

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

ANTICIPATORY BAIL APPLICATION NO.688 OF 2019

Viren Ahunja	..	Applicant
Vs.		
State of Maharashtra & Anr.	..	Respondents

Mr.Sanjay Kantawala a/w Mr.A.Kantawala i/by Mr.Sebin Michael Joseph for the applicant.
Mr.A.R. Kapadnis, APP for respondent-State.

CORAM : P.N. DESHMUKH, J.
DATE : 19th March 2019

P.C.:

1. Issue notice. Learned APP waives service for the respondent-State. As limited relief is sought in this application for issuing direction to the respondent, investigating Crime No.0337 of 2018 registered for offences punishable under Sections 389, 120(B) of IPC with Police Station Hauz Khas, New Delhi, by consent heard finally.

2. Learned counsel for applicant submitted that applicant is falsely involved in a case registered with Police Station at Connaught Place, Delhi Police, New Delhi of which report is lodged on 23rd May 2018 by complainant Sanjiv Nanda which was duly investigated by said Police Station and found no substance in the complaint and accordingly

reached to the conclusion that all the allegations therein are of civil in nature pertaining to recovery of certain amounts from the applicant alleged to be owned by complainant. It is also noted by investigating agency that after lodging of complaint despite reminders, complainant could not provide any documents and liabilities of any financial dispute as alleged against applicant and though complainant in support of allegations made in his report had filed affidavit of one Kamaljeet B. Singh. Said affidavit is found not to be trustworthy and accordingly, Connaught Place Police took no action on this first report.

3. Learned counsel for applicant by referring to subsequent report lodged by Sanjiv Nanda with SHO Police Station, Hauz Khas Delhi Police, New Delhi dated 4th December 2018 submits that on the basis of said report, offence is registered against applicant for offences punishable under Sections 389, 120(B) of IPC, it is submitted that after registration of said crime, applicant is served with notice under Section 41A of Cr.P.C. directing him to join investigation on 21st March 2019 at 4.00 a.m. at PS, Hauz Khas, South Dist., New Delhi and orally makes a submission that thereafter he received text message from the said PS to read timing in its notice as of 4.00 p.m. instead of 4.00 a.m.

4. According to applicant, both the offences registered against him as above, are bailable, however by referring to the contents of report stated that there is every possibility of applicants apprehending his arrest on remaining present before the concerned police. In this background, it is submitted that applicant shall abide by the provisions of 436 of Cr.P.C. and shall remain present before the learned trial Court and also before the Investigating Officer in compliance with notice under Section 41A of Cr.P.C.

5. Referring to the contents of subsequent report, it is submitted that in the event investigating agency adds any other offences which would be non-bailable in above crime, directions be issued to investigating agency to issue two weeks' clear notice to applicant informing adding of any such offences.

6. In the backdrop of police report of Connaught Place Police Station who has found allegations made by complainant Sanjiv Nanda to be totally false which are also negated by Kamaljeet B. Singh by filing an affidavit on record. Applicant submits that he in fact would adopt to recourse as available in law by making complaint against Sanjiv Nanda with competent authority.

7. On the count of maintainability of this application, learned counsel relied upon principles of law laid down in the case of ***Navinchandra N. Majithia Vs.State of Maharashtra & Ors. reported in (2000) 7 SCC 640*** and submits that in view of above facts, application be allowed by issuing necessary directions.

8. In response, learned APP could not dispute that both the offences registered by PS Hauz Khas Police Station, New Delhi are bailable nor could dispute fact of complaint lodging false report with Connaught Place police which is duly investigated and inspite of that complainant filing second report with PS, Hauz Khas.

9. In the facts and circumstances and on considering the contents of report upon which offence as aforesaid are registered, though both the offences are bailable, it is necessary to issue direction to applicant to appear before trial Court as contemplated under Section 436 of Cr.P.C., as applicant is served with notice under Section 41A of Cr.P.C. calling him to attend the said police station on 21st March 2019 at 4.00 a.m. As offences registered against applicant are bailable, on applicants appearing before competent Court at New Delhi, he deserves to be released on bail on his furnishing P.R. Bond and surety to the

satisfaction of concerned Court.

10. It is found necessary to issue such direction in view of report by Inspector Special Staff made to Deputy Commissioner of Police, New Delhi dated 27th July 2018 filed with the application revealing that on investigating, first complaint dated 23rd May 2018 same is not found to be truthful involving financial dispute which is purely civil in nature. From said report, it is also noted that Kamaljeet Singh who had earlier filed affidavit in support of the contention made in the complaint by Sanjiv Nanda, had filed subsequent affidavit and had refuted all contentions of his earlier affidavit dated 31st May 2018. In that view of matter, investigating officer, in reply first complaint did not found any substance in the report.

11. On the contrary, it is material to note that on same facts, PS Hauz Khas Police Station, New Delhi, without investigating the same, had issued notice calling upon applicant to attend said police station on 21st March 2019. Learned counsel for applicant, on instructions, submits that applicant shall remain present before concerned Court on 20th March 2109 at 11.00 a.m.

12. After going through contents of report dated 4th December 2018, there appears substance in the case of applicant of his apprehension of arrest in this crime in the event non-bailable offences are added in C.R.No.337 of 2018. Having considered admitted fact that earlier report lodged with Police Station Cannaught Place, Delhi Police, New Delhi since has been duly investigated by concerned police and since they had reached to the conclusion that no case is made out on the basis of said report, it is also necessary to direct investigating agency investigation C.R. No.337 of 2018 to issue two weeks' clear notice to applicant in advance informing of addition of any such offences in the present crime which would be non-bailable.

13. So far as submissions advanced for applicant on the point of maintainability of application relying on the law laid down in the case of *Navinchandra N. Majithia (Supra)* is not required to be considered at this stage as according to report, part of cause of action has very much taken place in Mumbai and the application is thus found to be tenable.

14. So far as last submission of applicant of his adopting recourse of lodging report against complainant Sanjiv Nanda to competent authority is considered, no directions are remained to be

issued on this aspect, as applicant is always at liberty to adopt recourse as available in law. In the circumstances, following order is passed :-

ORDER

- (i) Applicant shall remain present before competent Court having jurisdiction of PS Hauz Khas Delhi Police, New Delhi on 20th March 2019 at 11.00 a.m. On remaining present before concerned Court, applicant shall be released on bail on his executing P.R. Bond and on furnishing surety to the satisfaction of the said Court.
- (ii) Investigating authorities in Crime No.337 of 2018 registered with PS, Hauz Khas, New Delhi are directed to issue two weeks' clear notice to applicant in the event any non-bailable offence is to be added in said crime.
- (iii) In the event applicant adopts recourse of seeking investigation in respect of transaction as stated in the report with competent authority, it shall be looked into.
- (iv) Application is disposed of as allowed in above terms.

P.N. DESHMUKH, J.