

***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

ANTICIPATORY BAIL APPLICATION NO.3030 OF 2021

Atal Pritamdas Budwani

...Applicant

Vs

The State of Maharashtra

... Respondents

...

Mr. Rajeev Patil i/by Mr. Randhir A. Kale for the Applicant.
Mr. A.M.Khamkhedkar, APP for the State.

CORAM : SANDEEP K. SHINDE J.
DATE : JANUARY 11, 2022.

P.C. :

Heard Mr. Rajeev Patil, the learned Senior Counsel for the applicant and Mr. Khamkhedkar, the learned Additional Public Prosecutor for the State.

2 It is second Anticipatory Bail Application. The first application was dismissed as withdrawn on 2nd June, 2021. Whereafter, applicant moved the learned Sessions Court for pre-arrest bail, in connection with the Crime No.99 of 2021 registered at Pimpri Police Station, Pune for the offences punishable under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code, 1860.

That application was also rejected on 13th December, 2021.

3 Prosecution case in brief, is that the Pimpri-Chinchwad Municipal Corporation awarded civil contract to, M/s. Radhika Constructions, a proprietary firm of the applicant, being the lowest bidder. Contract awarded, was, worth Rs.11,40,41,311/-. In compliance of the tender conditions, applicant submitted bank guarantee in the sum of Rs.2,98,50,000/- issued by the Bank of Maharashtra in favour of the Pimpri-Chinchwad Municipal Corporation. Later, upon verification, the said bank guarantee, was found forged and fabricated. Bank of Maharashtra communicated this fact to the Corporation. After which on complaint, crime in question came to be registered against the applicant on 5th February, 2021.

4 Mr. Patil, the learned Senior Counsel for the applicant, would submit that due to ill health, applicant had sub-let/assigned the work-contract to one, Rajendra Patil, who, according to the applicant was required to complete formalities, including that of furnishing Bank Guarantee before commencing work. Mr. Patil would,

therefore, submit that although M/s. Radhika Constructions was successful bidder, in fact, all compliances pursuant to tender notice were made by Mr. Rajendra Patil. Submission is the Bank Guarantee was not furnished by the applicant personally. In the next place, Mr. Patil submitted that, since investigation is largely founded on documents, custodial interrogation of the applicant is not warranted. Mr. Patil, submitted, applicant is senior citizen. He does not keep good health. He is permanent resident of Poona City and thus, his presence for further investigation and trial can be secured by imposing appropriate conditions. Mr. Patil further submitted, since investigation is over, custodial interrogation of the applicant is not required. Mr. Patil, learned Senior Counsel drew my attention to a letter dated 20th September, 2021 addressed by PSI Mr. Patange, from Pimpri Police Station to the applicant. The letter is at Page No.40. I have perused it. It suggests, that when applicant was granted interim pre-arrest protection on 9th February, 2021, applicant co-operated in the investigation. Letter further suggests that Investigating Officer was contemplating, to file charge-sheet since investigation was over. Hence, Investigating Officer called upon the applicant to remain

present, to enable him to file the charge-sheet.

5 It may be noted that neither the applicant nor the prosecution has placed on record order, granting interim pre-arrest protection to the applicant. Be that as it may, in the course of the arguments when confronted the prosecution and enquired, whether statement of Rajendra Patil, has been recorded, Mr. Khamkhedkar, the learned Prosecutor, on instructions from the officer, who was present in the Court, submitted that neither the statement of Rajendra Patil has been recorded nor relevant tender documents have been seized from the office of the Corporation. Statement is accepted.

6 In the back-drop of these facts, I have reason to believe, that the letter dated 20th September, 2021 addressed to the applicant by the Investigating Officer was with sole intention to assist the applicant to secure anticipatory bail. I am constrained to observe it, because Mr. Khamkhedkar on instructions submitted that the officer has neither recorded the statement of Mr. Rajendra Patil nor seized tender documents submitted by the applicant from the Corporation's

Office. It means, investigation, was incomplete when letter dated 20th September, 2021, was addressed by the officer to the applicant. As such, prosecution could not justify the said letter. Be that as it may, offence under Section 467 of the IPC is punishable with imprisonment for life or imprisonment of either description, which may extend to ten years, and shall also be liable to fine. Bank Guarantee is “Valuable Security” within the meaning of Section 30 of the Indian Penal Code, 1860. In this case, the bank guarantee in the sum of Rs.11,40,41,311/- issued by the Bank of Maharashtra in favour of the Corporation was found forged and fabricated. Therefore, in consideration of the gravity of the offence, which is punishable with imprisonment for life, in my view, it is not a fit case to grant pre-arrest protection to the applicant.

7 Application is rejected.

8 The offence alleged is serious. Bank Guarantee of the Nationalised Bank has been allegedly forged. Undeterred by these facts, Officer addressed a letter to the applicant, stating that

investigation was over and was contemplating to file, although the investigation was incomplete. It is a serious lapse on the part of the Investigating Officer. Prima-facie, it requires proper enquiry to be conducted by the higher officer. For that reason, Registrar General shall forward a copy of this order along with the copy of the bail application to the Commissioner of Police, Pimpri-Chinchwad Municipal Corporation, Pune.

9 In consideration of the facts of the case and the circumstances, the Commissioner of Police, Pimpri-Chinchwad Municipal Corporation, shall hold appropriate enquiry into the circumstances in which Mr. N.G.Patange, PSI addressed a letter to the applicant intimating that investigation was over and was contemplating to file charge-sheet. In that view of the matter, to ensure fair investigation, Commissioner may transfer the investigation to officer, not below the rank of Assistant Commissioner of police, as he may think fit and proper.

10 Application is rejected and disposed of accordingly.

11 It is made clear that observations made here-in-above be
construed as expression of opinion for the purpose of anticipatory
bail only and the same shall not in any way influence the trial in
other proceedings.

(SANDEEP K. SHINDE, J.)