present application was drafted in the Police Station. This all requires evidence. Merely the applicant is stating that she

has attended police station, that cannot be accepted as gospel truth. It is always open for the applicant to file a private complaint against PSI Sonali Meshram, the erring police officer according to the applicant. However, that cannot be a ground to claim again the relief of anticipatory bail, which was already rejected by this Court.

In view of above, the application is rejected.

JUDGE

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