

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.817 OF 2020

...
SWAPNIL PREMSING PATIL
VERSUS
THE STATE OF MAHARASHTRA.
...

Mr.Vinod P.Patil, Advocate for the applicant.
Mr.S.Y.Mahajan, Addl.P.P.for the respondent-
State.
Mr.Satej S.Jadhav, Advocate for the
informant.

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CORAM : V.L.ACHLIYA,J.
DATE : 01.12.2020

P.C.

1] On an apprehension of arrest in
connection with Crime No. 201 of 2020
registered with Dharangaon Police Station,
Taluka Dharangaon, District Jalgaon, for the
offences punishable u/s. 420, 406, 418, 294,
506 r/w. 34 of the IPC, the applicant has
preferred this Application seeking pre-arrest
bail.

2] Heard learned counsel for the

applicant, learned APP for the respondent-State and the advocate representing the informant. Perused the first information report.

3] In brief, it is the contention of the learned counsel for the applicant that the applicant is a Government servant and served as a Junior Clerk in the office of Ground Water and Development Agency from 20.08.2008 upto 30.05.2018. On 31.05.2018, he was transferred and posted in the office of Senior Geologist at Nandurbar. It is submitted that complaint was lodged on 18.04.2020 by the informant leading to registration of the above referred crime. By referring the allegations made in the complaint, learned counsel submits that the allegations made in the complaint are primarily made against the accused no.1. i.e. Vishwambhar Tayade. Police have arrested

accused no.1. It is submitted that even if allegations made in the complaint are taken to its face value and presumed to be true and correct still it makes out no offence u/s. 406, 418 and 420 of the IPC against the applicant. It is submitted that the applicant is having deep roots in the society. He is ready to co-operate in investigation. In case the applicant is not protected on account of such false complaint lodged at the instance of informant there is every likelihood that applicant may be arrested, humiliated and harassed for no offence committed on his part and affect his service career as a Government servant.

4] 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. By referring to overall

allegations made in the complaint, learned APP submits that the informant has alleged that the applicant is a partner of accused no.1. As per the information provided by the Investigating Officer, the amount of Rs.13,90,000/- has been transferred from the account of accused no.1 in the account of applicant which establishes nexus between them. In order to conduct proper investigation and to make recovery, custodial interrogation of the applicant is required.

5] I have carefully considered the submissions advanced in the light of overall facts of the case, nature of accusation made against the applicant and the role attributed to the applicant in commission of the offence. In my considered view the applicant has made out the case to make indulgence in exercise of powers u/s. 438 of the Criminal Procedure Code.

6] The allegations made in the complaint *prima facie* make out no case to register offence u/s. 406, 418 and 420 of the IPC against the applicant. The allegations made in the complaint leading to registration of offence are primarily made against accused no.1 Vishwambhar Tayade, the Government Contractor, to whom alleged tender was allotted. It is the case of the informant that accused no.1 Vishwambhar Tayade had entered into agreement with the informant and allotted the sub-contract of tender allotted to him. In terms of sub-contract allotted to him, accused no.2 has executed the work and the amount of Rs.54,67,500/- payable to him by accused no.1. The accused no.1 has withdrawn the amount of work executed of which sub contract was given to informant but failed to pay the amount due to payable to informant. Although it is alleged that the applicant is a business partner of accused

no.1 but except the allegation there is nothing to show that they are carrying the business in partnership and applicant in any way liable to pay any amount to informant. Even if it is accepted that the applicant is having some business relationship with accused no.1 and carrying the business with him still it will not make out any case to attract offence u/s. 406 and 420 of the IPC against the applicant. The allegations of existence of business relationship and role of applicant in allotting tender to accused no.1 may provide cause to initiate inquiry and departmental proceedings against applicant. So also if applicant has received the amount of Rs.13,90,000/- from the accused no.1 as alleged by informant then same can be enquired. However, for conduct of such enquiry, the custodial interrogation of the applicant is not required.

7] In the light of overall facts of case, the nature of accusation made against applicant in the complaint, no *prima facie* case exist to attract the offence u/s.406, 420, 294, 506 of IPC against the applicant. Neither any agreement nor any contract exist between applicant and informant to make him liable to pay any amount to informant on the basis of alleged sub contract entered between informant and accused no.1. The allegation of execution of sub contract and breach of trust are primarily attracted against the accused no.1. In absence of *prima facie* case to attract the offences u/s. 406, 418, 420, 294, 506 r/w. 34 of IPC against the applicant, the applicant deserves to be extended protection u/s. 438 of the Criminal Procedure Code. I am, therefore, inclined to allow the application and pass the following order:

ORDER

i] The application is allowed.

ii] Interim bail granted vide order dated 29.09.2020 is confirmed and made absolute on same terms and conditions with further condition that the applicant shall appear before the Investigating Officer as and when directed by the Investigating Officer and co-operate in investigation.

iii] It is clarified that the observations made in the order are made for limited purpose of deciding the present application and none of the observations to be treated as observations made as to the merits of the case of the prosecution against the applicant. The grant of anticipatory bail to the applicant will not preclude the Departmental Authority as well as investigating agency to conduct enquiry and investigation in respect of allegations of payment/deposit of Rs.13,90,000/- made by the accused no.1 in the account of the applicant.

[V.L.ACHLIYA]
JUDGE