IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

917 ANTICIPATORY BAIL APPLICATION NO.751 OF 2020

ANKUSH S/O.ROHIDAS CHAVAN
VERSUS
THE STATE OF MAHARASHTRA

…

Mr.V.D.Salunke, Advocate holding for Mr.M.V.Salunke, Advocate for the applicant.
Mr.N.T.Bhagat, APP for the respondent-State.

…

CORAM : V.L.ACHLIYA,J.

DATE : 06.10.2020

P.C.

1] The applicant apprehending arrest in connection with the Crime No.165/2020, registered with Udgir [City] Police Station, Udgir, for the offence punishable u/s.7 and 12 of the Prevention of Corruption Act has preferred this application seeking pre-arrest bail.

2] Heard learned counsel for the applicant and learned APP representing the respondent-State. Perused the papers of investigation.

3] By referring overall facts of the case and the allegations made in the complaint, learned counsel for the applicant submits that the complaint filed by the informant is false, concocted and without iota of truth. It is submitted that the informant is no way connected with the affairs of the village panchayat. The wife of the informant is the Sarpanch of the village panchayat. The Sarpanch of the village has to act on his / her own in conduct of business of the village panchayat and if necessary take assistance of the Gramsevak in discharge of duty as the Sarpanch of the village. There is no provision under law permitting the Sarpanch to appoint proxy or to delegate authority to her husband. In that view, the informant has nothing to do with the business of the village panchayat. Without purchasing articles for Anganwadi the informant approached the applicant and tried to pressurize to sanction the bill brought for sanction. He refused to approve those bills and told him that unless articles are purchased he will not approve those bills. Being aggrieved the informant lodged false complaint against the applicant. It is submitted that wherever articles were found to be purchased, the applicant has immediately approved those bills. There is no truth in the allegations made by informant that the applicant demanded amount to approve alleged bills. It is submitted that the Officer of Anti Corruption Bureau or the Police Officer have not lodged any complaint against the applicant. The complaint has been filed by private individual. The complaint is lodged on 30.06.2020 with ACB. The first information report has been registered on

15.07.2020 that too at the instance of the private individual. On 03.07.2020 and 04.07.2020 no work was pending with the applicant. The applicant was on leave from 06.07.2020. In that view, there is no question of any demand. The bill of LED bulbs already approved by him, and therefore, there is no question of making any demand to approve the same.

4] It is submitted that the applicant is a Class-I Officer with unblemished service record. He joined the service in the year 2013. He has long standing service career. The complaint filed is a motivated and filed out of vengeance at the instance of the informant, who has nothing to do with the affairs of the village panchayat and obtaining approval of bills. There is no evidence to *prima facie* establish the commission of offences u/s. 7 and 12 of the Prevention of Corruption Act by the applicant. As per the version of the incident given by informant himself, no gratification has been paid or accepted by the applicant on his own or through accused no.2. In that view, there is no evidence against the applicant to attract the offence u/s. 7 and 12 of the Prevention of Corruption Act. The applicant is ready to co-operate in investigation. He is also ready to offer his voice sample for ascertaining truth by the Investigating Officer. In absence of any protection from arrest, there is every likelihood that the applicant may be arrested, humiliated and harassed for no offences committed on his part.

5] On the other hand, learned APP opposed the application with contention that there is *prima facie* case to connect the applicant with the offences registered against him. It is submitted that in order to conduct proper investigation, the police may require custodial interrogation of the applicant. So also the presence of the applicant may be required to obtain his voice sample.

6] I have carefully considered the submissions advanced in the light of overall allegations made against the applicant and further perused transcript of audio conversation alleged to be taken place between the applicant and informant. Also perused the house search panchanama made after searching the house of applicant.

7] Learned Additional Sessions Judge has rejected the application for the reason the applicant alleged to have committed offences u/s. 7 and 12 of the Prevention of Corruption Act. In my view, mere registration of offence under the Prevention of Corruption Act itself not sufficient to presume that the acts alleged against the person are true and correct and he has committed those offences.

8] The informant in the case is a husband of the Sarpanch of the village Kumdal [Her], Taluka Udgir, District Latur. In the capacity as a husband of Sarpanch of the village though not concerned with official business of village panchayat still he claims to have approached the applicant to sanction certain bills of alleged expenditure made by the village panchayat. Informant alleged to have approached the applicant serving as Block Development Officer for approval of those bills. It is alleged that the sanction was required from the panchayat samiti for the bill of Rs.59,000/- towards purchase of electric motor pump with equipments and bill of Rs.1,12,000/- for purchasing sports equipment and furniture for Angandwadi and Rs.1,48,000/- for LED lights. In order to get those bills sanctioned & approved, the informant approached the applicant. On 29.06.2020 the applicant alleged to have demanded gratification to the tune of 2% of the bill amount for sanctioning those bills. He has approved the bill of Rs.59,000/-. It is alleged that on 2nd July, 2020, the applicant suggested the informant to first purchase sports equipment and furniture then bring the bill for approval. The informant purchased the same and approached the applicant on 03.07.2020 for approving said bill. At that time the applicant alleged to have demanded gratification and asked him to pay the amount to Gramsevak. On 04.07.2020, the informant contacted accused no.2 Gramsevak, however, he did not accept the amount of gratification and asked him to directly pay the same to the applicant. On 06.07.2020, when attempt was made to pay the amount, the applicant was not present in the office. It is alleged that on 11.07.2020 accused no.2 informed the informant that the applicant is not ready to accept the amount and he lodged complaint on 15.07.2020.

9] It is admitted position that no amount has been paid and accepted by the applicant. The transcript of conversation recorded which alleged to have been taken place between the applicant and the informant allegedly recorded by the Anti Corruption Bureau, *prima facie* make out no case of demand of gratification on the part of the applicant. On the contrary, the transcript of conversation suggests that the informant tried to force the applicant to approve the bills without the material being purchased. Informant appears to have offered to pay the amount for sanctioning the bill. There is no specific demand of money made on the part of the applicant for sanctioning the bills reflect from transcript of conversation between informant and applicant.

10] In view of overall facts of the case, nature of accusations and evidence gathered by the prosecution and more particularly alleged transcript of conversation recorded between the applicant and informant, possibility of the applicant being falsely implicated in the case at the behest of the informant cannot be ruled out. In order to attract the offence u/s.7 of the Prevention of Corruption Act, there must be case of demand. There is no credible evidence to *prima facie* show that there was demand of money on the part of the applicant as a gratification.

11] The applicant is a Class-I Government Official with long standing career. There is no credible evidence to *prima facie* attract the offence u/s.7 and 12 of the Prevention of Corruption Act against the applicant. No incriminating evidence has been found against the applicant as per the panchanama. The total cost of articles found in the house of the applicant itself worth Rs.1,72,000/-. In that view, no incriminating evidence found against the applicant. In the facts & circumstances of the case, possibility of applicant being framed in the false case cannot be ruled out. The grant of anticipatory bail to the applicant would not frustrate on-going investigation. The custodial interrogation of the applicant is not necessary in the facts and circumstances of the case. The voice sample of the applicant can be collected by the Investigating Officer even if applicant is granted protection u/s.438 of the Criminal Procedure Code. In that view, the applicant deserves to be protected by extending protection u/s. 438 of the Criminal Procedure

Code. The arrest of the applicant would lead to serious consequences and affect his service career. I am, therefore, inclined to allow the application. Hence the following order :

ORDER

i] The application is allowed.

ii] In the event of arrest of the applicant in connection with the Crime No.165/2020, registered with Udgir [City] Police Station, Udgir, for the offence punishable u/s. 7 and 12 of the Prevention of Corruption Act, the applicant be released on furnishing bail in the sum of Rs.15,000/- with one surety in the like amount on following conditions :

a] The applicant shall appear before the Investigating Officer on 15th October, 2020 at 11.00 a.m. and offer him for investigation. If the Investigating Officer requires to obtain his voice sample then the applicant shall provide the same to the Investigating Officer.

b] On or after 16th October, 2020, the applicant shall appear before the Investigating Officer as and when directed by the Investigating Officer.

c] The applicant shall not indulge into any act amounting to pressurizing or threatening the prosecution witnesses.

d] In the event of breach of any conditions, the prosecution will be at liberty to move the Court for cancellation of bail of the applicant.

iii] The application is disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

DDC