

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

CRIMINAL BAIL APPLICATION (ABA) 271 OF 2020

(Rameshwar s/o. Nenraj Zade..vs.. State, thr PSO, PS Malkapur (City), Dist. Buldhana)

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

Court's or Judge's orders.

Ms. Shejal Lakhani, amicus curiae.
Mr. N.R. Rode, APP for non-applicant.

CORAM: ROHIT B. DEO, J.

RESERVED ON : 16.12.2020

PRONOUNCED ON : 04.01.2021

The applicant Rameshwar Nenraj Zade preferred Writ Petition 7951/2018 assailing the permission granted by the Education Officer to the Management to suspend him, the order of suspension and the eventual termination.

2. The Division Bench (Coram : Rohit B. Deo & Smt. Pushpa Ganediwala, JJ.) allowed the Petition partially by judgment dated 22.11.2019. In view of the alternate remedy of Appeal under section 9 of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977, the Division Bench declined to entertain the grievance qua termination. However, since the enquiry was not completed within the stipulated

period of 120 days, and no permission was granted by the competent authority for extending the said period, the Division Bench held Rameshwar Zade to payment of salary for certain period.

3. The Division Bench was constrained to note that the petitioner heavily relied on a communication dated 25.9.2009 purportedly issued by the Secretary of the Society Mr. Subhash Patil, which communication Mr. Subhash Patil and the Management dismissed as forged and fabricated. The Division Bench dealt with the controversy thus:

“7. Before parting with the order, we are impelled to deal with a disturbing feature of the matter. During the course of hearing, the petitioner filed an affidavit dated 30-9-2019 in which he referred to a communication dated 25-9-2019 purportedly issued by Shri Subhash Damodhar Patil as Secretary of respondent 4-Society. The petitioner sought disposal of the petition in view of the contents of the said communication, which the petitioner enclosed alongwith the affidavit. Perusal of the said communication would show that Shri Subhash Damodhar Patil purports to state that the action of suspension is being revoked unconditionally and that the petitioner shall be paid not only the subsistence allowance, the entire salary as

well. The said communication further purports to record that the statement recorded during the enquiry shall not be used by the management in any proceeding in future.

8. A counter affidavit is filed on behalf of respondents 4 and 5 which is affirmed by Shri Subhash Damodhar Patil. Serious allegations are leveled against the petitioner. The counter affidavit avers that the communication dated 25-9-2019 is a forged and fabricated document. Several circumstances are referred to in the counter affidavit to substantiate the allegation that the communication dated 25-9-2019 is forged and fabricated.

9. We are conscious that it may not be possible for us to make any definite observation on the correctness or otherwise of the contents of the affidavit filed on behalf of the petitioner, or then of the counter affidavit filed on behalf of respondents 4 and 5. However, we have no hesitation in recording that the allegations are serious and if the allegations are even partially correct, the intent was to pollute the purity of the stream of justice.

10. We, therefore, direct the Malkapur Police Station to treat the counter affidavit of respondents 4 and 5 dated 10-10-2019 as a first information report and to investigate the offence, if any, by exhibiting the urgency which the issue deserves.

11. The Registrar (Judicial) is requested to bring this order to the notice of the Superintendent of Police, Buldhana”.

4. The First Information Report (“FIR”) was registered on 3.1.2020 in respect of offence punishable under sections 420, 468 and 471 of Indian Penal Code (“IPC”) on the basis of the communication of the judgment of the Division Bench by the Registrar (Judicial) Mr.S.K. Kulkarni and the counter affidavit of the respondents 4 and 5 in Writ Petition 7951/2018, consonance with the directions in paragraph 10 of the judgment.

5. I have heard Ms. Shejal Lakhani, the learned amicus curiae, in support of the application seeking pre-arrest protection, Mr. N.R. Rode, the learned APP and Mr. Pravin Patil, the learned counsel for the Management, who was permitted to assist the prosecution. Ms. Shejal Lakhani was appointed as the amicus curiae, since the learned counsel for the applicant did not appear on 2.12.2020 and on the next date of hearing, on 9.12.2020.

6. The learned amicus curiae would argue that the registration of the FIR leaves a lot to be desired. She would argue that the police made no effort to conduct an

enquiry into the veracity of the contents of the counter affidavit. The learned amicus curiae submits that the least which could have been done was to await the report of the handwriting expert to prima facie weigh the merits of the rival contentions qua the disputed documents. The learned amicus curiae would then argue that custodial interrogation is not necessary. She would invite my attention to certain decisions to buttress the submission that since the allegations are entirely based on documentary material, notwithstanding that cheating and forgery is alleged, the applicant is entitled to pre-arrest protection.

7. Before I consider the submissions of the learned amicus curiae, it would only be appropriate to note the decisions on which reliance is placed.

The first decision pressed in service is *Pravin Sakharam Bagade vs. State of Maharashtra (2017 SCC Online 3335) ("Pravin Bagade")*. The learned Judge, while considering the entitlement to pre-arrest protection in connection with crime registered under sections 406, 420

and 468 read with section 120-B of IPC observes that in the case of *Ravindra Saxena vs. State of Rajasthan [(2010) 1 SCC 684]*, (“*Ravindra Saxena*”) the Apex Court has expressed a view that when the allegations are of cheating and forgery, the merits can be assessed at the time of trial. The learned Judge granted pre-arrest protection holding that custodial interrogation is not necessary.

The decision in *Ravindra Saxena* may now be considered, since the learned amicus curiae has heavily relied on certain observations therein. *Ravindra Saxena* was arraigned as an accused in crime registered under sections 420, 467, 468 and 120-B of IPC. The substratum of the complaint was that Ravindra Saxena and his father agreed to sell two apartments to the complainant, received consideration and subsequently sold the apartments to somebody else. In paragraph 7, the Apex Court observes that the approach adopted by the High Court was erroneous since the application for pre-arrest protection was rejected without considering the case of *Ravindra Saxena*, solely on the ground that the challan (final report) is presented. In

paragraph 12, the Apex Court reiterates that the High Court erred in not considering the application for anticipatory bail in accordance with law. The Apex Court observes that the submission of the learned counsel for *Ravindra Sexena* that the dispute is purely of a civil nature cannot be brushed aside. Adverting to the observations, which are referred to by the learned Judge, who decided ***Pravin Bagade***, it would be apposite to reproduce paragraph 9 which reads thus:

“9. In our opinion, the High Court ought not to have left the matter to the Magistrate only on the ground that the challan has now been presented. There is also no reason to deny anticipatory bail merely because the allegation in this case pertains to cheating or forgery of a valuable security. The merits of these issues shall have to be assessed at the time of the trial of the accused persons and denial of anticipatory bail only on the ground that the challan has been presented would not satisfy the requirements of [Sections 437 and 438 Cr.P.C.](#)”

8. In my considered view, the observations cannot, by any stretch of imagination, be considered as a mandate that a person accused of cheating and forgery is entitled to pre-arrest protection on the premise that the merits of the issue is a matter of trial. The Apex Court has observed that the High Court ought not to have left the matter to the

Magistrate only on the ground that the challan is now presented and that there is no reason to deny anticipatory bail merely because the allegation pertains to cheating or forgery. (*emphasis supplied*). It is in this context that the further observation that the merits of these issues shall have to be assessed at the time of the trial and denial of anticipatory bail only on the ground (*emphasis supplied*) that the challan has been presented would not satisfy the requirements of sections 437 and 438 of Criminal Procedure Code, shall have to be understood.

9. The next decision pressed in service is ***Haji Muhammad Yasin s/o. Haji Muhammad Osman & Ors vs. State of Maharashtra in Anticipatory Bail Application 968 of 2018.*** The learned Judge noted from perusal of the investigation papers, that there were claims and counter claims in respect of three properties. The learned Judge ventured to peruse the documents and then observed that prima facie, he did not come across any false or fabricated document. In the facts of the case, the learned Judge held that custodial interrogation is not necessary. That the

applicants were senior citizens, was also noted. The decision clearly turns on facts.

10. The learned amicus curiae then invited my attention to the decision of the Apex Court in ***Maruti Nivrutti Navale vs. State of Maharashtra & anr [(2012)9 SCC 235***, and very fairly invited my attention to paragraph 16 thereof, which reads thus:

“16. As observed above, all the three counsel appearing for the parties took us through MoUs, lease deed and other correspondence /communications with the Educational Authorities as well as the report of the Deputy Collector, Pune, to Senior Police Inspector, Bundgarden Police Station, Pune. It is also relevant to point out that all these materials were scrutinized/analyzed by the Additional Sessions Judge, Pune and the High Court while considering the application for anticipatory bail. It is true that the parties have also approached the Civil Court for various reliefs. At the same time, as pointed out by the counsel for the State and the second respondent- Complainant, considering the seriousness relating to corrections/ additions/ alterations made in various documents, information furnished to the Educational Authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, custodial interrogation is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the

appellant and the allegation against him that he has made false representation before the Public Authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, custodial interrogation is necessary. For this reason, the Additional Sessions Judge and the High Court rejected the claim for anticipatory bail”.

Reverting to the first submission of the learned amicus curiae that the registration of the FIR is flawed, since the police did not conduct an enquiry to prima facie assess the veracity of the contents of the counter affidavit, the submission merits rejection. The contents of the counter affidavit clearly disclose the commission of cognizable offence. The police committed no error, and indeed acted in accordance with the statutory scheme, in registering the FIR. At the stage of registration of FIR, the limited exercise which could have been done was to ascertain from the contents of the counter affidavit, the disclosure of cognizable offence and a deeper or more probing enquiry would be in the domain of investigation.

11. I am also not inclined to agree with the learned amicus curiae when she submits that custodial interrogation

is not necessary. I have carefully scrutinized the investigation papers and the material available in the case diary. It may not be appropriate to minutely examine the material in the case diary while considering the entitlement to pre-arrest protection. However, since reasons, howsoever brief, as would indicate the thought process, must be given, suffice it to observe that there is more than ample material in the case diary not only to prima facie connect the applicant with the crime, to further hold that in the absence of custodial interrogation, the investigation may be derailed. In the house search, several incriminating documents are seized. Perusal of the seizure panchanama reveals that registers, school leaving certificates, letter heads, rubber stamps and transfer certificate book, were recovered and the said documents purport to bear the names of educational institutions, with which the applicant has no concern, and the purported signatures of the office bearers and the headmaster of such institutions. It has transpired during the course of investigation, that the office bearers and the headmaster of the institutions whose name/s and signatures appear in the documents, and most

of which documents are blank, have given their statements categorically denying the authenticity of the documents including the purported signatures appearing thereon. From the material in the case diary, I am more than satisfied, that the investigation shall suffer an incalculable prejudice if the Investigating Agency is deprived of the opportunity to custodially interrogate the applicant. It is well known that the quality of the material elicited in the custodial interrogation and the material which is elicited while an accused is interrogated in a psychologically secure environment under the umbrella of pre-arrest protection, differs dramatically.

12. The allegations are serious. The punishment, in case of conviction, is severe. The alleged forgery, according to the prosecution, is not restricted to the disputed documents referred to in the counter affidavit and the house search has revealed several suspicious documents which according to the purported signatories, are forged. The learned APP would submit that various facets of the crime are to be unraveled. The possibility that documents

which are similar to the documents found in the house search are already used or rather misused, is a real possibility. The learned APP further points out that a separate Crime 620/2020 is registered subsequent to the present crime, by the Buldana Police, acting on the complaint of one Mr. Mahendra Dhanorkar, which also involves similar allegations.

13. Considering the nature of the accusations and the need for custodial interrogation, the application is dismissed.

14. The valuable assistance rendered by the learned amicus curiae Ms. Shejal Lakhani, is appreciated.

Judge