IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1452 OF 2021

MAHESH S/O DNYANESHWAR KHAIRNAR
VERSUS
THE STATE OF MAHARASHTRA
…..
Advocate for Applicant : Ms. Chaitali Kutti Choudhary
APP for Respondent-State : Mr. V. M. Kagne
…..

CORAM : SMT.VIBHA KANKANWADI, J.

Date of Reserving the Order : 18-01-2022

Date of Pronouncing the Order : 09-02-2022

ORDER :

1. The applicant is apprehending his arrest in connection with Crime No.416 of 2021, registered with Parola Police Station, District Jalgaon, for the offences punishable under Section 420 of Indian Penal Code and Section 43, 66, 66 (C) of the Information Technology Act.

2. Heard learned Advocate Ms. Chaitali Kutti Choudhary for applicant and learned APP Mr. V. M. Kagne for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been named by the informant Naimoddin Nasiroddin

Mujawar who is working as Revenue Assistant in Tahsil Office, Parola. It is in respect of the alleged misdeeds and misappropriation in respect of the work of Pantpradhan Kisan Sanman Nidhi Yojana which was for farmers. Even the work of correcting the name of Aadhar Card was entrusted to the revenue department and for that purpose login ID was provided to the Tahsil Office, Parola. It was then noticed on 04-08-2021 that 788 new beneficiaries have been registered themselves from the login ID of Tahsildar Parola. A report was submitted to Collector when physically in fact only 22 persons were said to have taken benefit of the scheme by illegal means. Notice was issued to the 18 persons which were found to be from village Chorwad Ta. Parola. Inquiry was made and it was revealed that one Rahul Jagannath Patil had taken Aadhar Cards and bank passbooks of those persons as well as charged Rs.600/- from each of them under the pretext that he would give amount under the scheme to them. Even notice was issued to said Rahul Patil and he submitted reply. According to him, he had handed over those Aadhar Cards and the bank passbooks, mobile numbers as well as amount collected from various persons to one Prashat Uttam Hatkar. Prashant Hatkar in his reply told that he had kept amount of Rs.100/- each with him and paid Rs.500/- each to present applicant.

Notice was issued to the present applicant, however, he remained absent, and therefore, suspicion has been raised against the present applicant. Applicant is innocent and he has not cheated anybody. Considering the procedure, the form is required to be submitted in a proper channel. Further, there was no question of getting the login ID and password of Tahsildar Office by the present applicant. He could not have made any changes in the DATA, and therefore, Information Technology Act cannot be made applicable to the present applicant. The physical custody of the applicant is not required for the purpose of investigation. He is ready to abide by the terms of the bail.

4. Learned APP strongly opposed the application and submitted that the entire fraud has been committed by those shop owners who are doing business on computers and who know as to how transactions can be made online. They had misrepresented the villagers by saying that they would give benefits under the said scheme which was in fact in the nature of a pension. List of 22 persons was found to be bogus. Now the name of the present applicant is revealed by accused Prashant Hatkar to whom the documents were supplied by Rahul Patil. Actual changes appears to

have been made by the present applicant, and therefore, how he had taken the path and revealed the login ID as well as password which was in fact exclusive created for Tahsildar Office, Parola. It is racket which is operating in a manner that they would show bogus names as beneficiaries in respect of various schemes introduced by Government for the weaker sections and poor people with intention to get those benefits had innocently shared their Aadhar Cards and bank details. Those persons found to be not eligible, yet because of the acts on the part of applicant, the public money has been thus taken away by those persons. Therefore, the applicant does not deserve any sympathy. The said amount which has been misappropriated, deserves to be recovered from the present applicant.

5. Naimoddin Mujawar - the informant, submits that he was assigned with the work under the scheme Pantpradhan Kisan Sanman Nidhi in December, 2019. The registration under that scheme, changes in Aadhar Card and even if there is wrong mentioning of the savings account then to correct it, was given to Tehsil Office, Parola for which a separate login ID and password was given. It was revealed that till 04-08-2021 from the login ID of

Tahsildar Parola, names of 788 beneficiaries have been registered. Thereafter, it was transpired from the list supplied by Tahsildar Parola, that names of 22 persons have been illegally included. From the said names, 18 persons were from the village Chorwad Tq. Parola, and therefore, the inquiry was undertaken. Statements of 10 persons were recorded who were shown to be the beneficiaries and from them it was revealed that they had given amount to one Rahul Patil along with the documents including Aadhar Cards, mobile phone numbers etc. Rahul Patil, thereafter, in the inquiry by the Tahsil Office, disclosed the name of Prashat Hatkar and Prashat Hatkar in the said inquiry disclosed the name of present applicant. The applicant, whose occupation is said to be agricultural as well as online work, definitely knows how the information is to be filled in the portal and how amount would be ultimately credited to the beneficiary. It was then revealed that 10 out of those 18 persons were not resident of the said village or taluka and three of them had no agricultural land within the jurisdiction of Parola Tahsil. In view of the statements those have been recorded by police, it can be seen that a unique login ID and password was provided to the Tahsildar Office. Now the question arises as to how the registration could have been done by a third person who is not having knowledge of the login ID as well as password. Definitely investigation in this respect will have to be conducted. Statements of the witnesses i.e. the beneficiaries recorded by the police officer would show that they had given the amount and the documents to Rahul Patil. Now in general parlance statement of the co-accused cannot be said to be admissible, but here in this case it is to be noted that initially inquiry was done by the revenue officer. An opportunity was given to the present applicant to remain present and put forth his say. The applicant has not utilized that opportunity. He did not remain present before the inquiry officer. The investigation is still incomplete. When the investigation is in respect of an offence under Information Technology Act, the investigating officer should be swift in seizure of the relevant devices. The unique ID of each of such electronic devices, registers, the activity done by a human being, definitely that clue will help the investigating officer to reach to the computer which would have been used for making entry of the DATA in respect of those 18 persons. Even the destroyed DATA can be recovered. It appears that there is no seizure effected in respect of present offence. Those 18 persons who had received the amount though they were not entitled, have stated in the statement under Section 161 of Cr.P.C. that they are ready to deposit back the amount of Rs.4000/- received by them. Whatever was received by them under the scheme was the government money. Further, even the DATA on Aadhar Card appears to have been shared by the innocent villagers when in fact RBI and other banks as well as the Government by all possible modes time and again caution general public that they should not share the details of Aadhar Card, bank account, mobile numbers etc. unless authentic person is asking for the same. Certain persons are found while taking disadvantage of the illiteracy of the public, so also the financial condition of the general public from rural area is so encashed by such persons. Therefore, taking into consideration the facts and circumstances of the case and the manner in which the offence is stated to have been committed, this is not a fit case where the discretion and extraordinary powers of this Court under Section 438 of Cr.P.C. should be exercised. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-

LATER ON :

6. After the pronouncement of the order, the learned Advocate appearing for the applicant submits that the interim protection was granted to the applicant and it may be continued for a period of four weeks.

7. The learned APP is opposing the same in view of the rejection of the application.

8. As aforesaid, the applicant was apprehending his arrest in connection with the offences punishable under Section 420 of Indian Penal Code and Section 43, 66, 66(C) of the Information Technology Act. This Court has come to the conclusion that the custodial interrogation of the applicant is necessary. However, now the applicant intends to approach the Hon'ble Supreme Court and in order to facilitate him, the interim protection, granted earlier, is extended by two weeks from today.

(SMT. VIBHA KANKANWADI)
JUDGE