

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.171 OF 2022

NANABHAU SUKA AKHADE
VERSUS
THE STATE OF MAHARASHTRA

...
Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. R. Sapkal, Advocate for
applicant.
Mr. A. M. Phule, APP for the respondent – State.
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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 10.03.2022

Pronounced on : 08.04.2022

ORDER :-

1. The applicant is apprehending his arrest in connection with Crime No.34 of 2022 registered with Dhule City Police Station, Dist. Dhule for the offence punishable under Sections 7 and 7-A of the Prevention of Corruption Act, 1988.

2. Heard learned Senior Counsel Mr. V. D. Sapkal for the applicant and learned APP Mr. A. M. Phule for the respondent – State. In order to cut short it can be said that both of them have made submissions in support of their respective contentions.

3. The present applicant is a police person, who was entrusted with investigation of Crime No.435 of 2019 under Section 379 of Indian

Penal Code lodged against the complainant - Yogesh @ Sunny Balasaheb Gurav. The present FIR has been lodged by Police Inspector, Prashant Sapkale of Anti Corruption Bureau, Nashik with whom said Yogesh Gurav had lodged the complaint. Yogesh Gurav was given anticipatory bail by learned Additional Sessions Judge, Dhule in the said offence under Section 379 of Indian Penal Code. It appears that he had thereafter filed application for return of the car. It was stated that Jaguar Land Rover car bearing registration No.MH-15-GT-2009 was stolen and one Sanjay Shantilal Jain had lodged the said report, but this complainant Yogesh Gurav had filed application under Section 457 of the Code of Criminal Procedure for return of the car to him. The hearing of that application was scheduled on 08.12.2021 and on that day, say of the APP as well as Investigating Officer was called. It is the say of the complainant that the applicant had contacted him and told that if he want favourable report, then he should pay amount of Rs.1,50,000/- to him. It is stated that Yogesh Gurav had no intention to pay that amount and, therefore, he lodged the said complaint. Pre-trap panchanama is stated to have been executed and said complainant, panch No.1 and present applicant sat in a cafe and there was demand of Rs.3,00,000/- by the present applicant. It was thereafter settled at Rs.2,80,000/-. It was settled that immediately some amount should be paid and rest of

amount would be paid on 14.12.2021. Complainant then arranged for Rs.50,000/-, which were then tainted. Again the entire team went near cafe, but the applicant had not come to that place. Complainant Yogesh Gurav then contacted the applicant on phone and then it is stated that one Paresh Gurav should be handed over with the amount, who was in fact relative of the complainant. Yogesh Gurav was not ready for the same and, therefore, he had not given that amount to Paresh Gurav. The informant says that it appears that the applicant got suspicious about the things and had not accepted the amount, but then for the demand, he has filed the FIR.

4. At the outset, it is to be noted that the demand was not accepted by the present applicant. It was only the demand and, therefore, the physical custody of the applicant is not required. Interestingly, the informant has used the word 'Cafe' where it is stated that talks were settled and, therefore, question was asked to learned APP as to whether the cafe had CCTV and why it could not have been fetched by the Investigating Officer. It was then told that though word 'Cafe' has been used, it is in fact a small shop providing eatery and it is not a regular Cafe. There was no CCTV installed in the same. Here, in this case, the complainant himself was the accused in the FIR that was lodged by another person. Further, the documents have been produced by the

applicant showing that he had issued notices under Section 160 of the Code of Criminal Procedure to said Yogesh Gurav from time to time and he has expressed that he is not co-operating with the investigation. It was also stated that the condition was imposed while granting anticipatory bail to Yogesh Gurav that he should cooperate with the investigation, but he had not cooperated to the police station and, therefore, it was stated that if he doesn't cooperate, steps would be taken for cancellation of his bail. It further appears that on 18.01.2022, Sub Divisional Police Officer, Dhule Sub Division, Dhule had given letter to Chief Judicial Magistrate, Dhule that 'B' summary should be sanctioned as it was transpired that the FIR was wrongly filed or due to some misunderstanding, it was filed by Sanjay Shantilal Jain. Therefore, when the said complainant himself appears to be at fault, how he could have lodged any such complaint is a question. Another fact to be noted is that while the matter was before the learned Additional Sessions Judge for anticipatory bail by the present applicant bearing Criminal Bail Application No.57 of 2022 said Yogesh Balasaheb Gurav had given affidavit stating that he had filed application for return of property, however, adjournments were granted and, therefore, he was under some mistaken facts against the Investigating Officer. He lodged the report against the applicant in the said anger. Thus, it appears that said Sanjay

Shantilal Jain or Yogesh Gurav have settled their score against each other and now it is the matter left between the Government servants. There is absolutely no necessity for the custodial interrogation of the applicant. One more fact to be noted is that the applicant has accepted voluntary retirement, but for that he had applied even prior to handing over of the investigation to him by the police station. His resignation has been accepted on 31.12.2021. Definitely, the Superintendent of Police, Dhule, who has allowed the said application of voluntary retirement would have definitely considered, if at all there was some substance in the allegations. The said incident is stated to have taken place on 09.12.2021, but it appears that the informant has not informed the said fact i.e. is in respect of demand to the Superintendent of Police, Dhule. He lodged the FIR on 18.01.2022. The delay has not been then properly explained. The applicant, therefore, deserves to be granted the extraordinary and discretionary relief under Section 438 of the Code of Criminal Procedure. Hence, the following order :-

ORDER

- I) Application is hereby allowed.
- II) In the event of arrest of the applicant – Nanabhau Suka Akhade in connection with Crime No.34 of 2022 registered with Dhule City Police Station, Dist. Dhule for the offences punishable

under Sections 7 and 7-A of the Prevention of Corruption Act, 1988, he be released on P. R. Bond of Rs.30,000/- with two sureties of Rs.15,000/- each.

III) The applicant shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 12.00 p.m till 31.05.2022.

IV) He shall not tamper with the evidence of the prosecution in any manner.

V) He shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm