

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

LD-VC-CRI ABA NO.1051 OF 2020

(Ramdas Ramchandra Samarth Vs. State of Maharashtra thr. PSO PS Sakkardara,
Nagpur and another)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri R.R. Vyas, Advocate for Applicant.
Shri I.J. Damle, APP for Non-Applicants/State.

CORAM: ROHIT B. DEO, J.
DATE: 7th AUGUST, 2020.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant is seeking pre-arrest bail apprehending arrest in Crime 396/2019, registered with Sakkardara Police Station, Nagpur for offence punishable under sections 409 and 420 read with section 34 of the Indian Penal Code and sections 3 and 4 of Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 ("MPID Act")

3. At the very outset, the learned counsel for the applicant Shri R.R. Vyas candidly submits that the applicant is seeking pre-arrest bail purely on medical and humanitarian ground. Shri R.R. Vyas fairly concedes that

the conduct of the applicant, and which conduct impelled the learned Sessions Judge who rejected the pre-arrest bail to impose exemplary cost of Rs. 25,000/-, is indefensible.

4. Considering that the pre-arrest bail is sought, not on merits, but on medical and humanitarian ground, only bare essential facts need be stated.

5. The applicant is aged 83 years and is suffering from various ailments. The medical papers placed on record suggest that he is bed ridden.

6. One Shri Harshavardhan Zanzad lodged report with the Sakkardara Police Station on 2.7.2019 on the basis of which offence was registered against unknown person/s under section 409 read with section 34 of the Indian Penal Code. During the course of investigation, offence punishable under section 420 of Indian Penal Code and sections 3 and 4 of the MPID Act came to be added.

7. The informant is an account holder of Poonam Urban Credit Co-operative Society, Reshimbagh, Nagpur (Credit Society). The informant alleged that the Manager and the Directors of the society persuaded him to deposit amount in Recurring Deposit Account promising lucrative returns, and he deposited Rs. 49,992/- and Rs. 51,695/-. It is alleged in the report that despite maturity, the informant did not receive the maturity amount and other

depositors too suffered similarly.

8. The applicant contends that he was indeed the Director of the credit society, however, he addressed several protest letters *inter alia* dated 20.3.2020, 23.3.2017, 25.9.2018 and 30.6.2019 placing on record that the President, Manager and Assistant Manager of the credit society were disbursing huge amounts in favour of close relatives keeping the Board of Directors in dark. According to the applicant, he also lodged a complaint dated 6.6.2019 with the Deputy Registrar, Co-operative Societies, Nagpur City-2.

9. In nutshell, the defence of the applicant qua the allegations in the report that he cannot be held accountable for the misconduct of the President and the officers of the credit society.

10. The applicant preferred Criminal Application 1509/2019 seeking pre-arrest bail, which was rejected by the learned Sessions Judge on 11.7.2019. The applicant then approached this Court in Criminal Application (ABA) 487/2019, which was withdrawn since this Court was not inclined to entertain the application.

11. Undeterred by the fate of the pre-arrest bail application in this Court, the applicant again approached the learned Sessions Judge. Perusal of the application would

reveal that while the withdrawal of the application from this Court was disclosed, conveniently and clearly in an attempt to mislead the learned Sessions Judge, it was not disclosed that the application was withdrawn since this Court was not inclined to entertain the same. The learned Sessions Judge rejected the second application (Miscellaneous Criminal Application 1393/2020) vide order dated 22.7.2020. The learned Sessions Judge rejected the second application on merits as well as on the ground of gross suppression of material facts. The learned Sessions Judge observed thus:

“25. Fair trial means both parties approaching court with clean hands and without suppression of any material aspect of case. Whenever specific order is passed by Hon’ble High Court, the same needs to be specifically mentioned in the application before the Sub-ordinate court and not only that it is expected that due attention of the sub-ordinate Judge needs to be drawn to such order so that sub-ordinate Judge shall not commit any legal error. It is the duty of prosecution as well as defence side. In the present case, the Hon’ble Bombay High Court, Bench at Nagpur categorically worded that Criminal Application (ABA) No. 487 of 2019 was to be rejected and at that point, it was withdrawn. As such, it was not only expected from the applicant to mention it in the application but attention of this court must have been taken by the applicant himself to the said order during the course of argument. It is not done. It amounts to suppression of that order by applicant.

26. On the basis of aforesaid discussion, the applicant does not deserve the relief of anticipatory bail on both counts i.e. on merits

as well as for suppression of material facts”.

12. The learned Sessions Judge while rejecting the application directed the applicant to deposit costs of Rs. 25,000/- with the District Legal Services Authority, Nagpur, which costs stand deposited.

13. I have given due consideration to the reasons recorded by the learned Sessions Judge for rejecting the pre-arrest bail application and imposing costs. The view and approach of the learned Sessions Judge is unexceptionable and I entirely agree. The learned Sessions Judge was absolutely right and justified in rejecting the pre-arrest bail application on merits and in imposing costs.

14. However, since the learned Sessions Judge was presumably not called upon to consider the pre-arrest bail application on medical and humanitarian ground, I have restricted the consideration of the pre-arrest bail application to the said ground.

15. The photographs which are placed on record suggest that 83 year old applicant is indeed frail. The medical certificate issued by Dr. Kiran Somkuwar, MD. (Medicine) of Vedant Heart & Diabetes Care Centre certifies that the applicant is suffering from hypertension, diabetes and cardiac and kidney issues since 2013 and is at present bed ridden. In view of the medical certificate and the

photographs placed on record, I asked the learned APP Shri I.J. Damle to ensure the presence of the Investigating Officer. Accordingly, the Investigating Officer Smt. Meena Santosh Jagtap was present and assisted the Court. In response to a specific query from the Court as to whether it is absolutely essential to custodialy interrogate the applicant, the Investigating Officer very fairly stated that the Investigating Agency would be satisfied if the applicant gives his finger prints and handwriting sample. The learned counsel Shri R.R.Vyas, on instructions, stated that the finger prints and handwriting sample shall be given forthwith.

16. The learned APP Shri I.J. Damle and the learned Investigating Officer Smt. Meena Jagtap have taken a fair stand, which is appreciable. Considering the prevailing pandemic, and the state of health of the applicant, the pre-arrest bail can be granted, on medical and humanitarian ground, particularly, since the Investigating Officer is satisfied if finger prints and handwriting sample are given.

17. However, the conduct of the applicant has been otherwise deplorable. The applicant has clearly suppressed material facts from the learned Sessions Judge, for which he is adequately punished by costs imposed by the learned Sessions Judge. However, in the present application the averment is that the concerned lawyer suppressed the facts regarding the fate of the earlier pre-arrest bail application.

This assertion is untenable. The pre-arrest bail application in which facts are suppressed, is affirmed by the applicant. The applicant, undeterred by the imposition of costs by the learned Sessions Judge, has indulged in sharp practice by blaming his counsel for the suppression. In view of the said conduct, while I am granting pre-arrest bail on medical and humanitarian condition, I am impelled to impose exemplary cost.

The application is allowed, subject to the following conditions:

- [i] The applicant shall co-operate with the Investigating Officer and shall give his finger print and handwriting sample and provide such other information or document as is required of the applicant by the Investigating Officer. Breach of this condition shall *ipso facto* entitle the Investigating Officer to seek cancellation of the pre-arrest protection.
- [ii] In view of the conduct of the applicant, while the applicant is protected due to his medical condition and in view of the extremely fair approach of the Investigating Officer and the learned APP, the applicant is saddled with costs of Rs.50,000/- which shall be deposited in

the Police Welfare Fund within seven days to be utilized for the treatment of any police personnel who may be suffering from Covid-19.

[iii] The applicant shall not make any attempt to influence the witnesses, directly or indirectly.

[iv] The applicant shall not leave the country without the permission of the jurisdictional Court.

18. The order be communicated to the counsel appearing for the parties, either on the e-mail address or on WhatsApp or by such other mode, as is permissible in law.

JUDGE

rsb

**Nitin
Nikhare**

Digitally signed
by Nitin Nikhare
Date: 2020.08.10
11:19:15 +0530