

Ashwini V

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

ANTICIPATORY BAIL APPLICATION NO. 1698 OF 2023

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Sushil Shivaji Shewale ... Applicant

V/s.

The State of Maharashtra ... Respondent

WITH

INTERIM APPLICATION NO. 2158 OF 2023

IN

ANTICIPATORY BAIL APPLICATION NO. 1698 OF 2023

Prashant Pandurang Satav ... Applicant/
Intervenor

IN THE MATTER BETWEEN

Sushil Shivaji Shewale ... Applicant

V/s.

The State of Maharashtra ... Respondent

Mr. Abhijeet Desai with Vijay Singh, i/b Desai Legal, for
the Applicant in ABA/1698/2023.

Mr. Anil S. Shitole, for the Applicant/Intervenor in
IA/2158/2023.

Mr. Amit A. Palkar, APP, for the Respondent-State.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.293 of 2023
registered with Baramati Police Station, Pune (Village) for the

offence punishable under Section 420, 467, 471 read with 34 of the Indian Penal Code, 1860 ("IPC"), the applicant has filed present anticipatory bail application seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973 ("Cr.P.C.").

2. According to the prosecution, an informant, who is the Secretary of a Charitable Foundation which participates in cricket tournaments organized by the Maharashtra Cricket Association, alleges that a cricket team under the age of the informant participated in the cricket tournament scheduled to be held on 26th January 2023 and 27th January 2023. It is alleged that tournament was organized for players below the age of 18 years. However, Accused No.1, who was 25 years on the date of the tournament, was permitted to participate. The Applicant is a Secretary of said Association. According to the prosecution, when he objected to the ineligibility of Accused No.1, the Applicant refused to entertain his objection. He, therefore, complained that Applicant and other co-accused of alleging offence under Section 420, 467, 471 read with 34 of the IPC.

3. The Applicant applied for pre-arrest bail before the Sessions Court, which was rejected by Additional Sessions Judge, Baramati, vide order dated 12th June 2023. Aggrieved thereby, the Applicant has filed the present application.

4. According to the Applicant, as per the Pune District Cricket Association constitution, duties have been prescribed. It is not the Applicant's duty to verify the credentials of candidates

participating in the tournaments organized by the Association. Since he is 25 years old, he has been falsely implicated by a rival group in the Association. The rules/constitution of the Association provides for disciplinary action against responsible persons. However, the allegations against the Applicant do not constitute any offence. According to him, statements of co-accused under Section 161 of the Criminal Procedure Code (Cr.P.C.) are not admissible in evidence and, therefore, cannot be relied upon. Moreover, the statements of other members of the Association cannot be relied upon as they are rivals of the offence. He, therefore, submitted that custodial interrogation of the Applicant is unnecessary.

5. Learned APP invited my attention to the statement of a co-accused who allegedly participated in the tournament for himself to be a candidate below 18 years by forging documents such as an Aadhar card and Birth certificate. He submitted that the Vice President of the Association had stated that the Applicant accepted the responsibility to verify the credentials of the candidates who participated in the tournament. Accused No.1 was allowed to participate in the tournament upon his certification of fulfilling eligibility conditions. Therefore, the Applicant has played an active role in the offence committed by Accused No.1. He, therefore, submitted that custodial interrogation of the Applicant is necessary to unearth similar instances in the past and other possible cases that the concerned persons have not reported.

6. Having perused the material on record in the form of a statement of co-accused (Accused No.1), a statement of the vice

president and a member of the Association, it prima facie appears that the Applicant asked accused no. 1 to get a forged Aadhar card and Birth certificate, certifying him to be a candidate below 19 years. The material prima facie indicates that the Applicant told him to get an Aadhar card and Birth certificate despite being aware of the fact that accused no.1 was above 19 years. The Applicant told him that the Applicant is a person who would be scrutinizing the veracity of documents submitted by candidates. It is also prima facie that the Applicant certified credentials of Accused No.1 to be a candidate below 19 years, and relying on the Applicant's certification, Accused No.1 was allowed to participate in the tournament.

7. Insofar as the contention of admissibility of the statement of co-accused under Section 161 of Cr.P.C. is concerned, though such statement is inadmissible in the trial, for the purpose of investigation, it is always open for the Investigating Agency to rely upon such statement.

8. Insofar as the ingredients of an offence under Section 420 of the IPC are concerned, it prima facie appears that the Applicant cheated the Association and the participating teams by intentionally inducing the Association to permit Accused No.1 to participate in the tournament, which would not have done so but for deceit. By certifying credentials of accused no. 1, caused or likely to cause damage or harm to the Association in reputation. Prima facie, there is no doubt that the applicant's certification allowed Accused No.1 to participate in the tournament. The applicant intended to create an impression that Accused No.1 is

below 19 years and to permit Accused No.1 to participate in the tournament.

9. The contention of the Applicant that there is no wrongful loss caused to the Association or the participating team cannot be accepted as though such permission has no pecuniary value; it has immense value to the teams and candidates participating in the tournament. Without such certification by Applicant about the eligibility of Accused No.1, he could not have participated in the tournament. Therefore, in my opinion, the prima facie case is made out against the Applicant.

10. In so far as the contention regarding the necessity of custodial interrogation, 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 ensconced 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 insulated 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.”

11. In the facts of the case, custodial interrogation is necessary to unearth the possibility of more such instances occurring in the tournaments organised by the Association.

12. In so far as the necessity of custodial interrogation is concerned, in a recent judgment in the case of ***Sumitha Pradeep vs Arun Kumar C.K*** reported in 2022 SCC OnLine SC 1529, the Apex Court in paragraph 6 has emphasized the requirement of prima facie case to be a fact which needs to be considered while exercising power under Section 438 of Cr.P.C., and thereafter the Court needs to consider the necessity of custodial interrogation.

13. In view of other material on record and the facts and circumstances of the present case, the Applicant does not deserve relief under Section 438 of Cr.P.C.

14. The application is therefore rejected.

15. In view of the disposal of the Anticipatory Bail Application, nothing remains to be adjudicated in the Interim Application. Hence, the Interim Application No. 2158 of 2023 stands disposed of.

16. Considering the fact that during the pendency of the present application, the applicant was protected, the ad-interim relief granted earlier shall continue for two weeks from today.

(AMIT BORKAR, J.)