

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.548 OF 2021

Gautam Shankar Vardhan

Applicant

versus

The State of Maharashtra

Respondent

Mr.Niranjan Mundargi with Mr.Varun Thokal, Abhishek Yende Lokesh Zade for applicant.

Mr.Deepak Thakare, Public Prosecutor with Mr.S.s.Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th March 2021

PC :

1. This is an application for anticipatory bail in CR No.3 of 2021 registered with ACB, Mumbai for offence u/s.7 of Prevention of Corruption Act. The complaint was registered on 11th February 2021.

2. According to the complainant he owns a flat in Manikmoti building co-operative housing society, 17th Road, Khar (West), Mumbai. There was irregularity in affairs of co-operative society. The managing committee was not conducting meetings. Audit was not conducted. Hence the complainant lodged complaint with the Deputy Registrar, Co-operative Societies on 12th September 2020. The complaint was filed through advocate. The complainant was informed by his advocate that file is pending in the office of Deputy Registrar Mr.Vardhan and he is demanding illegal gratification. Since the complainant was not interested in paying the bribe, he approached ACB. The complaint was lodged against Deputy

Registrar Mr.Vardhan (applicant). The complainant attended the office of ACB on 11th February 2021. He was provided digital voice recorder and instructed to record the conversation with public servant. He was informed that during verification if it is found that public servant is demanding bribe, the trap will be conducted. Panch witnesses were arranged. He visited the office of public servant. He put on the voice recorder. He met assistant of his advocate. The panch witness, advocate's assistant went to office of public servant Mr.Vardhan on the second floor. They had discussion about his complaint. Mr.Vardhan called another officer from the office Mr.Rathod. The file of the complainant was called and on going through the file Mr.Vardhan told him that he should discuss the matter with Mr.Rathod and he will do the needful. The complainant left the cabin and met Mr.Rathod. Mr.Rathod went inside the cabin of Mr.Vardhan, had a discussion and came back. He told him that Mr.Vardhan had demanded Rs.3 lakh. The complainant informed him that he is not in a position to gather such amount. Mr.Rathod then again went to the cabin of Mr.Vardhan and informed the complainant that he will have to pay Rs.2 lakh. The complainant expressed inability to arrange such amount. Then Mr.Rathod told him to pay Rs.1.10 lakh. Thereafter Mr.Rathod, complainant and assistant of his advocate, went to the cabin of Mr.Vardhan. He spoke to him about his complaint. Mr.Vardhan again told him that he will handle his complaint properly. He would give him hearing. He would declare the committee members as incompetent to contest elections. He told him that he has instructed Mr.Rathod to do the needful and act as per his directions. He made gestures by his fingers to Mr.Rahul who was accompanying complainant. Hence Mr.Vardhan had indicated that the amount be paid to Mr.Rathod. He

told Vardhan that Rathod is demanding Rs.1.10 lakh. Mr.Vardhan has gestured to the said information by consenting for the same. The complainant told Rathod that he would bring the money. Information was given to the raiding party. Digital voice recorder was heard. It was evident that demand of illegal gratification was made. Arrangement for raid was made. The complainant met Mr.Rathod. He inquired as to how much he has brought. The complainant told that he has brought Rs.1 lakh. Rathod told that he was supposed to bring Rs.1.10 lakh. The amount was accepted by Mr.Rathod and he kept it in his drawer. The complainant then went to the cabin of Mr.Vardhan and told him about the fact that amount has been paid to Rathod and came out. He gave signal to the raiding party. The raiding party visited the cabin and they apprehended Mr.Rathod and Mr.Vardhan (applicant). The bribe amount was recovered.

3. The applicant was sent for medical examination and it was found that he was suffering from Covid-19 and thus he was hospitalized/quarantined.

4. Learned APP at the outset submitted that the application is not maintainable since the applicant has been arrested. It is submitted that at the time of raid, the applicant was present and he was taken into custody along with co-accused Rathod. It is submitted that the co-accused was produced for remand on 12th February 2021 and the Trial Court was informed that the applicant has been hospitalized in Nair Hospital since he has been suffering from Covid-19. As soon as he is discharged, he will be produced for remand. He further submitted that the applicant was in their custody and only on

account of fact that he was suffering from Covid-19 and since he was quarantined in the hospital, he could not be produced for remand nor the Magistrate could visit the hospital for remanding the accused.

5. Learned counsel for applicant, however, submitted that the document on record itself indicate that applicant was never arrested. Although the applicant was found at the place of raid, he was sent to hospital for medical examination and thereafter he was hospitalized as he was found positive for Covid-19. The remand application itself would indicate that applicant is not in custody.

6. It appears that as soon as the raid was conducted, the applicant was sent for medical examination and it was found that he was suffering from Covid-19. He was hospitalized in Nair Hospital which is Covid centre. The remand application mentions the said fact. Perusal of the remand application shows that it is stated therein that the applicant is taking treatment for Covid-19 and he is yet to be arrested for the offence. Inquiry is to be conducted. The applicant had preferred application for anticipatory bail before Sessions Court. Learned Judge in the order has recorded that during the course of arguments learned APP and Investigating Officer have specifically submitted that at the time of raid applicant was not arrested. From the admissions of respondents and the documents it appears that the applicant was not arrested.

7. In view of the above, the application was heard on merits. Learned advocate for applicant submitted that merely on account of demand made by the co-accused the applicant cannot be subjected to

custody. There is no evidence to show that the applicant has demanded bribe from the complainant. The person who was found accepting bribe was arrested and he is in custody. The applicant is suffering from Covid-19 and he need not be subjected to custody.

8. Learned APP submitted that there is strong evidence to show that applicant is involved in the crime. The complainant in his complaint has attributed specific overt act to the applicant. The co-accused was acting at the behest of applicant. The amount was accepted by the co-accused at the behest of applicant. It is also pointed out that conversation recorded in digital voice recorded indicates involvement of applicant. The investigation is going on. Custodial interrogation of applicant is necessary.

9. I have perused the documents on record. The applicant is working as Deputy Registrar, Co-operative Societies. The complaint was forwarded by the complaint to the said office. According to prosecution the applicant was in-charge and was the person who was supposed to deal with the complaint of complainant. On perusal of the complaint dated 11th February 2021 it is apparent that specific role has been attributed to the applicant which indicate connivance with co-accused. The complainant has alleged that amount was demanded at the behest of applicant. The complainant has also stated that the co-accused who has accepted the amount, had visited the cabin of applicant while fixing the amount of bribe. The complainant has also alleged that after the amount was given to the co-accused, he had informed about the same to the applicant. The amount of Rs.1.10 lakh was accepted by Mr.Rathod. I have also perused the transcript of conversation recorded in digital voice

recorder. Prima facie, complicity of applicant is disclosed. At this stage, prima facie, it cannot be said that the applicant was not involved in the offence. Custodial interrogation of the applicant is necessary.

10. Considering the circumstances, no case for grant of anticipatory bail is made out. Hence, the application is rejected.

11. At this stage learned counsel for applicant, on instructions, seeks time to surrender before Investigating Officer on or before 12th March 2021 since the applicant is suffering from Covid-19. It is submitted that the applicant would indicate the Investigating Officer as to when he would surrender within the aforesaid period. In view of the submission, the applicant is permitted to surrender before Investigating Officer on or before 12th March 2021. The application is disposed of.

12. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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