

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO. 100 OF 2023

Surekha Vivek Kate

..APPLICANT

VERSUS

State of Maharashtra and Another

..RESPONDENTS

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Mr. N.S. Ghanekar, Advocate h/f Mr. S.D. Kotkar, Advocate for applicant
Mr. K.N. Lokhande, A.P.P. for respondents
Mr. S.G. Kawade, Advocate for assist to A.P.P.

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**CORAM : R.G. AVACHAT, J.
DATE : 31st MARCH, 2023**

PER COURT :

1. This is an application under Section 438 of Code of Criminal Procedure. The applicant claims to have an apprehension of being arrested in connection with Crime No. 266 of 2022 registered with Osmanpura Police Station, Dist. Aurangabad for the offences punishable under Sections 420, 417, 406 and 499 of the Indian Penal Code.

2. Heard. Perused First Information Report ("F.I.R.") and related police papers.

3. F.I.R. has been lodged by one Ashok Rasal, serving as Regional Manager with M.I.D.C., Aurangabad. It has been averred in the F.I.R. that

Industries Minister, State of Maharashtra has authorised him to lodge F.I.R. against the applicant herein. The averments in the F.I.R. is that the applicant herein obtained a sum of Rs.20 lakhs from one Deepali Kulkarni and her husband – Mr. Sandip Kulkarni ('Kulkarnis') as a consideration to secure a job to their nephew. The applicant is alleged to have executed an agreement to that effect on 16th September, 2022 on a stamp paper. The applicant represented Kulkarnis that her son – Kedar works for the Industries Minister. He (her son) would make use of his good offices to secure the job. The F.I.R., therefore, came to be lodged alleging the applicant to have duped Kulkarnis and even misused name of the Industries Minister and defamed him as well.

4. Learned counsel for the applicant would submit that a false F.I.R. has been lodged. Agreement dated 16th September, 2022 is a forged and fabricated document. No prudent person would execute the same. Kulkarnis are unauthorized money lenders. Whatever transactions between the applicant on one hand and Kulkarnis on the other are of money lending. The applicant has even made a complaint to the Registrar of Co-operative Societies and Money Lenders. The chats on WhatsApp have been placed on record to submit that until the day before the F.I.R. was lodged, there was exchange of messages between the applicant on one hand and Kulkarnis on the other. All those messages pertain to the money advanced as a hand loan at exorbitant rate of interest. Had the applicant really received amount of

Rs.20 lakhs for securing the job for the nephew of Kulkarnis, both of them would not have kept quite. At least in one of the messages they would have broached the said subject. The applicant is a woman. The case is based on documentary evidence. The applicant has been protected vide order dated 24th January, 2023. She had even appeared before the investigating officer. He, therefore, urged for grant of the application.

5. Learned A.P.P. for State and learned counsel for the intervener would, on the other hand, submit that as per the contents of agreement dated 16th September, 2022 itself, the applicant has agreed to secure a job within a period of three months and Kulkarnis, therefore, kept quite until that period. According to both learned counsel, it is a serious offence. Custodial interrogation of the applicant is required. Both of them, therefore, urged for rejection of the application.

6. Considered the submissions advanced. Perused the documents relied on. This Court has particularly perused agreement dated 16th September, 2022 to have executed by the applicant herein in favour of Kulkarnis. The document is titled as, “नोकरी लावून देणे करारनामा”. It has been averred therein that the applicant’s son – Kedar serves with Industries Minister, State of Maharashtra. He would secure a job for the nephew of Kulkarnis by using his good offices. Under the agreement, a sum of Rs.20

lakhs is shown to have been paid to the applicant. Balance amount of Rs.5 lakhs was to be paid after the nephew of Kulkarnis gets the government job. Examination of the said document indicates that signature of the applicant is not appearing on her photographs. Learned counsel for the applicant was right in submitting that no prudent person would enter into such transaction creating evidence in writing. This Court is at one with the submissions made by learned counsel.

7. Number of text messages exchanged between the applicant on one hand and Deepali Kulkarni and some others on the other and some of the bank statements indicate that the applicant was in dire need of finance. The transaction between the applicant on one hand and Kulkarnis on the other are of money lending and/or contribution towards *Bhishi*. This Court do not propose to refer those text messages in extenso. Suffice it to say that the said material undoubtedly suggests Kulkarnis have lend money to the applicant herein even at exorbitant rate of interest.

8. During hearing of the application, learned counsel for the informant placed on record photograph wherein the applicant and Deepali Kulkarni are seen. According to him, the photograph was snapped when agreement dated 16th September, 2022 was executed. In the said photographs, Deepali Kulkarni is seen giving the applicant something.

According to learned counsel it's a wad of currency notes. The cell phone used for snapping the said photograph was also shown to this Court to show that the said photograph was snapped at the relevant time on the given day. This Court, therefore, called upon the applicant to explain the same. Learned counsel for the applicant would submit that it was a morphed photograph. The applicant was ready to state the same on affidavit. This Court, therefore, called upon both, the applicant and Deepali Kulkarni to substantiate their rival claim about the said photograph on affidavit. This Court made them aware that the cell phone would be seized and sent to Regional Forensic Science Laboratory for analysis to unravel truth. Today, the applicant filed her affidavit as was directed by this Court. Alongwith said affidavit, she placed on record four photographs, based on which, the intervener is said to have morphed disputed photograph. Learned counsel for the intervener would submit that she (Deepali Kulkarni) is not ready to file the affidavit as has been suggested by this Court. Learned counsel then urged this Court to pass necessary orders.

9. The comparison of the photographs placed on record by the applicant and the photograph relied on by the intervener reinforce the claim of the applicant. Refusal of Deepali Kulkarni to file affidavit leads this Court to raise adverse inference against her. This Court has every reason to observe that agreement dated 16th September, 2022 might (must) have been forged

one. The case is based on documentary evidence. The intervener even failed to prima facie make out a case of having paid the applicant a sum of Rs.20 lakhs for securing a job to her nephew. On the contrary, the photograph relied on by Deepali Kulkarni appears to have been morphed. Same is nothing but making false evidence and relying on the same in the Court of law. Deepali Kulkarni, being a woman, this Court do not propose to take any action against her.

10. In the aforesaid factual backdrop, order dated 24th January, 2023, granting the applicant interim anticipatory bail, is hereby made absolute. The applicant shall appear before the investigating officer, as and when required for the investigating purpose. The applicant shall not tamper with the prosecution evidence.

(R.G. AVACHAT, J.)

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