

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

ANTICIPATORY BAIL APPLICATION NO. 133 OF 2019

Balasaheb Waman Wankhede ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Aniket Nikam I/by Piyush Toshnival for Applicant.

Ms. S. S. Kaushik, APP for Respondent – State.

Mr. Dattatraya V. Bhapkar, ACP, Anti-Corruption Bureau, Pune present in Court.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 4, 2019.

P.C. :

. The Applicant – a public servant, shown to be an Accused in Crime No. 392 of 2018 for an offence punishable under Sections 7A, 12 of the Prevention of Corruption Act, 1988 and Section 120-B of the Indian Penal Code is seeking pre-arrest bail.

2. The prosecution case as could be inferred from the material available on record is, on 22nd November 2018 Adv. Umesh More lodged a complaint stating that for changing mutation entries about land City Survey No. 2025 situated at Mouza Peth Parvati, Tahsil & District Pune in

City Survey Appeal No. 4375 of 2018 the Applicant has demanded the bribe through co-accused Rohit Shende. As such an offence in question.

3. The complainant alleged that a filed City Survey Appeal No. 4375 of 2018 of Mr. D. B. Giri, the original owner of the said land was registered on 26th April 2018. According to him, registered Power of Attorney is executed in favour of Rukhmini Bagal in 2017 i.e. wife of complainant authorizing to deal with the said Appeal.

4. He claimed that after having visited the office of the Applicant who is working as Deputy Director of Land Records authorized to deal with an Appeal under Section 247 of the Maharashtra Land Revenue Code, came in contact with one Mr. Rohit Shende who took him to the present Applicant. According to him, the Applicant assured to allow the Appeal in favour of the Appellant and directed him to discuss same with Mr. Shende. He claimed that through Mr. Shende, co-accused a demand of Rs.2.00 Crores was made, out of which, an amount of Rs.5,00,000/- in genuine currency and rest in duplicate was delivered through Mr. Shende to the Applicant.

5. After the offence was registered, the Mobile Phone of Applicant, Shende and Complainant Adv. More was placed under scanner. From the mobile of Mr. Shende there were about 78 calls to the complainant whereas Complainant made 59 calls to said Shende. The present Applicant made 474 calls to Rohit Shende whereas Rohit Shende made 46 calls to the Applicant in between 1st September 2018 to 26th December 2018.

6. In the aforesaid background, while trying to make out a case for grant of pre-arrest bail, Mr. Nikam, the learned Counsel for Applicant would urge that after the arrest of co-accused Rohit Shende in none of the remand papers name of the Applicant nowhere surfaced as an accused. He would urge that the Applicant was known to the Complainant and Rohit Shende for more than last six months before his posting at Pune. That being so, there are call details.

7. According to the learned Counsel, neither demand as alleged was made nor the amount is accepted by the Applicant. He would submit that even if the Appeal of the complainant was allowed, pursuant to the provisions of Section 17-A of the Prevention of Corruption Act, 1988 (for

short, 'the Act' for the sake of brevity) in absence of permission from the State Government an enquiry cannot be conducted against the Applicant being a public servant under the said Act, if the decision is in discharge of the official functions or duties. According to him, since the Applicant was exercising appellate powers under the Maharashtra Land Revenue Code, the Applicant is entitled to be released on pre-arrest bail for want of sanction from the State Government.

8. Even otherwise according to him, the Applicant is falsely implicated and he being a public servant his custodial interrogation is not warranted as he is very much available for the investigation. Reliance is placed on the Judgment of the Apex Court in the matter of ***R. Balkrishna Pillai V/s State of Kerala and another***¹ particularly Paragraph No.7 so as to substantiate his contention that the alleged act is directly and reasonably connected with the official duty of the Applicant. Paragraph No.7 reads as follows :

“7. In the present case, the appellant is charged with having entered into a criminal conspiracy with the co-accused while functioning as a Minister. The Criminal conspiracy alleged is

1 AIR 1996 Supreme Court 901

that he sold electricity to an industry in the State of Karnataka 'without the consent of the Government of Kerala which is an illegal act' under the provisions of the Electricity (Supply) Act, 1948 and the Kerala Electricity Board Rules framed thereunder. The allegation is that he in pursuance of the said alleged conspiracy abused his official position and illegally sold certain units to the private industry in Bangalore (Karnataka) which profited the private industry to the tune of Rs.19,58,630.40/- or more and it is, therefore, obvious that the criminal conspiracy alleged against the appellant is that while functioning as the Minister for Electricity he without the consent of the Government of Kerala supplied certain units of electricity to a private industry in Karnataka. Obviously, he did this in the discharge of his duties as a Minister. The allegation is that it was an illegal act inasmuch as the consent of the Government of Kerala was not obtained before this arrangement was entered into and the supply was effected. For that reason, it is said that he had committed an illegality and hence he was liable to be punished for criminal conspiracy under Section 120-B I.P.C. It is, therefore, clear from the charge that the act alleged is directly and reasonably connected with his official duty as a Minister and would, therefore, attract the protection of Section 197(1) of the Act.”

9. So as to substantiate claim of applicability of provisions of Section 17-A of the Act reliance is placed on the Judgment of the Apex Court in the matter of *Amrik Singh V/s State of Pepsu*¹ and *Shreekantia Ramayya Munipalli and another V/s State of Bombay*² .

10. *Per contra*, the learned APP submits that the custodial interrogation of the Applicant is very much required for the reason of conversation between the Applicant and Complainant and that of the Complainant and the co-accused Rohit Shende in clear terms establishes the demand by the present Applicant. It is also claimed that though the Applicant is a public servant and has admittedly exercised powers under Section 247 of the Maharashtra Land Revenue Code, the fact remains that the amount was accepted by the co-accused Rohit with whom Applicant was continuously interacting on the issue involved in the Appeal preferred by complainant. A strong reliance is placed on the conversation dated 26th December 2018 contained in File No. 5 wherein the Applicant claimed to have demanded the amount. It is submitted that since the amount was delivered and accepted by a middle-man at the behest of Applicant, the

1 AIR 1955 S.C.309

2 AIR 1955 S.C.287

demand for illegal gratification can be inferred. In that view of peculiar facts of this case, Section 17-A of the Act will not be attracted. As such, it is claimed that the Application needs to be rejected.

11. The investigation reveals that though there are no calls in between the Complainant and the Applicant, the Applicant perhaps established his contact with Complainant through co-accused Rohit Shende, who was already arrested in the present crime. Between Applicant and co-accused Rohit Shende there are exchanges of more than 600 calls in between period of three months which speaks voluminous about the Applicant's association with the said co-accused. Co-accused Rohit had conversation with Complainant in almost 150 times which also establishes the contact between the Complainant and said co-accused Rohit. The call recording in categorical terms speaks of the Applicant time and again spoke in reference to the Appeal of the complainant.

12. In the aforesaid background, if the conversation recorded by the investigating agency is appreciated, about the demand and delivery of the amount of bribe, the cumulative effect of the conversation recorded in File No. 8 between co-accused Rohit Shende and the present Applicant

takes this Court to the conclusion that there was demand by the Applicant through the said co-accused. In the aforesaid background, if the stand of the Applicant *qua* the provisions of Section 17-A of the Act are applicable, if noted, the learned Counsel for Applicant was right in pointing out that the Applicant was exercising appellate powers. As such the investigation or enquiry into the offence alleged to have been committed by the Applicant without previous approval of the State Government should not have been initiated or conducted.

13. However, in the case in hand considering the call details, the conversation recorded after the order in the Appeal was delivered in favour of the Complainant, co-accused has accepted the amount at the behest of Applicant and conversation between the Applicant and co-accused speaks of demand of amount. In such an eventuality, this Court is of the opinion that the protection conferred on the public servant like Applicant pursuant to the provisions of Section 17-A will be of no assistance, as in the case in hand, an amount of bribe was delivered to the middle-man pursuant to the demand made by the Applicant.

14. That being so, the claim of the Applicant that he is entitled for grant of pre-arrest bail, in my opinion, does not warrant any consideration.

15. As such, the Anticipatory Bail Application fails. Hence the same stands rejected.

(NITIN W. SAMBRE, J.)