

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.952 2020

Shri Shivaji s/o Suryabhan Salunkhe ... Applicant

Versus

The State of Maharashtra ... Respondent

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Mr. A. B. Girase h/f Mr. V. B. Madan, Advocate for applicant.
Mr. A. M. Phule, APP for respondent – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 05-01-2021

PRONOUNCED ON : 18-01-2021

ORDER :

. Present applicant is apprehending his arrest in connection with Crime No.183 of 2020 registered with Dhule City Police Station, District Dhule for the offences punishable under Sections 420, 120-B read with 34 of Indian Penal Code and, therefore, he has filed present application under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. B. Girase holding for learned Advocate Mr. V. B. Madan for applicant and learned APP Mr. A. M. Phule for respondent – State.

3. It will not be out of place to mention here that the present applicant had knocked the doors of learned Additional Sessions Judge by filing Criminal Bail Application No.887 of 2020 for pre-arrest bail. It came to be allowed, however, with conditions. The order has been passed by the learned Additional Sessions Judge, Dhule on 15-10-2020, which reads thus :-

- “1. Application Exh.1 is hereby allowed.*
- 2. In the event of arrest in C.R.No.183/2020 registered at Dhule City Police Station, in respect of offence punishable under Sections 420, 120(B) r/w.34 of I.P.C., applicant namely Shivaji Suryabhan Salunkhe, shall be released on anticipatory bail on furnishing one solvent surety of Rs.15,000/- and P.R. bond of like amount, **in addition to this he shall deposit an amount of Rs.6,50,000/- (Rupees Six Lac Fifty Thousand) in court towards cash surety on or before 19.10.2020, subject to further following conditions :***
 - (i) Applicant shall not tamper with the evidence of prosecution and its witnesses in any manner.*
 - (ii) Applicant shall attend Dhule City Police Station twice in a week i.e. on Wednesday and Saturday in between 02.00 p.m. to 05.00 p.m. till filing of the chargesheet.*
- 3. Investigating Officer is hereby directed to maintain attendance register of applicant as directed in order clause-2(ii) and submit same alongwith chargesheet.*
- 4. If applicant failed to comply whole order clause-2 on or before 19.10.2020, application shall be treated as a rejected.*
- 5. Inform to the concern police station accordingly.”*

(stress supplied to clause No.4 by me)

4. It has been vehemently submitted on behalf of the applicant that the learned Additional Sessions Judge was not justified in imposing a condition to deposit as cash surety in addition to solvent surety of Rs.15,000/-. He relied on following authorities :-

- (1) *Keshab N. Banarjee Vs. State of Bihar, 1984 DGLS (SC) 161.*
- (2) *Avinash Arora and others Vs. State of U. T. Chandigarh and another, AIR 2000 (SC) 3563 (1).*
- (3) *Shyam Singh Vs. State, (2005 DGLS(SC) 491.*
- (4) *Munish Bhasin and Ors. Vs. State (Govt. of N.C.T. of Delhi) and Anr., (AIR 2009 SCC 2072.*
- (5) *Sumit Mehta Vs. State (NCT of Delhi), (2013) 15 SCC 570.*
- (6) *Dataram Singh Vs. State of Uttar Pradesh and Another, (2018) 3 SCC 22.*
- (7) *Kunal Kumar Tiwari Alias Kunal Kumar Vs. State of Bihar and Another, (2018) 16 SCC 74.*
- (8) *Parvez Noordin Lokhandwalla Vs. State of Maharashtra and Another, Criminal Appeal No.648 of 2020 (Arising out of SLP (Crl) No.3420 of 2020).*
- (9) *Kaleem alias Kaleem Pasha Vs. State by Central Police Station, Bangalore, 2003 (1) R.C.R. (Criminal) 524 :: 2003 CriLJ 353.*
- (10) *Vipin Mehra and Another Vs. State, 2003 VAD Delhi 501.*
- (11) *Makhan Kant Sharma Vs. Union of India, 2011(4) ALL.LJ 80.*
- (12) *Amaldoss and others Vs. State, Rep. By the Inspector of Police, Patteeswaram Police Station, Thanjavur, 2015(1) MLJ (Criminal) 471.*

(13) Bharatkumar Madanbhai Chikani Vs. The State of Maharashtra, (Criminal Application No.5821 of 2015 with companion matters) decided by this Court on 30-10-2015.

(14) Runa Pasricha Rajpoot Vs. State of Haryana, 2019(2) R.C.R. (Criminal) 873.

5. In most of these authorities, Hon'ble Supreme Court and the other High Courts have taken a view that harsh, onerous, excessive, irrelevant or freakish conditions cannot be imposed on the accused. Word "any condition" used in Section 438 of the Code of Criminal Procedure contemplates that the condition should be reasonable and should effectuate object of imposing conditions, having regard to the facts and circumstances. Any condition which departs from this object is not permissible, but Court should exercise its discretion with utmost caution. Further observations are that the Courts are required to take humane approach while dealing with applications for remanding of matter to police or judicial custody and even if grant or refusal of bail is entirely upon discretion of the judge, it must be exercised in the judicious manner. Such conditions cannot be arbitrary, fanciful or extend beyond ends of provision. In one of the recent judgments delivered on 01-10-2020 in ***Parvez Noordin Lokhandwalla Vs. State of Maharashtra and Another*** in Criminal Appeal No.648 of 2020, the Hon'ble Apex Court has taken note of many earlier decisions and again reiterated the same fact. Hon'ble the Single Judge of Karnataka High

Court in *Kaleem alias Kaleem Pasha (Supra)* had even declared that the condition imposed to make cash deposit of Rs.10,000/- as illegal. So also, the Allahabad High Court in *Makhan Kant Sharma (Supra)* had held that the condition of depositing amount of rupees four crores as difference of Custom Duty while granting bail held it as amounting to denial of bail and, therefore, it was quashed. Similar view was taken by the Madras High Court in *Amaldoss and others (Supra)*. This Court also in Criminal Application No.5821 of 2015 with companion matters in *Bharat Kumar MadanBhai Chikani (Supra)*, had taken the similar view.

6. After pointing out the legal position stated in the above said authorities it has been submitted on behalf of the applicant that in view of clause (4) of the said order passed by learned Additional Sessions Judge and the fact that the said amount has not been deposited by the present applicant, it amounted to refusal of his application by learned Additional Sessions Judge and, therefore, the present application before this Court is maintainable. This Court by order dated 23-10-2020 had made it clear that though the interim protection was granted, the point regarding maintainability of the application was kept open.

7. Further on the merits of the case, the learned Advocate for the applicant submitted that applicant is the Chairman of Sundradevi Apang

Shikshan va Prashikshan Prasarak Mandal, Aurangabad. The said society is running a school for mentally challenged students at Dondaicha in Dhule District under the name and style as Swargiy Khandu Patil a residential school, Dondaicha. There is facility of boarding in addition to the education given to the students below the age of 18 years. It is stated that the appointment for the post of teacher in this school are done as per the roaster strictly. Similar procedure is also followed for appointment of doctors and nurses. The informant has alleged that she has been cheated by the present applicant and four other persons and in spite of taking amount of Rs.6,50,000/- and though appointment was given, no salary was paid to her and sanction has been obtained from the Government for her post. Therefore, the said FIR under Sections 420, 120-B read with 34 of Indian Penal Code has been lodged by her. It has been, thereafter, stated that, in fact, amount of Rs.12,36,200/- has been taken by the Headmaster of the school. The development in the case are that the present applicant came to know about such money transaction, when he received complaint by one Nana Mangu Dhangar, which was also signed by one Dagdu Bhika Dhivare stating that in all amount of Rs.12,36,200/- was taken by Atul Baburao Patil, the In-charge Headmaster. Thereafter, immediately the present applicant had given a letter to the Commissioner, Handicapped Welfare, Maharashtra State Pune on 06-08-2020 informing him about the entire facts and it was also brought to the notice, the misdeeds of District Social Welfare Officer, who was dancing on the tune of the

Headmaster. Even if we consider the complaint that was given by the father of the informant on 26-06-2019, it can be said that he is saying that the said amount was given to the Headmaster and not to the present applicant. In fact, the present applicant after the receipt of the said complaint had transferred the said Headmaster to another school run by the same institute, however, he, with the help of said District Social Welfare Officer and after knocking the doors of the Tribunal, could retain his post. Now, the said matter is further *sub judice* before the appropriate appellate authority. If there was any intention in the mind of the applicant to cheat the informant, then he would not have taken those steps. He has not taken the amount. No doubt, there is some error on his part that he did not pay attention to the process of appointment and was on the said panel which selected the informant, he could not notice that the Headmaster has misled him. It has been also submitted on behalf of the applicant that information is now given that the entire amount which was allegedly taken by the Headmaster has been returned to the informant. He vehemently submitted that the custodial interrogation of the applicant is not required and, therefore, he canvassed for the grant of pre-arrest bail.

8. Per contra, the learned APP strongly opposed the application submitting that the application itself is not maintainable in view of the fact that the pre-arrest bail application filed by him before the learned Additional Sessions Judge has been allowed, though on condition. He has not abided by the said

condition and, therefore, now he cannot take advantage of the fact. On the merits of the case, he submitted that, being the Chairman of the institution, he was responsible for the appointment of the informant. The said post was, in fact, reserved for the category of Scheduled Caste and Open Category. All the accused persons were aware that the present informant is from the category of NT-C. The advertisement was published and it was stated that the post is reserved for NT category. The present informant was called for interview and she was appointed for the post of Nurse. None of the accused had, thereafter, taken care of the fact that whether they could have given appointment to the informant or not and even sent the proposal for sanction. Even the District Welfare Officer, without considering all the legal aspects involved, gave sanction to the said post, however, thereafter, she could not get her salaries. All these acts have been committed in conspiracy by taking money. Therefore, the applicant, who is the Chairman of the Society, does not deserve any sympathy and the discretionary relief.

9. At the outset, the point regarding maintainability is required to be considered. The order that was passed by the learned Additional Sessions Judge has been quoted above. The present applicant was directed to deposit amount of Rs.6,50,000/- in the Court as cash surety which was along with the surety and P.R. Bond of Rs.15,000/-. Though this Court is now exercising the concurrent jurisdiction under Section 438 of the Code of Criminal Procedure, yet, perusal of

the order passed by the learned Additional Sessions Judge would show that submissions were made on behalf of the prosecution that it is alleged in the FIR that amount of Rs.12,50,000/- were taken from informant and it was then stated that out of that, amount of Rs.6,00,000/- have been refunded by accused No.1 – Atul Patil. It was submitted that amount of Rs.6,50,000/- is yet to be seized and, therefore, it appears that the learned Additional Sessions Judge thought that he should take cash surety to the extent of amount which was yet to be recovered. In view of the aforesaid catena of judgments, it can be certainly said that the learned Additional Sessions Judge was not justified in imposing such condition. Furthermore, further harshness in the matter can be seen from clause No.4, wherein it was stated that if the applicant failed to comply with the said clause of deposit of the amount before 19-10-2020, then the application would be treated as rejected. This condition is totally unrealistic, inhumane and arbitrary. As aforesaid, this Court is not sitting as an Appellate Court and, therefore, that point is now required to be dealt with further and it will have to be treated that since the said condition has not been obeyed by the present applicant, his application stood as rejected and, therefore, his present application before this Court is maintainable.

10 Now, turning towards the merits of the case, the fact that even the learned Additional Sessions Judge felt that case was made out to exercise the discretionary powers and then the order was passed will have to be considered

here. If we consider the complaint application that was made by Nana Mangu Dhangar and Dagdu Bhika Dhivare on 26-06-2019, then it can be seen that it was given to present applicant and it was against accused No.1 – Atul Patil only, who was the Headmaster. Surprising part to be noted is that the informant appears to have been appointed since 14-01-2013 till 01-10-2018 and it is the say of the informant as well as in this complaint application that she did not get salary since the date of her appointment. What prevented her from knocking the doors of this Court or any other legal platform to agitate regarding her salary is a question. Further, in the said complaint application, it is stated that since 2013 till the date on which that complaint application was given i.e. on 16-06-2019, amount of Rs.12,36,200/- has been given to the said Headmaster. Question then arises as to when the informant as well as her family members thought that they were cheated? What prompted them to go on giving such amount for illegal cause. Whatever it may be, but the said allegations are only against the Headmaster. The action taken by present applicant can also be seen from the communication dated 06-08-2020 and 17-08-2020. He has also made complaint against the said Headmaster, District Social Welfare Officer and others. It is specifically stated that he had transferred the said Headmaster, but it appears that even the Headmaster had not listen to the Chairman of the institute in which he was serving and, thereafter, some orders appears to have been passed in favour of the Headmaster and now, the matter is *sub judice*. A statement has

been made that the said amount which was alleged to be given has been returned back to the informant, though it is not confirmed from the learned APP to the extent of further amount of Rs.6,50,000/- as there is only mention about Rs.6,00,000/- in the order passed by the learned Additional Sessions Judge. Yet, for the purpose of any such alleged recovery, the applicant cannot be sent to custody. The investigation is dependent on documents and the documents are with the Society or the Government office where the proposal was sent for sanction. Under such circumstance, the present applicant deserves protection by way of pre-arrest bail. As aforesaid this Court by order dated 23-10-2020 had granted *ad-interim* protection in favour of the applicant. That order deserves to be confirmed. Hence, the following order :-

ORDER

- I) Application stands allowed.
- II) The *ad-interim* protection granted by this Court earlier to the applicant vide order dated 23-10-2020, is hereby confirmed and made absolute. In other words, in the event of arrest of the present applicant in connection with Crime No.183 of 2020 registered with Dhule City Police Station, District Aurangabad for the offences punishable under Sections 420, 120-B read with 34 of Indian Penal Code, he be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.
- III) The applicant shall not tamper with the evidence of the prosecution in any manner. He should cooperate with the investigation.

IV) He shall remain present before the Investigating Officer on every Monday between 10.00 a.m. to 2.00 p.m. till further orders.

V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm