

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.176 OF 2021

(Mohammad Saud s/o Takdirullah Khan Vs. State of Maharashtra thr. PSO PS
Khadan, Akola, Dist. Akola)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Tushar Mandlekar, Advocate for Applicant.
Mr. M.K. Pathan, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 25th MARCH, 2021.

Hearing was conducted through video conferencing and the learned counsel agreed that the audio and visual quality was proper.

2. The applicant is apprehending arrest in Crime 838/2020 registered with Police Station Khadan, District Akola for offences punishable under Sections 420, 468 and 417 of the Indian Penal Code. The crime is registered on the basis of report dated 18.12.2020 lodged by an officer of the Maharashtra State Co-operative Marketing Federation Limited (Federation).

3. The gist of the report is that the applicant – accused who was engaged as a transport contractor, stole a signed cheque from the working table of the concerned officer, filled in the name of the payee and the amount and

encashed the same.

4. Prior to the lodging of the report, a preliminary inquiry was conducted and the statement of the applicant – accused is recorded. The applicant – accused admitted to have taken away the cheque from the table. The applicant – accused further admitted that he filled in his name as the payee and the amount of Rs.45,00,000/- (Rupees Forty-five lakhs only).

5. The learned counsel for the applicant Mr. Mandlekar, relying on the decision of the Hon'ble Supreme Court in *Siddharam Satlingappa Mehre v. State of Maharashtra and others (2011) 1 SCC 694* would submit that the applicant is ready to co-operate in the investigation, and that he has already returned the amount of Rs.25,00,000/- (Rupees Twenty-five lakhs only) to the federation. The next submission is that since there is nothing to recover, custodial interrogation is not necessary.

6. In my considered view, no discretion can be exercised in favour of the applicant.

7. The allegation is grave. If the prosecution culminates in conviction, the punishment may be extremely severe. The proceeds of the crime will have to be traced. The manner in which the crime appears to have been perpetrated, *prima facie* does not exclude the possibility of

involvement of other persons. It would not be possible to unearth the conspiracy, if at all there is a conspiracy, nor would it be possible to throw light on all the facets of the crime, unless the applicant is custodially interrogated. It is well settled, that the quality of elicitation of material while the accused is in custody is qualitative different from the elicitation while the accused is protected.

8. *Prima facie*, the crime is perpetrated in a brazen manner.

9. In my considered view, the articulation of the Hon'ble Apex Court in *Siddharam Satlingappa Mehre v. State of Maharashtra and others* would be of no assistance to the applicant, considering that in the absence of custodial interrogation the investigation may be derailed.

10. At the insistence of the learned counsel Mr. Mandlekar, the submission which is made while the order was being dictated, and which is to the effect that the admission that the accused stole the cheque from the table was under duress, is duly noted. *Prima facie*, it is difficult to accept or give any grievance to such submission. The admission was given, not to police officers nor was the admission given after the registration of the offence, rather, the admission was given in the preliminary inquiry conducted by the authorized officer.

11. Needless to record, that every observation herein is made only for the limited purpose of deciding entitlement to pre-arrest protection. The application for regular bail, if such an application is moved, shall be considered on its own merit.

12. The application is dismissed.

JUDGE

NSN