IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

5 ANTICIPATORY BAIL APPLICATION NO.331 OF 2023

UJJAWALA W/O PARMESHWAR NAZARKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. V. D. Sapkal (Senior Counsel) i/b
Mr. S. R. Sapkal, Mr. A. S. Sakhare.
APP for Respondents/State: Mr. S. B. Narwade.
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CORAM : S. G. MEHARE, J.
DATE : 27.03.2023

PER COURT :-

1. Heard the learned senior counsel for the applicant and learned APP for the Respondents/State.

2. Issue notice to the respondents-State. Learned APP waives service of notice for the respondents-State.

3. The applicant seeks anticipatory bail in Crime No.49 of 2023, registered for the offences punishable under sections 120-B, 420, 465, 467, 468, 471 of the Indian Penal Code by Police Station City Chowk, District Aurangabad.

4. The learned senior counsel Mr. Sapkal for the applicant, has vehemently argued that the first informant has an individual grievance against her and her husband. The first

informant does illegal money lending. Against money lending, he used to get nominal sale documents of the immovable property from the borrowers as security. The applicant and her husband had also borrowed money from him. Against the loan, they had executed formal sale deeds, one was executed in favour of his workman, and another was in his name. The entire hand loan with interest was paid. The applicant and her husband asked him to execute the re-sale document. However, he was demanding Rs.50,00,000/- (Rupees Fifty Lacs). He was harassing and defaming them by lodging reports at various places against them. Hence, they lodged a report about his illegal money lending. Therefore, without personal harm, he used to lodge the reports against them. The present crime is an example of his illegal acts.

5. He also argued that, on a similar allegation, Crime No.370 of 2020 has been registered. The Police made a thorough investigation, and her husband was arrested. He had undergone eight days P.C.R. The applicant was not arrested for the said crime. However, recently she learned that she had been arraigned as an accused in the said crime. So, she approached the learned Sessions Court for anticipatory bail. The learned Sessions Judge granted her interim protection,

and that application was seized before the learned Sessions Judge for final adjudication. Referring to the investigation of Crime No.370 of 2020, he vehemently argued that similar documents for which the prosecution wants the custodial interrogation of the applicant in this crime were brought to light. The allegations were levelled that the said documents were forged. The Government stamps were also not paid, and on the basis of those forged documents, the applicant and her husband had secured the loan from Canara Bank. In fact, the alleged documents were not registered with the Office of Sub Registrar. The Investigating Officer was aware that the present applicant was a partner in one firm and that the document was recovered. However, the prosecution has no case that on the same document, the applicant with her husband has raised the loan again from the same bank. In a nutshell, he has the argument that the person cannot be interrogated and tried more than once for the same crime. His arguments were on the line that the same facts and allegations had been investigated, but to fill up the lacuna of the earlier investigation, the Police are trying to take the applicant in custody for the same thing. In the set of facts, she claims anticipatory bail.

6. Learned APP has vehemently opposed the application. He has referred to the letters issued by M.I.D.C., Aurangabad. That clarifies that the document allegedly used to secure the loan from Canara Bank was forged. The sanction was not issued by its office. He referred to the same document, which was placed before the bank for securing the loan. In the earlier crime, the Investigating Officer secured all those documents, which the learned APP referred to as forged. Taking to the Court through the papers of this and earlier crimes, he has tried his level best to convince the Court that the applicant was the beneficiary of the loan secured from Canara Bank. In addition to it, he has also argued that it was a *modus operandi* of the applicant to create such type of false documents and dupe the banks. This is not a single incident in that the applicant and her husband have raised the loan on forging the document. He has tried to argue that a detailed investigation was not done into the earlier crime. Therefore, it cannot be said that she is going to face the same incident. This being an independent crime, the police may ask for her custodial interrogation to collect the incriminating evidence, which was in her knowledge. He prayed to dismiss the anticipatory bail application.

7. It appears that the dispute between the applicant and the first informant began in 2019 when a report was lodged against him that he does illegal money lending business, did not cancel the nominal sale deed, and demanded Rs.50,00,000/- (Rupees Fifty Lacs only). Thereafter, it seems that advocate Mr. Sushil Murlidhar Biyani/first informant against whom the report was lodged by the applicant and her husband, started investigating the wrongs committed by the applicant, and her husband personally. On searching the material which may amount to a crime, he started lodging the reports. He did his job, intimating the Police and putting the law into motion. Police also took cognizance of his reports. However, during the course of the arguments, it has transpired that the documents for which the prosecution is seeking the custodial interrogation came to light in the earlier crime. The then Investigating Officer had collected the same documents and made the investigation. Though the offence was registered for preparing a false document affecting one Joseph Durai, the investigating Officer found that another alleged fraud played with Canara Bank. Our criminal jurisdiction did not stop the Investigating Officer from investigating the consequential crimes or other crimes that did not come to light against the same and similar accused. He need not investigate separately

for each related crime. The Investigating Officer in the earlier crime did the same thing and investigated the same document, which was relied upon by the prosecution in this crime for seeking the custodial interrogation. The reason best known to the then Investigating Officer why he did not arrest the present applicant in the earlier crime. However, the applicant has already approached the Sessions Court seeking anticipatory bail, and it is pending before the Sessions Court. In these circumstances, if this Court hold that her custodial interrogation is required for the same document would be interference in the discretion of the Sessions Court who is dealing with the anticipatory bail of the applicant for the same document. That apart, the Court finds *prima facie* that the prosecution has no substantial ground for custodial interrogation of the applicant, and the reasons quoted by the prosecution appear insufficient. The purpose of arrest in the crime is to investigate the crime to find the truth. However, the prosecution has to satisfy the Court that without custodial interrogation, the investigation could not be done properly. The prosecution failed to satisfy the Court that it had substantial grounds for the custodial interrogation of the applicant.

8. The discussion made above led this Court to conclude that this is a fit case to exercise discretion under Section 438 of the Cr.P.C., and the applicant deserves protection. Hence, the following order :

O R D E R

(i) The Anticipatory Bail Application is allowed.

(ii) In the event of arrest, applicant **UJJAWALA W/O. PARMESHWAR NAZARKAR**, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in Crime No.49 of 2023, registered with Police Station City Chowk, District Aurangabad, for the offences punishable under Sections 120-B, 420, 465, 467, 468, 471 of the IPC, on the conditions that;

(a) She shall attend the Police Station as and when called on written notice by the Investigating Officer in the present crime till filing the charge sheet.

(b) She shall not involve in a similar offence.

(iii) Needless to say that these are the *prima facie* observations restricted to the present anticipatory bail application only.

(S. G. MEHARE, J.)

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