

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 389 OF 2023

Harish @ Harishchandra s/o Baburao Rathod Applicant

Versus

The State of Maharashtra & another Respondents

Mr. G. S. Shete, Advocate for the applicant.
Mrs. G. L. Deshpande, APP for the State.

CORAM : R. M. JOSHI, J.
DATE : 16th OCTOBER, 2023.

ORDER

1. Applicant apprehends arrest in connection with Crime No. 174/2018 registered with Gangakhed Police Station, Dist. Parbhani for the offences punishable under Sections 420, 406, 465, 468, 471, 473 read with Section 34 of Indian Penal Code.

2. Informant Suresh Rathod reported to the police that he is unemployed and that Manoj Pawar, acquaintance from his village, informed him about his brother-in-law and friend by taking money give employment. On 22nd July, 2017, Manoj and other accused including present applicant came to the house of the informant. They

impressed upon the informant and his family members that they had done such work on numerous occasions and that there are vacancies available in health department. They called upon informant to shell out Rs. 8,50,000/- for that purpose. It was agreed by informant and Kiran to make such payment as they thought that they would get government job. On the same day, sum of Rs.4,00,000/- each was paid by them to the accused persons. Thereafter accused persons told them that the letter of appointment would reach them in four days and that they are required to make payment of the remaining amount. The said amount was paid at Mumbai. However, even thereafter no appointment order was issued in favour of the informant and Kiran and hence report came to be filed.

3. Learned counsel for the applicant submits that charge-sheet has been filed in the present case and as such custodial interrogation of the applicant is not necessary. It is submitted that there is delay in lodging First Information Report and that on 4th August, 2017, applicant was present at his work place in the Government hospital at Beed. It is his further submission that the co-accused has been granted anticipatory bail and hence even on parity, applicant is entitled for bail.

4. Learned APP opposed the application with the submission that offence committed is serious in nature and for recovery of the amount, custodial interrogation of the applicant is necessary. It is submitted by relying upon the attendance record of the Government hospital Beed and statement of Medical Superintendent that there is tampering in the said attendance register. It is thus her contention that the claim of alibi which otherwise cannot be taken into consideration at this stage is not substantiated.

5. Having regard to the nature of offence and the expectation of the informant to receive appointment letter, it cannot be said that there is delay in lodging of the report. In any case, delay is not intentional and hence applicant cannot get benefit thereof. In the report there are specific allegations against the present applicant that he along with co-accused on two occasions met informant and on both occasions money was handed over to them. Pertinently, applicant is working in Government hospital and the accused persons have informed to the informant about availability of vacancy in health department. There is nothing on record to indicate that the

informant had any enmity with the present applicant in order to falsely implicate him in this crime. The possibility of false implication therefore is prima facie ruled out. As far as defence of applicant about he being on duty on 4th August, 2017, is concerned, prima facie material placed on record creates serious doubt about his claim. The Medical Superintendent in his statement has categorically stated that there is tampering in the attendance register of the relevant date. Thus, the plea of alibi sought to be raised by the applicant is not substantiated at this stage. The nature of offence is serious and since recovery of money is yet to be done as claimed by learned APP, it is a fit case wherein custodial interrogation of the applicant is necessary. Merely because charge-sheet has been filed, applicant is not entitled for pre-arrest bail.

6. In view of above, application is rejected.

(R. M. JOSHI)
Judge

dyb