

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

BAIL APPLICATION NO.1537 OF 2020

Mangala Rajesh Kothari = **APPLICANT**

VERSUS

The State of Maharashtra = **RESPONDENT/S**

Mr.Uday S.Malte, Advocate for Applicant/s;

Mr.AM Phule, APP for Respondent-State.

CORAM : SMT.VIBHA KANKANWADI, J.

RESERVED ON : 11th January, 2021

PRONOUNCED ON: 30th January, 2021

PER COURT :-

1. Present applicant has been arrested in connection with CR No.827/2020 registered with Kopargaoon Police Station, Kopargaoon, District Ahmednagar, for the offences punishable under Sections 420, 466, 468, 471 read with 34 of IPC.

2. Heard learned Advocate Shri Malte for applicant and learned APP Shri Phule for Respondent State.

3. It has been vehemently submitted on behalf of the applicant that Assistant Police

Inspector – Dipak Ambadas Borase has lodged an FIR against the present applicant and one N.C.Khicchi, who was then Police Head Constable, working with Shirdi Police Station, District Ahmednagar. In fact, present applicant herself had issued notice to said N.C.Khicchi on 8.7.2002, stating that many certified copies were supplied by him to the applicant for production in Claim Petitions before Motor Accident Claims Tribunal (for short, the Tribunal) on behalf of different claimants/persons and after the applicant had received the information from the Advocate of the Insurance company in those matters, it was found that Mr.Khicchi has made various alterations. She felt that she is being cheated.

4. Thereafter, the then Additional District & Additional Sessions Judge, Kopergaon had given a confidential letter to the then District Superintendent of Police, Ahmednagar on 1.2.2003 to have investigation in respect of the false and fabricated claims before the Tribunal. Based upon that inquiry, one Rohidas Sukdeo Pawar, the then PSI working with Shirdi Police Station had lodged

the FIR on 27.5.2004, vide CR No.42/2004. The present applicant came to be arrested in that matter and she has been released on bail.

5. Further, it also appears that there was Criminal Writ Petition bearing Criminal WP No. 257/2015 filed before this Court in view of the inquiry made by learned Additional District & Sessions Judge, Kopergaon to take action. Permission was granted to convert the said writ petition into Criminal Public Interest Litigation (PIL) vide order dated 7.6.2018 and the said PIL is still pending. When the said matter was before the Division Bench of this Court on 1st December, 2020, report regarding progress in the investigation was produced and a statement was made by learned APP that the present applicant is absconding. In fact, it was a wrong statement, according to learned Advocate for the applicant. He submits that when the FIR is lodged on 27.11.2020, then within three days how it can be said that the applicant is absconding.

6. As regards the earlier FIR is concerned,

i.e. CR No.41/2004, the investigation was complete and charge sheet has been filed before the JMFC bearing RCC No.516/2005 and it is pending before the JMFC, Rahata. Present applicant was arrested in that offence on 15.7.2004 and was in police custody till 19.7.2004. In fact, the second FIR itself was not maintainable. If the notice that was issued by the present applicant is seen, it mentions about 18 cases those were filed before Kopergaon Court and MACP No.729/2001 (one of the case from 18 cases), later on transferred to Sangamner Court after establishment of the Tribunal there. Now in the present FIR, it has been contended that certain numbers of the cases remained to be mentioned, especially four cases, out of 18 cases, viz. 1) MACP No.369/29002; 2) 335/2002; 3) 385/2002 and 4) 434/2002. Those were included in the list given in the notice issued by the applicant. After their numbers have been changed, those have been mentioned in the present FIR. Therefore, when the entire investigation is over and it would have revealed that the applicant had not at all appeared in MACP No.335/2002, there was absolutely no necessity to lodge a fresh FIR.

On this count also, she is entitled to be released on bail.

7. Another ground that was submitted on behalf of the applicant is that even after lodging the second FIR, accused NC Khicchi was arrested and he has been released on bail under Section 437 of Cr.P.C. by learned Additional Chief Judicial Magistrate, Kopargaon, Court No.3, on 30.11.2020. On the ground of parity also, she is entitled to be released on bail and the 3rd ground that has been canvassed is medical ground. It is stated that the present applicant, who is a practicing lawyer, is now aged 65 years and she is suffering from knee-joint problem and is advised for knee replacement surgery. The medical papers are produced on record. She is also suffering from lumber lordosis because of degenerative changes in the form of osteophytes. She is unable to carry out her daily pursuits without assistance in the jail. Affidavit of her daughter has been produced on record, who is also practicing Advocate. Husband of the present applicant is also a practicing Advocate. The medical report was called and it also appears that

the same supports the present applicant. Therefore, on these three grounds, the learned Advocate for the applicant, has canvassed for bail.

8. The learned Advocate for the applicant has relied on a decision of Division Bench of this Court in the case of Pawan Ranjithmal Lodha Vs. State of Maharashtra and anr. - 2017 (5) Mh.L.J. (Cri.)103: 2017(3) Bom.C.R.(Cri.) 534 wherein, this Court held that, if an offence forming part of second FIR arises as a consequence of offence alleged in first FIR, then offences covered by both FIRs are same and, accordingly, second FIR will be impermissible in law. In other words, offences covered in both the FIRs shall have to be treated as a part of first FIR. Test of sameness is clearly applicable to facts of the case.

9. Further, the decision that is relied upon by the learned advocate for the applicant is, Ram Lal Narang Vs. State (Delhi Administration), reported in (1979) 2 SCC 322; wherein it is observed, " The question is not whether the nature and character of the conspiracy has changed by the

mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Where the conspiracy discovered later is found to cover a larger with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions."

10. Further decision that is relied on is, Babubhai Vs. State of Gujrat and Anr with companion matters, reported in (2010) 12 SCC 254 wherein it was held that, the test of sameness is required to be considered. Further, on the same line, there is a decision in the case of Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and Anr. - (2013) 6 SCC 348.

11. Per contra, learned APP strongly opposed the application and submitted that though the applicant is a lawyer by profession; yet with the help of police constable, she has managed to lodge fake and false claims for getting compensation from

the insurance companies before the Tribunal. In fact, the entire fact was revealed after the learned Additional District & Sessions Judge pointed out all these facts by his confidential letter dated 1.2.2003. Now, the applicant is trying to shield her acts by saying that she had issued the notice to accused No.1, first in time, on 8.7.2002. She has not taken any further action pursuant to the said notice. In view of the inquiry that was held, some MACP cases were included in the earlier FIR. Perusal of the FIR would show that it was relating to 13 matters, when it ought to have been in respect of 18 cases/matters. Perusal of the present FIR would make it very much clear that the present informant, who is also a Police Officer, is well aware about the earlier FIR and, therefore, it has been specifically mentioned that though it mentioned 18 matters; yet four matters still were not included, which were MACP Nos.369/2002; 335/2002; 385/2002 and 434/2002. The background, on which the second FIR came to be lodged is, various orders those have been passed in Criminal Writ Petition, which has been later on converted into Criminal PIL, which is

still pending for its adjudication. Seriousness in the matter was considered by this Court. Taking into consideration the contents of the FIR that in one of the matters, in fact, death was due to drowning; yet it was tried to have been shown that it has caused due to vehicular accident. Further, in another matter, death was due to dash by unknown vehicle and it was so shown in the original FIR. However, when the so-called certified copy of the same, which appears to have been issued by accused NC Khicchi, indicates the registration number of the vehicle and then those persons have been made as respondents. The statements of the applicants in those petitions were recorded before lodging the present FIR, which show that present applicant as well as co-accused used to meet them and assure them about compensation; used to take their signatures or thumb impressions on various documents. This is nothing but a conspiracy and fabrication of documents with an intention to commit fraud upon the Court, cheat the insurance companies and to extract the amount from the company. Further physical custody is also required as well as there is *prima facie* evidence against

the present applicant. As regards the medical condition of the applicant is concerned, he submitted that proper and required treatment is given to the applicant in jail and lastly he prayed for dismissal of the application.

12. At the outset, it can be seen that the allegations against the present applicant are definitely serious. Legal profession is a noble profession. The relationship of client and Advocate is of confidence. But, then definitely there are certain elements now in the legal profession, which are defaming the profession itself. There are instances of lodging fake and bogus claims on the basis of false documents; may be obtained from police station. But we are required to consider the present case, where it reflects the same. The first point, that is raised is, in respect of filing of second FIR as not maintainable. If we peruse the earlier FIR as well as the present FIR, it can be seen that in the second FIR, there is definitely a reference to the earlier FIR and it has been specifically mentioned that, out of those 18 cases mentioned in the first

FIR, there is no place to the subsequent four cases which have been mentioned above. Now, as regards the second FIR is concerned, there is no mention as to why it is filed after so much of delay. But, then the said delay would be fatal to the prosecution or not will have to be considered by the concerned court trying the case. In his affidavit filed by one Harshawardhan Gawali, present Police Inspector attached to Kopargaon city police station, in view of the order passed by this Court on 6.1.2021, is nothing but re-production of the FIR and it is then also stated that he had consulted the superior officer in regard to filing of the second FIR and it was advised to him to file the second FIR.

13. This Court, while dealing with the Bail Application has its own limitation to consider this point as the applicant cannot have a prayer seeking quashing of 2nd FIR in the present application. However, since the point is raised, *prima facie*, things are required to be considered. Even as per the ratio laid down in the case of Babubhai Vs. State of Gujarat (supra) and Amitbhai Shah VS CBI

and Anr. (supra), the Hon'ble Apex Court has not concluded that it is absolutely improbable and impermissible to have a second FIR. In Amitbhai Shah's case (supra) it has been observed, - "If two FIRs pertain to two different incidents/crimes, a second FIR is permissible, which is not the case in the present case. A second FIR would lie in the event for example when pursuant to the investigation in the first FIR, a larger conspiracy is disclosed, which was not part of the first FIR." It will not be out of place to mention here that after the application of this test to the facts in hand, the Hon'ble Supreme Court observed that, that was not the case before it, and therefore, the second FIR in that case was held to be not permissible.

14. Further in Babubhai's case (supra) it has been observed, "in case of subsequent FIR, the Court has to examine the facts and circumstances, giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs really would same incidence in respect of same occurrence or are in regard to the incidence, which are two or more parts of the same

transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case contrary is proved where the version in the second FIR is different and they are in respect of two different incidence/crimes, the second FIR is permissible."

15. Further reliance can be placed on a decision in the case of Anju Choudhari Vs. State of U.P. – (2013) 6 SCC 384, wherein also the same principle of sameness was reiterated and in this case also, the decision in the case of Babubhai's case (supra) was referred. Thus, relying upon these authorities, the Division Bench of this Court in Pawan Lodha's case (supra) had come to the same conclusion.

16. As aforesaid, in the case in hand though now the second FIR is filed, wherein the basic fact is showing that there was conspiracy or common intention between both the accused persons, but then it is in respect of the subsequent filing of the petitions. It is stated that in the earlier FIR, four cases, referred to above, were not mentioned. It has been tried to be pointed on

behalf of the applicant that, out of these four cases, now mentioned, one case, i.e. MACP No. 385/2002, was in fact, bearing old case No. 392/2002 and MACP No.369/2002 was also already covered under the FIR. It is to be noted from the further contents of the present FIR that it is accepted by the informant that the said number was already covered in the first FIR. But, as regards the contents of the FIR are concerned, it is stated that those contents are not as per the documents those have been collected. In other words informant has tried to say that there new information about said matter. In the original FIR, in respect of the incident it was stated that one unknown tempo, whose registration number is not known, was involved in the accident. But, the copy of the FIR, which was filed with the claim petition, showed registration number of the said tempo. Even if for the sake of arguments it is accepted that MACP No.369/2002 and MACP No.385/2002 (old No.392/2002) were already covered in the first FIR; yet as regards MACP No.335/2002 and 434/2002, there is admittedly no mention in the first FIR. Now, the applicant says that she never appeared in MACP

No.335/2002. It is for her to prove the same and since the investigation is still pending in respect of it, the Investigating Officer would thoroughly consider the same. Therefore, we cannot jump to the conclusion here that the second FIR was absolutely not maintainable.

17. It also appears from the copy of the order filed by the present applicant that after the second FIR was lodged, accused No.1 – NC Khicchi was arrested and he has been released on bail by the learned Additional Chief Judicial Magistrate, Kopargaon on 30.11.2020. At that time, the same Judge has not given a detailed order, as he has given when the present applicant had filed the bail application. By a detailed order thereafter he has rejected the bail application filed by the present applicant. He has not considered the ground of parity in detail. However, it has been mentioned in Para Nos.10 to 12 of the order that role of accused Nos.1 and 2 are not identical. It has been also observed that forgery is alleged to have been committed by accused No.1 and accused No.2 has used those forged documents as genuine though she had

knowledge about the forgery thereof and, therefore, the role of the present applicant is on higher pedestal. What has not been considered by the learned Magistrate, it appears, is common intention to forge the documents; use them as genuine for the purpose of cheating. Unless one would not have prepared it, another would not have used it. Therefore, it cannot be said that role of one accused was more than another. Taking into consideration the allegations, both the accused had knowledge and they did acts with that knowledge, appears to be the case of the prosecution and in fact, it would be proved by the prosecution. Furthermore, it can also be proved by the present applicant that she had no knowledge as to how the forgery has been committed by accused No.1. But then she intended to say in her notice that when accused No.1 used to bring the clients for her including the documents, she had no knowledge about the contents of those documents. Therefore, it was premature on the part of the learned Trial Judge to observe that the ground of parity is not available to present applicant. Now, only the fact is required to be considered that accused No.1 has

been released on bail. The person who prepared the false and fabricated documents has been released on bail; then the person who used those documents would definitely have the ground of parity in his/her favour.

18. Present applicant was released on bail after her arrest when the first FIR was filed. Perusal of the order passed by the learned JMFC, Court No.2, Kopargaon on 19.7.2004 would show that the applicant was released on bail in ordinary course. The RCC No. 516/2005 is still pending and the learned APP has not pointed out that the applicant had ever breached the terms of the bail.

19. Now, as regards the observations by the Division Bench of this Court in PIL on 1.12.2020 are concerned, it appears that the learned APP was given such instructions; yet when the FIR was lodged on 27.11.2020, then how the Investigating Officer had come to the conclusion about the applicant being absconding is a mystery. Merely because after 27.11.2020, if he would have gone to her house and she was not found there, it cannot be said that she was absconding within a period of

three days. Prosecution has not come with a case that the applicant has not attended the Court in RCC No. 516/ 2005 on the fixed dates and therefore, non-bailable warrants have been issued against her. Those statements before the Division Bench of this Court are not hurdle for applicant in this application.

20. The third ground that has been raised is medical ground. There are documents produced on record showing that present applicant, who is aged now 62 years, due to degeneration is suffering from knee-joint problem. The certificate dated 6.12.2020 issued by Pandit Accident Care and Unique hospital, Ahmednagar would show that she has been advised knee replacement operation. Surprising to note that within two days, i.e. on 8.12.2020, she has been arrested. It cannot be the co-incidence that she obtained the certificate on 6.12.2020 and she came to be arrested on 8.12.2020. Further, the medical record produced by her also shows that she is suffering from the said ailment since 10.5.2018. The status report of her health was also called from the Superintendent of Prison. The Medical

Superintendent has given the report to Superintendent of Prison, wherein it is stated that she had a mild knee joint swelling and she has difficulty in standing up from sitting position. It is further stated that she has been advised to have low salt and less oily food and she has been asked to continue wearing knee-caps. Further management and treatment has been suggested with advice of orthopedic surgeon.

21. Therefore, taking into consideration the said development as also for the reasons enumerated above, when substantial part of the investigation is already over and now the investigation is in respect of only two matters and depends on the documents, those which have been already seized or within reach of the police authorities, the further physical custody of the applicant is not required and she deserves to be released on bail. Hence, following order, -

ORDER

- i. The Bail Application stands allowed;
- ii. The applicant, who has been

arrested in connection with CR No.827/2020, registered with Kopargaon Police Station, Kopargaon, District Ahmednagar, for the offences punishable under Sections 420, 466, 468, 471 read with 34 of IPC, she be released on PR of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- each.

iii. The applicant shall attend the concerned police station on every Sunday between 10.00 AM to 2.00 PM and co-operate with the investigation.

iv. The applicant shall not tamper with the prosecution evidence nor shall indulge in any criminal activity.

v. The applicant shall comply with the requirements contained in paras 12(1) to (6) of Chapter-I of Criminal Manual, which ever are applicable.

vi. Bail before the Trial Court.

(SMT. VIBHA KANKANWADI)
JUDGE