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

Criminal Application (ABA) No. 400 of 2019

Anuj Agrawal
Vs.
State of Maharashtra Through P.S. Lakadganj, Nagpur City

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. K. Nankani, Advocate for applicant
Mr. H.R. Dhumale, APP for non-applicant.
Mr. Shyam Dewani, Advocate for the complainant.

CORAM : MANISH PITALE, J.

DATED : JULY 25, 2019

The applicant herein has approached this Court apprehending arrest in connection with FIR dated 21/05/2019, registered against him for offences under Sections 406 and 420 of the Indian Penal Code.

2. While issuing notice and granting ad-interim protection to the applicant, this Court had observed as follows.

> "4. By way of the present application, the applicant is seeking anticipatory bail in respect of offences registered under Sections 406 and 420 of the IPC as per FIR dated 21.05.2019. The allegation against the applicant is that although he collected sales tax in respect of certain transaction, he failed to deposit the same with the Sales Tax

> Department, as a consequence of which notice was issued to the complainant and the complainant was constrained to deposit the said amount. According to the complainant, this has resulted in the applicant having committed the said offences.
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> 5. A perusal of the FIR shows that while the offence is said to have been committed between 21.05.2005 and 21.05.2006, the FIR has been registered after about 14 years on 21.05.2019. Apart from this, at this stage, it appears that there is some dispute between the complainant and the applicant, who happen to be cousins. Although, the learned APP appearing on behalf of the non-applicant/State has opposed grant of ad-interim anticipatory bail, in view of the material that is presently on record, this Court is of the opinion that the applicant deserves to be granted ad-interim protection.
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> 6. Hence, in the event the applicant is arrested in Crime No. 296 of 2019 registered in Police Station Lakadganj, district Nagpur, he shall be released on bail on furnishing P.R. bond of Rs.25,000/- (Rs. Twenty Five Thousand) and a surety in the like amount. The applicant shall cooperate with the investigation and he shall make himself available before the Investigating Officer, as and when required."

3. The State as well as the complainant have filed their affidavits and submissions in response to the present application. While the State has opposed grant of relief in the present application pointing out that the applicant has caused huge financial losses to the State and the Sales Tax Department, in the submission filed on behalf of the complainant, it is emphasized that the

applicant is a repeat defaulter as in number of such cases he has not deposited amounts recovered under various heads and thereby loss has been caused to the State. It is specifically pointed out on behalf of the complainant that although the applicant was supposed to deposit amount recovered towards value added tax (VAT) when iron was sold to the complainant in the year 2005-06, the applicant failed to do so, as a result of which on 02/03/2015, a notice of demand was received by the complainant for amount of Rs.20,39,153/- from the Department.

4. It is further pointed out that the complainant had approached the Department under the Settlement Scheme announced under the Maharashtra Settlement of Arrears in Disputes Act, 2016 and ultimately an order dated 24/10/2016 was passed under which the complainant had to deposit an amount of Rs.6,71,178/- with the Sales Tax Department. On this basis, it was contended that the impression sought to be created by the applicant that while the offences were said to have committed in the year 2005-06, the FIR came to be registered on 21/05/2019, was not a correct impression and that, therefore, the present application was required to be dismissed.

5. A perusal of material on record shows that even in the FIR, it is recorded that information was

received to the police on 01/03/2018, but, the FIR was registered after more than a year i.e. on 21/05/2019. The sequence of events pointed out by the learned counsel for the applicant shows that while notice was received from the Department to the complainant on 02/03/2015 and order under the Settlement Scheme was passed on 24/10/2016, even the complainant approached the police authorities for the first time on 01/03/2018. In this backdrop, the submission made on behalf of the applicant is relevant that it was when an order of temporary injunction was passed in favour of the applicant in civil dispute between the complainant and the applicant on 28/2/2018, that immediately on the next day the complainant approached the police authorities on 01/03/2018, for setting criminal law in motion. As noted above, the FIR stood registered on 21/5/2019.

6. In view of the aforesaid facts, as long as the applicant continues to co-operate with the investigation, this Court is of the opinion that no purpose would be served by putting the applicant behind bars. At the same time, the material on record indicates that the applicant has been a serial defaulter in depositing amounts towards tax under various heads and that there are number of grievances against him.

7. In view of the above, the present application is allowed and ad-interim protection granted to the

applicant by order dated 25/06/2019 is confirmed, subject to conditions stated in the said order. Additionally, it is directed that if any further offence is registered against the applicant on similar grounds in future, the present order granted in favour of the applicant will stand recalled.

8. Application is allowed in above terms.

JUDGE

MP Deshpande