

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1434 OF 2021

MAROTI S/O KHUSHALRAO NANDE

VERSUS

THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. N. S. Ghanekar
APP for Respondent-State : Mr. N. T. Bhagat
.....

CORAM : SMT.VIBHA KANKANWADI, J.

**Date of Reserving the Order :
04-01-2022**

**Date of Pronouncing the Order :
11-01-2022**

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.226 of 2021, registered with Goregaon Police Station, Taluka Senggaon District Hingoli, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988.
2. Heard learned Advocate Mr. N. S. Ghanekar for applicant and learned APP Mr. N. T. Bhagat for respondent-State.
3. The applicant is serving in police department. He was attached

to Goregaon Police Station as PSI. On or about 02-11-2021 one Nitin Sanjay Kavarkhe has lodged the First Information Report contending that applicant had demanded bribe of Rs.10,000/- for not taking any legal action and allow the informant and others to play cards in club at the time of Diwali festival for a period of one month. It was his contention that when the informant and panch No.1 met applicant on 02-11-2021, the said demand was made and amount of Rs.3,000/- was accepted by the present applicant and the remaining amount were asked to be given in the evening of the same day. Trap was arranged and accordingly the informant and the panch No.1 went to applicant at about 08.00 p.m. However, he gave indication that they should come later. There was an attempt to trace out the place where applicant can meet on 03-11-2021, however, he was not available and he could not be traced out till 11-11-2021. On 11-11-2021 it was learnt that the applicant has been transferred in Gadchiroli District and, therefore, the first informant lodged report on 11-11-2021 with Goregaon Police Station.

4. The learned Advocate for the applicant submits that the physical custody of the applicant is not required for the purpose of investigation. He himself being a police officer will be available for

any investigation and he promises that he would co-operate with the investigation, even for voice sample. As regards the alleged attempt to tender of amount of Rs.7,000/- is concerned, the offence cannot be said to have been made out and, therefore, prays for anticipatory bail.

5. Per contra, the learned APP strongly opposed the application and submitted that the applicant is a responsible police officer, yet he had demanded bribe i.e. illegal gratification. He has already accepted amount of Rs.3,000/- for which entire conversation has been recorded. No doubt as regards the rest of the amount of Rs.7,000/- is concerned, the trap could not be successful but for the demand and acceptance of Rs.3,000/-, there is evidence against the present applicant. Therefore, his physical custody is required.

6. The facts as narrated in the First Information Report would disclose that informant went to the applicant with a request that he and his friends/colleagues should be allowed to play cards in club at the time of Diwali festival. Playing cards amongst friends, even in a club, may not amount to offence. But when for this purpose the informant goes to the police and makes that request, there is a room to presume that that game which they were planning, was

"gaming" as would be defined under the Prevention of Gambling Act. It was intended to be played at the time of Diwali festival and, therefore, it can be inferred that the informant and his friends wanted to have common gaming house. That would have been an illegal act. The request appears to have been made by the informant that no raid should be conducted by the police, thereby no offence should be registered under the Prevention of Gambling Act against those persons who could be found gaming. No doubt as it appears from the First Information Report and the police papers that amount of Rs.10,000/- was demanded and out of that Rs.3,000/- was paid by the informant in presence of panch No.1 and its recording has been made. As regards amount of Rs.7,000/- is concerned, the trap was not successful. Taking into consideration this aspect the applicant being public servant himself, there is no question of he going absconding. His presence would be then necessary for taking voice sample and for that purpose condition can be imposed. Physical custody of the applicant is therefore not required for the purpose of investigation and the investigation can take place thereafter also. Hence, the application deserves to be allowed.

ORDER

- 1) Application is hereby allowed.
- 2) In the event of arrest of the applicant Maroti s/o Khushalrao Nande, in connection with Crime No.226 of 2021, registered with Goregaon Police Station, Taluka Sengaoon District Hingoli, for the offence punishable under Section 7 of the Prevention of Corruption Act, 1988, he be released on P.R. of Rs.25,000/- (twenty-five thousand) with one or two sureties of like amount.
- 3) The applicant shall not tamper with the evidence of the prosecution.
- 4) Applicant to co-operate with the investigation and remain present before Investigating Officer as and when directed, for which the Investigating Officer shall issue notice to him 48 hours in advance.
- 5) Applicant shall not refuse or put any kind of excuse when he receives the notice to attend the police station.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-