

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1426 OF 2021

1. Hanumant jagnnath Nazirkar
2. Sangeeta hanumant Nazirkar .. Applicants
Vs.

The State Of Maharashtra .. Respondent

Mr.S.B. Talekar, i.b Talekar & Associates, Advocate for
Applicants.

Mr. A. R. Kapadnis, A.P.P. for the State-Respondent.

CORAM : PRAKASH D. NAIK, J.

DATE : 30th JUNE, 2021

PC.

1. The Applicants are apprehending arrest in connection with C.R. No.53 of 2021 registered with A.P.M.C. Police Station, Navi Mumbai for the offence punishable under Sections 420, 465, 468, 471, 474 read with 34 of the Indian Penal Code (for short "IPC"). Hence, the applicants have preferred this application for pre-arrest bail under Section 438 of Cr.P.C.

2. The prosecution case is that the complainant is having business at A.P.M.C. market as vegetable agent. He was called by Anti-Corruption Bureau (for short "ACB") office Pune for inquiry and accordingly he visited the office of ACB on 03.02.2021. About 22 receipts in the name of M/s. Chandrakant Laxman Jadhav Firm for the period between 04.06.2021 to 25.03.2017 were shown to him. Those receipts

Digitally signed
by
DNYANESHWAR
ASHOK ETHAPE
Date:
2021.07.15
17:03:08 +0530

DNYANESHWAR
ASHOK ETHAPE

are in respect of purchase of potato, onion and other vegetables. Although, the receipts were in the name of his Firm, those were not issued by the Firm. The receipts were in the name of applicants. He did not know them. He never met them and never had any transactions with them. In vegetable market, there is no permission to deal with the onion and potato and for it there is separate market in APMC, Navi Mumbai. Their Firm issued computerized receipts since 2010 and the receipts shown to him were hand written. On the same day several other agents from the market were also called in ACB Office. Bogus receipts of their Firm were also shown prepared by the accused. The fabricated receipts issued in the name of Firm of complainant and others were submitted to ACB. The First Information Report (for short "FIR") was lodged on 15.02.2021.

3. The applicants preferred application for anticipatory bail before the Sessions Court, Thane. The application was rejected vide order dated 04.05.2021.

4. Learned counsel for the applicants submitted that whole genesis of the present prosecution is arising out of FIR No.736 of 2020 filed by the Anti-Corruption Bureau, Pune. The Department has conducted discreet enquiry and thereafter an open enquiry in which it was allegedly revealed that the applicants have prepared documents showing generation of income. The Investigating Officer on the basis of the report of

open enquiry had called upon fruit vendors at Baramati and Commission agents and merchants at APMC for enquiry. It was during the course of the investigation in respect of FIR No.736 of 2020 the complainant was called to verify the authenticity of sale receipts and to find out whether they had such receipts. The statement of the complainant and other witnesses in respect of the allegations in the present FIR has already been recorded by the ACB, Pune. The receipts which were alleged to be forged have been seized by ACB. The allegations in the present FIR are already investigated by the ACB. Subsequent to the filing of the FIR by ACB, similar offences were lodged by the witnesses who are interrogated by the ACB at Baramati City Police Station, Baramati. Filing of fresh FIRs at different Police Station is violative of the fundamental rights guaranteed under the Constitution of India. The documents relate to offence in respect of which FIR No.736 of 2020 is already registered with ACB and charge-sheet is filed against the applicant. Registration of fresh FIRs at APMC Police Station, Vashi, Navi Mumbai or at Baramati City Police Station, Baramati is contrary to various judicial pronouncements including in the case of **Amitbhai Anil Chandra Shah Vs. CBI and another reported in (2013) 6 SCC 348**. The applicants are victimized due to political vendetta. The Police are registering repeated FIRs. The sale-purchase agreements alleged to be executed by fruit-vendors or sale receipts issued by the commission agents and merchants at APMC, Mumbai, form part of the offence

investigated by ACB, Pune. The documents are already recovered from the vendor or merchants or commission agents. One of the accused in C.R. No. 644 of 2020 registered with Baramati Police Station had preferred application for anticipatory bail before this Court. Learned APP on instructions of the Investigating Officer had submitted that the investigating agency does not want to arrest the said accused Satish Bhikaram Wayase and that he can be directed to attend the Police Station as and when called and also give his specimen signature and specimen hand writing. The said application was disposed of in view of the statement of learned APP vide order dated 16.06.2021. The FIR does not disclose that, the applicant had caused wrongful gain or wrongful loss. The present FIR was not tenable in the eyes of law as the same amounted to second FIR. The delay in registering the FIR has not been explained.

5. Learned APP submitted that there was no legal bar for registering the present FIR. The applicants are involved in fabrication of documents. Several documents are fabricated. The documents were used by the applicants. The cause of action in receipt of the earlier FIR and the present FIR is different. The offence is committed within the jurisdiction of the concerned Police Station. Custodial interrogation of the applicant is necessary. If the applicant is aggrieved by different FIR, he should resort to remedy available under law.

6. Apparently, C.R. No.736 of 2020 was registered by ACB, Pune against the accused. The FIR is registered under Section 13(1)(b), 2 of Prevention of Corruption Act, 1988 read with Section 109 of IPC. The said FIR relates to the disproportionate assets. The FIR was registered against the applicant and the other family members. The FIR was registered on 18.06.2020. C.R. No.644 of 2020 was registered on 27.12.2020 with Baramati City Police Station for the offence punishable under Sections 417, 468, 471 and 477 read with 34 of the IPC. The said FIR was registered at the instance of Vajid Chotu Bagwan. It was alleged that the applicant and the other accused have prepared fabricated documents. The complainant is a fruit vendor at market yard Baramati. He was approached by one Rahul Khomne. The complainant purchased fruit from him. he had brought same stamp papers and took his signature. He also handed over cheque to him. The complainant was told that he will have to visit the office of ACB and to produce the stamp papers executed by him. The documents were fabricated. The said documents were utilized by applicant and others. The present FIR relates to the complaint by Sachin Jadhav who is vegetable agent at APMC Market. The FIR relates to the receipts issued in the name of Chandrakant Laxman Jadhav Firm. The case of the prosecution is that the applicants have submitted bogus receipts of APMC Office. The receipts which are shown on record are stated by vegetable agent as bogus and not issued by their Firm. The receipts were allegedly issued by agents in

the market against the receipt of the vegetable and other goods. Different agents in the market have given statement that they have not issued receipts in dispute and they have no transaction with the applicants. The receipt issued to the other are not their Firm and others are fabricated. It is also alleged that the applicant No.2 is agriculture and other subsidiary business. Land is in her name. The applicant No.2 is the wife of applicant No.1. The applicant No.1 is the main accused. The decision relied upon by the applicant is not applicable in the present proceeding. The present FIR relates to the offences filed in the Court is within the jurisdiction of the APMC Police Station Vashi, Navi Mumbai. The documents are false and fabricated. The applicant No.2 is the lady. Prime role is played by applicant No.1. The applicant No.2 need not be subjected to custodial interrogation. The applicant No.2 is granted interim protection by this Court in connection with C.R. No. 644 of 2020 registered with Baramati Police Station. The application for Anticipatory Bail preferred by the applicant No.2 is pending in this Court in connection with the FIR registered with Baramati City Police Station. The applicant No.2 has been arrested on 24.03.2021 in connection with another FIR and as per contention of the applicant, he is in custody in connection with other FIR. Considering the aforesaid circumstances, applicant No.2 can be granted relief under Section 438 of Cr.P.C. Applicant No.1 is not entitled to the said relief.

ORDER

- (i) Anticipatory Bail Application No.1426 of 2021 is partly allowed;
- (ii) Application of applicant No.1 is rejected.
- (iii) Application of applicant No.2 is allowed.
- (iv) In the event of arrest of the applicant No.2 in connection with in C.R. No.53 of 2021 registered with A.P.M.C. Police Station, Navi Mumbai, the applicant No.2 be released on bail on furnishing P.R. bond in the sum of Rs.25,000/- with one or more sureties in the like amount;
- (v) The applicant No.2 shall attend the investigating officer on 7th, 8th & 9th July, 2021 between 11:00 a.m. to 1:00 noon and thereafter as and when called for till filing of charge-sheet.
- (vi) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)