IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1431 OF 2021
WITH
CRIMINAL APPLICATION NO.3010 OF 2021

Shri Dipak S/o Tukaram Deore

...APPLICANT

VERSUS

1) The State of Maharashtra,

2) The Police Inspector,
Local Crime Investigation Branch,
Nandurbar, Tq-Shahada,
District-Nandurbar

...RESPONDENTS

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Mr.A.B. Girase Advocate with Mr. Y.B. Bolkar Advocate for Applicant.
Mr.N.T. Bhagat, A.P.P. for Respondent-State.
Mr.Amit S. Savale Advocate for Applicant in Criminal Application No.3010 of 2021 for assist to APP

...

WITH

ANTICIPATORY BAIL APPLICATION NO.1387 OF 2021
WITH
CRIMINAL APPLICATION NO.3009 OF 2021

Amol S/o Bansilal Sonwane

...APPLICANT

VERSUS

The State of Maharashtra

...RESPONDENT

...

Mr.Vikrant P. Raje Advocate for Applicant.
Mr.N.T. Bhagat, A.P.P. for Respondent-State.
Mr.Amit S. Savale Advocate for Applicant in Criminal Application No.3009 of 2021 for assist to APP

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CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 16th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 6th APRIL 2022

ORDER :

1. Criminal Application No.3010 of 2021 and Criminal Application No.3009 of 2021 moved for assist to APP, stand allowed and disposed of.

2. Both the applicants are apprehending their arrest in connection with Crime No.366 of 2021 registered with Mhasawad Police Station, Taluka-Shahada, District-Nandurbar for the offence punishable under Sections 419, 420, 465, 468, 504, 506 read with Section 34 of the Indian Penal Code.

3. Heard learned Advocate Mr. Girase with learned Advocate Mr. Bolkar for applicant in Anticipatory Bail Application (for short "ABA") No.1431 of 2021, learned Advocate Mr. Raje for applicant in ABA No.1387 of 2021 and learned APP Mr. Bhagat for the respondent - State, well assisted by learned Advocate Mr. Savale for the informant.

4. It has been vehemently submitted on behalf of the applicants that the applicants are the innocent and they have not committed any offence. It has been stated in the First Information Report (for short "FIR") that accused Bansilal Sakharam Sonwane and Amol Bansilal Sonwane misrepresented the informant that they are senior officers with the Ministry of Human Resources, Delhi and by hatching up a criminal conspiracy to cheat the informant, promised that they would bring sanction for the public Trust of the informant by name, Jai Devmogra Mata Bahuudeshiy Sanstha, Kudhawad, Taluka-Shahada, District-Nandurbar for opening a Model School. He was induced to part with amount of Rs.65,00,000/-. It is further alleged that the applicants in furtherance of their criminal conspiracy, issued forged letter dated 8th October 2014 indicating therein that the Government of India, Ministry of Human Resource Development, Department of School Education and

Literacy, Shastri Bhavan, New Delhi has sanctioned the informant's said institution seven blocks for Rashtriya Adarsh Vidyalaya through Public Private Partnership. It transpired to be of false and informant thought that he has been cheated, he lodged the report.

5. It has been further submitted on behalf of the applicants that a vague and after thought complaint has been lodged. It has been stated that the first representation is alleged to have been made in the month of June-July 2013 and certain amounts were parted, however, the FIR has been lodged after about 7 years and 9 months i.e. on 9th September 2021 which indicates that there is inordinate delay. There are no averments in the FIR that any amount was directly handed over to the applicants. It is also not alleged that in what manner the applicants were involved and how they could have forged the documents. Since the applicants are not the authors of the questioned documents, their custodial interrogation is not necessary. The applicants are ready to abide by the terms of the bail.

6. Per contra, the learned APP, well assisted by learned Advocate Mr. A.S. Savale for the informant, strongly opposed the Applications and submitted that every representation has been

made by the accused persons to the informant – Ashok Hiralal Patil that they would do all the activities which were required for bringing the sanction to the school. Applicant in ABA No.1431 of 2021 was introduced by accused – Bansilal Sakharam Sonwane and it was stated that the introduction was in such a manner that he is from Delhi and he is employed in Ministry of Human Resource Development in New Delhi. After the informant had met the present applicant – Dipak Tukaram Deore, he had in fact promised that he would give sanction to the model school. Time and again the amounts have been given and ultimately in 2015 it was revealed from the Ministry itself that there is no such person working with the said Ministry. Even the cheques those were given by the accused persons as security, were bounced and thereby the cheating has been revealed. Custodial interrogation is therefore, necessary. It is stated that Amol Bansilal Sonwane i.e. applicant in ABA No.1387 of 2021 had given ten cheques, by way of security, amounting to Rs.53,00,000/-, out of the amount of Rs.65,00,000/- taken from the informant. Out of those ten cheques, four cheques worth Rs.20,00,000/- have been bounced. Then, for this his custodial interrogation is necessary.

7. At the outset, it is to be noted that the informant states that he is the President of Jai Devmogra Mata Bahuudeshiy

Sanstha, Kudhawad. Through that trust, they wanted to start a school. He had then contacted his friend one Vinayak Sarode from Kopargaon, District-Ahmednagar, who asked him to meet some other persons. In June – July 2013, he had met one Ganesh Bornar and Deelip Mahajan. At that place, he and his son Rahul met Bansilal Sakharam Sonwane. Accused – Bansilal Sakharam Sonwane then informed that officer by name Dipak Tukaram Deore i.e. applicant in ABA No.1431 of 2021 is employed in Human Resource Development Ministry in New Delhi and he would do the work and give sanction for the school for their society / trust in one year. After some days, Bansilal Sonwane had called them to Dhule at his house. At that time one another person was there, who was introduced by Bansilal Sonwane as Dipak Tukaram Deore. Said Dipak Tukaram Deore promised that he would give sanction to the school within one year and for that purpose, he asked amount of Rs.65,00,000/-. Informant states that he had collected amount of Rs.40,00,000/- from his friends and relatives and amount of Rs.25,00,000/- was raised by mortgaging the gold ornaments of his wife as well as mother. Informant then states that in all amount of Rs.65,00,000/- was given to accused Dipak Deore, Bansilal Sonwane and Amol Sonwane.

8. It is to be noted that the informant has given some details about the cheques issued by accused – Bansilal Sakharam Sonwane and Amol Bansilal Sonwane, and it is stated to be the cheques given as security and it is then stated that those cheques were issued on J.D.C.C. Bank Jalgaon, Vijaya Bank, Dhule, State Bank of India, Dhule. The details have been given of 14 cheques and it is stated that out of those cheques, 4 cheques which were issued by applicant – Amol Sonwane were bounced. He then states that inquiry was made from 2013 to 2015 as to what has happened to the sanction of the school but accused gave evasive answers. It is then stated that one letter dated 8th October 2014 was shown to him stating that soon they would get sanction to the school. But, again after 2015 when they made inquiry, evasive answers were given by the accused persons. It is then stated that accused told that they would repay the amount of Rs.65,00,000/-. It is also then stated that applicant – Dipak Deore and accused – Bansilal Sonwane gave indemnity or undertaking on stamp papers of Rs.100/- as well as Rs.500/-, promising that they would would repay the amount of Rs.65,00,000/-, however it was also not done. Thereafter informant made inquiry and came to know that no such person

by name Dipak Deore is serving in Ministry. It is then stated that informant found that the accused persons have cheated them.

9. From the entire contents of the FIR, it appears that the informant himself was not sure about the nature of the transaction. He had not made any inquiry, before giving such huge amount to those accused persons, as to whether such huge amount was required and whether such persons serve with the Ministry or not. Only blind faith in someone cannot be the basis to part with such a huge amount. Further, it is to be noted that the informant has not stated that he was knowing Bansilal Sonawane from any earlier date. The first amount appears to have been parted with in 2013 and even first cheque that was given by accused – Bansilal Sonwane to the informant appears to be of Rs.2,00,000/- on 8th October 2013. Why that cheque was not deposited for encashment in the Bank, is a question. Those cheques which were deposited, were given by applicant – Amol Sonwane drawn on Vijaya Bank, Dhule and those were bearing dates as, 23rd December 2016, 8th January 2017, 12th March 2019 and 12th March 2019 for the amount of Rs.6,00,000/-, Rs.5,00,000/-, Rs.4,00,000/- and Rs.5,00,000/- respectively. None of the cheque appears to have been given by applicant – Dipak Deore. If that amount was given for getting

sanction to the school, then where was the question of giving security by somebody.

10. Another fact to be noted is that why so much of huge amount would have been given by the informant in cash if it is for getting permission from the Government to start a school. The informant is not saying that the said amount was given as a bribe or for getting the permission it was by way of illegal act. Therefore, how it will amount to offence under Section 419 and 420 of the Indian Penal Code, is a question. Answer would be certainly, no. No doubt there appears to be some document, which is shown to be issued by the Government of India on 8th October 2014 in the name of the institution of the informant. It only says that institution has been pre-qualified. It is stated to be under signature of one Deputy Secretary, namely, Nita Gupta. But how much time the informant can wait after 8th October 2014, would be a question. The FIR that has been lodged on 9th September 2021 is certainly after a huge delay.

11. Even if we consider that there was some agreement or writing that was got executed by applicant – Dipak Deore stating that he would pay amount of Rs.40,00,000/- and that agreement was entered into on 5th June 2018, then it may lead

to filing of civil suit for recovery of amount, but certainly no criminal case will lie. Another agreement is between informant and accused – Bansilal Sonwane. Accused – Bansilal Sonwane is not before this Court. But, still one more agreement could be found in the police papers which alleged to have been executed on 12th April 2019 between applicant – Dipak Deore and the informant, which states that the applicant had taken amount of Rs.40,00,000/- for some reason from the informant and then it also states that he had given registered document in favour of the informant in respect of six acres of land and that registered document would be returned after he pays the amount of Rs.40,00,000/-. All these documents are indicative of civil transaction which is now tried to be given criminal angle. Under such circumstance, the custodial interrogation of the applicants is not necessary. They deserve to be released on bail. This Court by order dated 17th December 2021 had already granted interim protection to both the applicants which deserves to be confirmed. Accordingly, following order is passed:-

O R D E R

i) Both the Applications stand allowed.

ii) The interim protection granted to the applicants by this Court by order dated 17th December 2021 stands confirmed. It is thus clarified that in the event of arrest of applicant - Dipak S/o Tukaram Deore in Anticipatory Bail Application No.1431 of 2021 and applicant – Amol Bansilal Sonwane in Anticipatory Bail Application No.1387 of 2021, in connection with Crime No.366 of 2021 registered with Mhasawad Police Station, Taluka-Shahada, District-Nandurbar for the offence punishable under Sections 419, 420, 465, 468, 504, 506 read with Section 34 of the Indian Penal Code, they be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) each with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) Applicants in both the Applications shall attend Mhasawad Police Station on every Monday, Wednesday and Saturday between 11.00 a.m. to 2.00 p.m. till filing of the charge-sheet and co-operate with the investigation.

iv) Applicants shall not tamper with the evidence of the prosecution in any manner.

v) Applicants shall not indulge in any criminal activity.

vi) Criminal Application No.3010 of 2021 and Criminal Application No.3009 of 2021 stand disposed of.

vii) It is made clear that the observations made in this order are restricted for the consideration of these Anticipatory Bail Applications only and the trial Court should not get influenced by the same at the time of concluding the trial.

[SMT. VIBHA KANKANWADI , J.]

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