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

ANTICIPATORY BAIL APPLICATION NO.975 OF 2020

Shivkanta w/o Sadashiv Kadam …Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. G.G. Kadam, Advocate for the applicant.
Mr. A.M. Phule, APP for the respondent-State.

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CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 06th JANUARY, 2021
PROUNOUNCED ON : 18th JANUARY, 2021

ORDER:-

. The applicant is apprehending her arrest in connection with Crime No.292 of 2020 dated 01.08.2020 registered with Shivajinagar Police Station, District Nanded, for the offences punishable under Sections 420, 506 read with Section 34 of the Indian Penal Code and therefore, she has approached this Court by filing the present application under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. G.G. Kadam for the applicant and the learned APP Mr. A.M. Phule for the respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is a household lady. She is also doing social work. She herself is a handicapped lady. It is alleged that the informant has been cheated by the present

applicant and the co-accused under the pretext that they had promised to give job to the informant and they have extracted amount of Rs.1,50,000/- from them. In fact, the friend of the informant resides in the house of the applicant on rent. She might have come across the informant, but the applicant had never promised anything to her and has not accepted any amount from her under the pretext of offering job to the informant. There was a dispute in respect of rent in between the applicant and the friend of the informant. It appears that under that pretext, the applicant has been falsely implicated. The applicant has come across with a video which has been uploaded on you tube by the informant. In the said video, she has stated that she had given the amount to co-accused Venkat Mudiraj and not to the present applicant. It is also submitted on behalf of the applicant that in view of the interim order passed by this Court on 26.10.2020, she has attended the police station, so also she has deposited amount of Rs.1,50,000/- as directed. Therefore now, the physical custody of the applicant is not required. She has already co-operated with the investigation.

4. The learned APP strongly objected the application on the ground that amount of Rs. 30,000/- out of amount of Rs.1,50,000/- has been transferred to the account of the present applicant by an online transaction through ATM. Therefore, she cannot say that she has not received any

amount from the informant. As per the FIR, the applicant had promised that she would give job to the informant, her brother and her friend. Amount of Rs.60,000/- was taken from the informant, amount of Rs.30,000/- from her brother and amount of Rs.60,000/- was taken from her friend. In fact, the said promise was by the present applicant and corporator Venkat Mudiraj from Nanded. The investigation papers further disclose that some other persons had also given amount to the applicant. One Changuna Sahebrao Guhade has given Rs. 45,000/- and Rupali Bhimrao Wadve has given Rs. 35,000/-. Ranjana Dhanwe, friend of the informant says that she has given amount of Rs.60,000/- through her cousin uncle Anandrao Dhanwe. Therefore, possibility that some more persons would have given the amount to the present applicant and they would have been cheated by her cannot be ruled out. The applicant has tried to take disadvantage of the unemployment of these persons and therefore, she deserves no sympathy.

5. Perusal of the FIR would show that the informant states that her friend was residing in the house of the present applicant on rent. As she use to visit her friend, she got acquainted with the applicant. The applicant gave promise that she would give job to the informant, her brother Vikas and friend Ranjana. It is to be noted that those amounts have been transferred between 23.09.2019 till 11.11.2019. It is also

stated that the said promise to give job was by the present applicant as well as co-accused Venkat Mudiraj. Now, the informant and even the other witnesses have not stated as to what was the exact promise given by the applicant and the corporator i.e. co-accused Venkat Mudiraj. None of them have stated where the job was available and how the applicant and co-accused were connected to that institution. What kind of enquiry they had made before parting with the amount? No doubt, unemployment is one of the biggest problem before the Country and in spite of having good education, young persons are not getting employment. There is cut-throat competition also to get the job. Under such circumstance, whatever educational qualification the informant, her brother and her friend were having, what kind of job they were offered, whether they were ready to do that job, all has been kept vague. No doubt, there appears to be transfer of amount of Rs.30,000/- by an online transaction through ATM from the account of the informant to the account of the present applicant. Only on the basis of this evidence, whether we are required to presume that such promise was made, is a question. Now, the prosecution is objecting the application on the ground that the investigation is still pending and the amount is required to be seized. It is stated that unless the amount is seized, the investigation cannot be progressed. This appears to be a superficial ground when cheating is complete.

As per the facts of the case, there is no question of any recovery. The investigation is in progress is also not a sole ground to reject the application. Further it is stated that it is yet to be discovered, as to how many persons have been cheated and who else was involved along with the applicant. In fact, other persons have not come to lodge a report considering themselves as the persons cheated, then the police cannot invite them. Therefore, the ground that has been shown is absolutely unreasonable and not sustainable in the eyes of law. Now, as per the order passed by this Court, the amount has been deposited in this Court and it is also stated that the applicant has attended the police station as directed. That means, she has shown her bonafides by co-operating the investigation and therefore, the discretionary relief is required to be granted to her. The amount deposited is required to be transferred to the Court of Chief Judicial Magistrate, Nanded and would be required to be kept in the custody of the said Court till the conclusion of trial. The concerned Court will have to decide its disposal, as per Law under Section 452 of Code of Criminal Procedure. Hence, the following order is passed:

ORDER

I) The application stands allowed.

II) The order passed by this Court granting ad-interim protection to the applicant on 26.10.2020, stands confirmed.

III) In other words, in the event of arrest of the applicant, if not arrested uptil now, in connection with Crime No.292 of 2020 dated 01.08.2020 registered with Shivajinagar Police Station, District Nanded, for the offences punishable under Sections 420, 506 read with Section 34 of the Indian Penal Code, she be released on P.R. Bond. of Rs. 20,000/- (twenty thousand) with one surety in the like amount on the following conditions:

a) The applicant shall remain present before the Investigating Officer on every Monday between 10.00 am to 12.00 pm till filing of charge sheet.

b) The applicant shall not tamper with the evidence of the prosecution in any manner and shall co-operate with the investigation.

c) The applicant shall not indulge in any criminal activity.

IV) The amount deposited by the applicant in this Court in view of order passed by this Court be transferred to the Court of Chief Judicial Magistrate, Nanded within a period of 15 days. Learned Chief Judicial Magistrate to invest the said amount in fixed deposit in a nationalized Bank for such period as would be required. The Court deciding the said case to decide the disposal of said amount (together with its accrued interest) at the conclusion of trial (under Section 452 of Code of Criminal Procedure).

V) Registrar (Judicial) to convey the order to the concerned Court and to effect the transfer of the amount as aforesaid.

(SMT. VIBHA KANKANWADI, J.)

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