

AGK

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

ANTICIPATORY BAIL APPLICATION NO.1049 OF 2023

Balkrushna Alias Balkrishna
Shankar Gawade

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. D.V. Sawant i/by P.S. Chambers for the applicant.

Mr. Amit A. Palkar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 27, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.6 of 2023 registered with Radhanagari Police Station for offence punishable under Sections 406, 420 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1860.

2. The case of the prosecution in short is as under:

The informant and one Saurabh were preparing for Military services in the year 2017. Earlier, they joined one Sai Career Academy. There they came in contact with one Vikas Suresh Chandekar. Since the informant and his friend were unemployed, said Chandekar introduced the informant and his friend with the

applicant. IT is told that the applicant is running Arya Chanakya Career Academy. The applicant asked Rs.5 lakh each from the informant and his friend promising to provide job in the Army. Accordingly, the informant paid amount of Rs.75,000/- and Rs.1,40,000/-. The friend of the informant paid Rs.30,000/-. They were called at Delhi where they were asked to pay Rs.49,500/-. The said amount was paid by GooglePay. They were asked to pay Rs.20,000/- each. Despite payment, the accused/applicant did not provide job to the informant and his friend. He collected Rs.3,29,500/- from the informant and Rs.3,40,000/- from the friend of the informant. When they demanded refund of the amount, the applicant issued notice demanding amount of Rs.40,000/-. Hence, they filed report.

3. The learned Sessions Judge rejected the application filed by the applicant under Section 438 of the Criminal Procedure Code, 1973 by order dated 31 January 2023.

4. According to the applicant, he is running bona fide institution and the amount paid by the informant and his friend are towards fees of courses run by the applicant. According to him, major amount is by cash and small amount is paid electronically, therefore, payment by cash cannot be taken into consideration at this stage. According to the applicant, assuming the case of the prosecution to be correct, still the amount would not exceed Rs.4,47,000/-.

5. Per contra, learned APP placed on record appointment order given by the applicant to the informant. According to prosecution,

said appointment order is forged. The prosecution has placed on record transcript of WhatsApp messages of the applicant with the informant, which supports the case of the prosecution.

6. On perusal of the material on record, it appears that the applicant has issued forged appointment order. After going through the contents of the appointment order dated 5 August 2021, it is clear that the same is forged. The informant has received an email purportedly addressed by the Indian Army which records that medical test of the applicant has been successfully completed and further progress will be notified. On prima facie perusal of the transcript of WhatsApp messages of the applicant with the informant, it appears that the informant was earnestly requesting the applicant to refund the amount as the informant was already facing financial trouble. Therefore, at this stage, considering the appointment order dated 5 August 2021 purportedly issued by the Indian Army and email received by the informant purportedly issued by the Indian Army, custodial interrogation of the applicant is necessary to unearth larger employment scam. In the facts of the case, effective investigation is not possible without custodial interrogation as a person insulated by pre-arrest order will not provide same results which can be achieved after custodial interrogation.

7. The importance of custodial interrogation has been laid down in paragraph 6 by the Apex Court in the case of **State represented by CBI v. Anil Sharma** reported in (1997) 7 SCC 187 as under:

- “6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders.”
- 8.** On overall view of the matter, I am prima facie satisfied that custodial interrogation of the applicant in the facts of the present case is necessary.
- 9.** The anticipatory bail application stands rejected. No costs.

(AMIT BORKAR, J.)