

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

**ANTICIPATORY BAIL APPLICATION NO.2987 OF 2021
WITH
INTERIM APPLICATION NO.1059 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.2987 OF 2021**

Sham @ Rohit Janardhan Kade ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Satyavrat Joshi i/b. Mr. Jaydeep D. Mane for the Applicant.

Mr. Manjunath Kakkamelli with Mr. Guru Birajdar for the Intervenor.

Mr. S.H. Yadav, APP for Respondent -State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 20th APRIL, 2023.

P. C. :-

1. This is an application under Section 438 of the Cr.PC. filed by the aforesaid Applicant apprehending his arrest in C.R. 786 of 2021 registered with Fauzdar Chavdi Police Station, District-Solapur city, for the offences punishable under Sections 7 and 12 of the Prevention of Corruption Act.

2. Heard Mr. Satyavrat Joshi, learned counsel for the Applicant, Mr. Manjunath, learned counsel for the Intervenor and Mr. S.H. Yadav, learned APP for the Respondent-State. I have perused the

records and considered the submissions advanced by the learned counsel for the respective parties.

3. Before adverting to the facts of the case, it would be advantageous to refer to the recent decision of the Apex Court in ***Central Bureau of Investigation V/s. Santosh Karnani, 2023 SCC Online SC 427***. The challenge in the said case was to the order granting pre-arrest bail in a corruption case. The Apex Court while setting aside the order of pre-arrest bail, considered the previous decisions in ***Gurbaksh Singh Sibia vs. State of Punjab, 1980 2 SCC 565*** and ***Sushila Aggarwal vs. State of (NCT of Delhi)*** and observed thus:-

“24. The time-tested principles are that no straitjacket formula can be applied for grant or refusal of anticipatory bail. The judicial discretion of the Court shall be guided by various relevant factors and largely it will depend upon the facts and circumstances of each case. The Court must draw a delicate balance between liberty of an individual as guaranteed under Article 21 of the Constitution and the need for a fair and free investigation, which must be taken to its logical

conclusion. Arrest has devastating and irreversible social stigma, humiliation, insult, mental pain and other fearful consequences. Regardless thereto, when the Court, on consideration of material information gathered by the Investigating Agency, is prima facie satisfied that there is something more than a mere needle of suspicion against the accused, it cannot jeopardise the investigation, more so when the allegations are grave in nature.

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31. *The nature and gravity of the alleged offence should have been kept in mind by the High Court. Corruption poses a serious threat to our society and must be dealt with iron hands. It not only leads to abysmal loss to the public exchequer but also tramples good governance. The common man stands deprived of the benefits percolating under social welfare schemes and is the worst hit. It is aptly said, "Corruption is a tree whose branches are of an immeasurable length; they*

spread everywhere; and the dew that drops from thence, hath infected some chairs and stools of authority.” Hence, the need to be extra conscious.”

4. In the instant case, the FIR prima facie reveals that the First Informant-Sharad Pawar had filed an application dated 20/04/2012 before Jawahar Gramvikas Mandal, Walunj, which is running two schools, for his appointment on compassionate ground. Since no decision was taken on his application, he filed a writ petition before this Court being Writ Petition No.5402 of 2018. The Division Bench of this Court had directed Jawahar Gramvikas Mandal, Walunj (hereinafter referred to as the ‘Mandal’) to file its reply in the said petition. The Applicant herein was the Secretary of the Mandal whereas co-accused Pujari was the Head Master of Walunj, Secondary High School, a school run by the Mandal. The First Informant has alleged that the Applicant and the co-accused contacted him and demanded Rs.14,00,000/- to file a favourable reply in the said Writ Petition. They also demanded one month’s salary for every year after his appointment. The First Informant has stated that since he was in extreme need of employment, he paid Rs.9,00,000/- to the Head Master-Pujari in presence of the Applicant. It is stated that thereafter

the Applicant filed his reply in the said petition. On the basis of the said reply, the Division Bench of this Court by order dated 06/09/2019 disposed of the petition with directions to Education Officer, Zilla Parishad, Solapur, take decision on the application for the appointment of the First Informant on compassionate ground.

5. Pursuant to the said order, the First Informant was appointed as a Junior Clerk in Walunj Secondary High School run by the Mandal. The First Informant has stated that the Applicant has retained his passbook and cheque book and told him that he would return the same only on payment of the balance amount, which was demanded. The First Informant has stated that co-accused-Poojari used to constantly demand Rs.5,00,000/-, which were to be paid to the Applicant herein. The First Informant claimed that since he was not legally liable to pay such amount, he lodged a complaint on 17/11/2021. On receipt of the said complaint, the presence of the pancha witnesses was secured and contents of the said complaint were read over to them. In the course of the verification, the First Informant was directed to make a phone call to the Head Master-Poojari. The conversation between the First Informant and the Head Master was recorded on a voice recorder.

6. The First Informant has stated that the Head Master had called him at his residence at 56, Lokmangal Vihar, Bale, Solapur. Accordingly as per the instructions of the police, the First Informant and the pancha witnesses went to the house of Poojari. The co-accused Poojari told him that the balance amount of Rs.5,00,000/- has to be paid to the Applicant herein. The First Informant told Poojari that he would sell his land within 15/20 days and would pay him Rs.1,00,000/-, which is likely to receive as earnest money. The First Informant has stated that the co-accused agreed to the said proposal and told him to pay a sum of Rs.1,00,000/- and further told him that he would give it to the Applicant after opening of the School. The First Informant also requested the co-accused to reduce the amount of Rs.5,00,000/-, upon which the co-accused Poojari told him to first pay the amount of Rs.1,00,000/- and that the matter could be discussed with the Applicant at a later stage. The First Informant thereafter returned to the Anti Corruption Bureau and informed the officer about the conversation. The conversation, which was recorded in the voice recorder was heard by the panchas and the transcript of the same was prepared. Memory card was also sealed in an envelope in presence of the panchas.

7. The First Informant has further stated that on 18/11/2021 in the course of the verification of the contents of the complaint, the First Informant, his mother and a pancha witness visited the house of the Applicant. The Applicant instructed the pancha witness to wait outside. When the First Informant requested the Applicant to reduce the amount of Rs.5,00,000/-, the Applicant got annoyed and told him that said amount could not be reduced and that he had made a mistake by appointing him and asked him whether he should return the money with interest. The First Informant informed the Applicant that he would sell his land and that the sale consideration would be available within 15 to 20 days and that he would pay the earnest amount of Rs.1,00,000/- to the co-accused Poojari. It is stated that the request of the mother of the First Informant to return the passbook and cheque book was also turned down by the Applicant.

8. The entire conversation was recorded in a Voice Recorder, which was later heard in the presence of the panchas and transcript of the same was prepared. The co-accused had told the Complainant to come with money near the petrol pump off Solapur S.T. stand. Thereafter a trap was laid and an amount of Rs.1,00,000/- in the

denomination of Rs.500 and Rs. 200 notes, which were smeared with anthracin powder was made available. Serial numbers of the said notes were noted down and after completing all the required formalities, the first informant and others went near the petrol pump opposite Solapur S.T. Stand. The co-accused came to the said spot and asked him for the money. The First Informant gave the envelope containing Rs.1,00,000/- to the co-accused Poojari and after the co-accused accepted the said amount, the First Informant made a pre-determined signal to the raiding team. The raiding team arrived at the spot and caught the co-accused Poojari. The tainted current notes were recovered from the co-accused.

9. The material on record prima facie reveals that the Applicant and the co-accused had demanded money to file a favourable reply before this Court in a petition concerning appointment on compassionate ground. This fact is confirmed by the panchas and the mother of the First Informant. The records also reveal that the co-accused had accepted cash of Rs.1,00,000/- from the First Informant and the same was to be paid to the Applicant. The records, thus prima facie indicate that the Applicant herein is involved in demanding and accepting illegal gratification for filing favourable reply in the writ

petition and thereby committed offences under Sections 7 and 12 of the Prevention of Corruption Act.

10. Considering the principles laid down by the Apex Court in the said decision as well as the gravity of the offence and consequences of the said crime, in my considered view this is not a case, which would justify exercise of discretion under Section 438 of the Cr.P.C. in favour of the Applicant.

11. Learned counsel for the Applicant seeks extension of interim relief. A perusal of the order dated 15/12/2021 reveals that the interim relief was not granted on merits of the matter. Under the circumstances, I am not inclined to extend the interim relief. Hence, the anticipatory bail application is dismissed.

12. Interim application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)