

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

921 ANTICIPATORY BAIL APPLICATION NO.530 OF 2022

SABRI MOHAMMED IMRAN S/O MOHAMMED AQUEEL

VERSUS

THE STATE OF MAHARASHTRA

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Mr. M.A. Latif, Advocate for the applicant

Mr. A.M. Phule, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 05th MAY, 2022

PER COURT :

1 Heard learned Advocate for the applicant. He submits that the applicant is 25 years old student pursuing his studies, however, in the Covid period he got the job on contract basis as a Data Entry Operator at the Vaccination Centre. His job was limited to make entries in the computer and there was no question of any register to be kept by him in his handwriting. The custodial interrogation of the applicant is not necessary, taking into consideration the fact that all the documents would be available with the Vaccination Centre itself. He is relying upon the decision in **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1** and submits

that the grant of anticipatory bail will not be a hurdle for the Investigating Officer to investigate the matter. The applicant is ready to join the investigation. If he is arrested, then, his career would be ruined.

2 Per contra, the learned APP submits that the matter is coming for the first time and he is not armed with the papers. However, from the contents of the First Information Report it has been seen that it has been lodged by Dr. Vaishali Kashinath Mudgadkar, Medical Officer at Meltron Covid Centre, Chikalthana M.I.D.C., Aurangabad as Centre Head. The said Centre had appointed Dr. Kenedi Zen Mathew and the applicant on contract basis. The duty of the present applicant was to make data entries regarding the patients at Covid Centre and Covid Vaccination Sessions. When the informant had inspected the register on 30.03.2022, she could see that there is difference in handwriting and, therefore, she made inquiry with the staff Nurse and it was told that the said handwriting is that of the present applicant as well as Dr. Kenedi. She made inquiry with Dr. Kenedi also and it was disclosed by Dr. Kenedi that it is in his handwriting and he has done it on the say of present applicant. Thereafter inquiry was made with the applicant also, who admitted that it is in his handwriting and in a way the present applicant has given extrajudicial confession stating that he had made wrong entries in respect of the mobile numbers and Aadhar card numbers, so also,

he has destroyed the vaccination. He also told that he has entered the names of those persons who had not actually taken the vaccination, but by making entry of their names and issuing them the certificates it has been shown that they had taken vaccination and it is then said that all these has been done by both of them for financial gain. It is also then stated by informant that both of them have issued about 70-80 Covid Vaccination Dose completion certificates. Under such circumstance, when there was duty on the part of the applicant to make correct and honest entries for his own purposes, he has carried out false entries. Therefore, this is not a fit case where the applicant should be granted interim protection or even the protection under Section 438 of the Code of Criminal Procedure.

3 Since the contents of the First Information Report have already been reproduced in the earlier paragraph they are not reproduced again. No doubt, the offences, for which the case is presently registered, are all prescribing imprisonment for seven years and in view of the decisions in **Arnesh Kumar vs. State of Bihar, 2014 (8) SCC 273**, **Joginder Kumar vs. State of U.P., (1994) 4 SCC 260** and even in **Sushila Aggarwal** (supra) one may come with a case that those procedures will have to be followed. However, we cannot undermine that even **Arnesh Kumar** (supra). In **Arnesh Kumar** (supra) Section 41 and 41-A of the Code of Criminal Procedure has been

discussed. The notice under Section 41-A of the Code of Criminal Procedure makes it mandatory for the police officer to issue notice where the arrest of a person is not required under the provisions of Sub Section (1) of Section 41 of the Code of Criminal Procedure, and at this stage we must consider Section 41(1)(b)(ii) of Code of Criminal Procedure, which provides for that the police officer if gets satisfied that such arrest is necessary -

- a) to prevent such person from committing any further offence; or
- b) for proper investigation of the offence; or
- c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
- d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or
- e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured;

then, the police officer after recording the reasons for the arrest can arrest a person. Definitely, in this case it appears from the say that was filed before the learned Additional Sessions Judge, where the present applicant had filed application under Section 438 of the Code of Criminal Procedure, it was projected that for proper investigation of the offence the

arrest of the applicant is necessary. Therefore, taking into consideration the facts of the case the benefit of ratio in **Arnesh Kumar** (supra) or **Sushila Aggarwal** (supra) cannot be given to the present applicant.

4 The facts of the case are also required to be considered from another angle also. The entire world went through a worst pandemic and still there is threat of the same. The persons from medical fraternity and also who have studied on pandemic had come with the solution of the vaccination and it will not be out of place to mention here that the vaccination has helped the spread of the disease. Various countries including India imposed various restrictions, either for going abroad or if a person is coming into India and main condition after the invention/discovery of the vaccination was that the persons should have taken two doses after prescribed interval. The mobility of the persons was made dependent on the vaccination. The Government of India has incurred huge expenditure by giving the vaccination free of costs to the major section of the citizens. It was with the sole intention to curb the spread of the disease. Even the portal was created and unless there would have been registration nobody was allowed to take vaccination. Under such circumstance, with some intention if manipulations are done, which are not in the interest of the mankind, then, such persons do not deserve protection. At this stage, we go by allegations and it can be seen

from even the contents of the bail petition as well as the First Information Report that there was no reason for the informant to implicate the present applicant. The allegations against the applicant are and they are on the basis of his own statement alleged to have been made before the informant that he has entered wrong mobile numbers and wrong Aadhar card numbers. For those persons, who had not even taken the vaccination yet, definitely it appears that they were in need of the Covid vaccination dose completion certificate. It is not only one or two but around 70 – 80 such certificates are stated to have been issued by the applicant and Dr. Kenedi. Therefore, taking into consideration the contents, the manner in which the offence is stated to have been made, its social background, this is not a fit case where any type of protection can be granted to the applicant. The application stands dismissed at the threshold.

(Smt. Vibha Kankanwadi, J.)