

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.**

ANTICIPATORY BAIL APPLICATION NO. 927 OF 2021

Yogita W/o Sharad Dhisale,
Age : 30 years, Occu. Household,
R/o. Dahigaon, Tal. Shevgaon,
Dist. Ahmednagar.

...Applicant

Versus

The State of Maharashtra

...Respondent

AND

ANTICIPATORY BAIL APPLICATION NO. 857 OF 2021

1. Jalindar s/o Sahadu Patkal,
Age : 27 years, Occu. Pharmacist,
R/o. Chapadgaon, Tal. Shevgaon,
Dist. Ahmednagar.
2. Ashok s/o Kisan Sagale,
Age : 45 years, Occu. Gri.,
R/o. Balamtakali, Tal. Shevgaon,
Dist. Ahmednagar.
3. Yogesh s/o Ashok Nemane,
Age : 29 years, Occu. Private Service,
R/o. Chapadgaon, Tal. Shevgaon,
Dist. Ahmednagar.

...Applicants

Versus

The State of Maharashtra

...Respondent

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In both matters : -

Mr. Sudheer R. Zambare, Advocate for the applicant
Mrs. Vaishali S. Choudhari, APP for respondent / State

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CORAM : V. G. BISHT, J.

RESERVED ON : 27.08.2021

PRONOUNCED ON : 06.09.2021

PER COURT : -

1. These are applications under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No. 0494 of 2021, registered with Topkhana Police Station, District Ahmednagar, for the offences punishable under Sections 420 r/w 34 of the Indian Penal Code.

2. The prosecution case, in short, is that the informant works as a Ward Assistant (कक्ष सेवक) in Civil Hospital at Ahmednagar. Nitin Nirbhavane and Somnath Sahadu Patkal were also doing service in the said hospital. Nitin introduced Somnath Patkal to the informant. The said accused Somnath always used to say that he has good relations and acquaintances with the officers of the Health Department and Zilla Parishad and after taking moneys from various persons, he has secured jobs for them. The informant, therefore, requested the aid accused to help her in getting job for her deemed brother, namely, Sagar Jivan Ghorpade.

3. The prosecution alleges that the said accused Somnath informed the informant that he had a word with senior officers and in order to secure the employment, she will have to shell out Rs. 15.00 lakhs in installments. Accordingly, on 03.10.2018, she paid Rs. 2.00 lakhs in cash to said accused in presence of witnesses and transferred Rs. 4.00 lakhs by way of RTGS. She then went on paying amount from time to time and also gave twenty tolas (200 gms.) of gold and thus, in all, paid Rs. 15.00 lakhs.

4. The prosecution further alleges that the present applicants, who are brothers, sister and brothers-in-law and maternal uncle of the applicant also used to assure that the accused Somnath has good acquaintance with higher officers and sooner the amount is paid, he would secure employment for her said brother. Despite paying the said amount, the accused Somnath Sahadu Patkal failed to secure employment. She accordingly lodged the report against the said accused and the applicants as well.

5. Mr. Sudheer R. Zambare, learned Counsel for the applicants, in both the applications, submits that it is nowhere alleged in the FIR that any of the applicants had taken a single rupee from the

applicant. The allegations are against the accused Somnath Sahadu Patkal. The present applicants have no role to play in the alleged offence of cheating. Merely because the applicants happen to be the family members of the main accused, they have been roped in. Also, there is no question of recovery from them and, therefore, they deserve the benefit of pre-arrest bail.

6. Mrs. Vaishali Choudhari, learned APP, on the other hand, heavily opposed the submissions by contending that all these applicants also induced the informant by suggesting from time to time that the accused Somnath Sahadu Patkal has good relations with the higher officers and he would definitely secure a job for her deemed brother. The learned APP also invited my attention to the statement of the witnesses recorded by the Investigating Officer and would submit that these applicants took active part in the offence of cheating. The investigation is in progress and, therefore, there being no merit in the application, same is liable to be rejected.

7. What is seen on perusal of FIR is that it is the accused Somnath Sahadu Patkal, who, from time to time not only induced and assured the informant that he would secure a job for her considered

brother but also took an amount of Rs. 15.00 lakhs in all from the informant. It is also apparent from the FIR that every time the amount was taken by said accused from the informant and it is also further clear that even the said accused took 20 tolas of gold from the informant, which was later on mortgaged with Mutthut Finance Company in his name and also in the name of brother of informant. Later on he also collected the mortgaged amount of gold in the name of informant's assumed brother, to the tune of Rs. 1,99,900/-. Thus, all the monetary transactions apparently took place between the informant and said Somnath Sahadu Patkal.

8. As far as the role of present applicants are concerned, the allegations against them is that they used to say that the accused Somnath Sahadu Patkal has acquaintance with the higher officers and he would secure a job for informant's assumed brother. They also used to tell that the informant should pay the amount as early as possible. Except this, there is nothing against the present applicants. It is also not the case of prosecution that in the whole transactions any amount was routed to the main accused through these applicants.

9. I have also gone through the statement of prosecution

witnesses. They support the contents of FIR pertaining to the present applicants and as noted by me herein above.

10. In view of above obtaining situation, in my considered opinion, the main accused in the whole alleged episode is Somnath Sahadu Patkal. The custody of these applicants for the purpose of investigation, in my considered opinion, is not necessary. However, they can be asked to cooperate with the Investigating Officer during the course of investigation. With this view, I am inclined to allow the present applications. Hence, I pass the following order.

ORDER

- i. The applications are allowed.
- ii. In the event of arrest of the applicants, namely, Yogita Sharad Dhisale, Jalindar Sahadu Patkal, Ashok Kisan Sagale and Yogesh Ashok Nemane, in connection with Crime No. 0494 of 2021, registered with Topkhana Police Station, District Ahmednagar, for the offences punishable under Sections 420 r/w 34 of the Indian Penal Code, the applicants are directed to be enlarged on bail on their furnishing P.R. Bond of Rs.20,000/- [Rs. Twenty thousand] each, with one or two solvent sureties in the like amount.

- iii. The applicants shall attend the concerned police station as and when called and shall cooperate with the police in the investigation.
- iv. The applicants shall not tamper with the prosecution evidence in any manner.

[V. G. BISHT]
JUDGE