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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1883 OF 2023

Padmakar Bhaskarrao Ghanwat and anr	...Applicants
vs.	
State of Maharashtra	...Respondent

Mr. Sandeep Pasbola i/b. Mr. Rahul Dhaigude for the Applicant.
Dr. Abhinav Chandrachud a/w Mr. Datta Mane, Mr. Prasad Patil, Mr. Maruti Sarkar for the original complainant.
Mr. S. R. Agarkar, APP for the Respondent-State.
PSI Mr. M.R. Pharande, Satara Taluka Police Station present

CORAM : S. M. MODAK, J.

DATED : 10TH JULY 2023

P. C. :

1. Heard the learned advocate Pasbola for the applicant, the learned advocate Dr. Chandrachud for the first informant and learned APP Agarkar for the respondent-State.
2. At the relevant time i.e. in the year 2016, the present applicant Shri Ghanwat was working as a Police Inspector attached to local crime branch and the present applicant Shri Shinde was his writer. Both of them are seeking pre-arrest bail in connection with CR No.265 of 2023 registered with Satara City Police Station on 28 March 2023 for the offences punishable under Sections 120B, 193,

201, 342, 392, 384 r/w 34 of the Indian Penal Code, 1860 and Sections 7, 13 and 13(1)(d) of the Prevention of Corruption Act, 1988. The said FIR is registered as per the direction given by the Court of 2nd Judicial Magistrate, F.C., Satara on 21 March 2023. The said order is passed on an Application made by one Rajendra Madhukar Chorge. It is no doubt true that in the said Application, he has not quoted particular Sections of any Act. It is also no doubt true that in the order dated 21 March 2023, the learned Magistrate has not quoted particular of Sections the Act. Probably, the police must have mentioned those sections and the Act on the basis of the allegations in the complaint.

3. There is background to this incident, it is as follow;

There was an offence bearing CR No.321 of 2016 registered with Satara City Police Station on 21 May 2016 at the instance of one Sachin Shrikrishna Gargate. It is in respect of preparing forged documents for the purpose of misappropriating amount standing in the bank account of one Gurukul Education Society, Satara. This FIR was lodged against 21 persons and out of them the first informant in the present FIR is accused no.1 Shri Rajendra Chorge. Initially, the offence was investigated by Satara City Police Station and later on it

was transferred to local crime branch that is how the both applicants came into picture. Sum and substance of the present FIR is that the present two applicants were responsible for detaining the accused in that FIR and particularly females after the sunset. There is some grievance sending them to medical examination. Further grievance is that the applicant – Ghanvat through the applicant-Shirke demanded illegal gratification from the present first informant Rajendra Chorge for showing some favour in investigation of that offence.

4. The copy of the application made before the Court of JMFC is at page 36. Mr. Pasbola and Dr. Chandrachud has invited my attention to the relevant paragraphs in that application. The contention of Mr. Pasbola is that even if we consider those allegations they relate to part of official duty as such this complaint was filed beyond the initial period of six months and even after the expiry of extended period of two years. Whereas the contention of Dr. Chandrachud is that those grievances do not fall within the purview of official duty and as such the period of limitation as prescribed under Section 161 of the Maharashtra Police Act, 1959 is not applicable.

5. Learned advocate Mr. Pasbola made the following submissions;
- (a) This FIR is filed belately as much as after a period of almost seven years.
 - (b) The statement of the present first informant Shri Chorge was recorded by Satara City Police Station on 11 February 2018 which is at page 99 and he has not made any sort of complaint against the present applicants.
 - (c) The said statement was recorded in investigation of the offence bearing C.R.No.196 of 2017 (9.30.2017) registered with Satara City Police Station under Section 395, 452, 447, 143, 147, 148, 149 of Indian Penal Code, 1860 and 37(1) r/w 135 of the Bombay Police Act, 1951 which is at page 101. The contention is that the incident mentioned in the FIR took place when Sachin Gargate and other persons illegally entered into the premises of Gurukul School where the present first informant Mr. Chorge is working as Chairman of Gurukul Education Society.
 - (d) Mr. Pasbola invited my attention to the order passed by the division Bench of this Court (Coram:Prasanna B. Varale & S. M. Modak, JJ) dated 6 April 2022. According to him, the

division Bench has directed the respondents therein to consider the complaint/communication dated 20 May 2019 filed by the petitioner/present first informant and to pass appropriate orders. It is true that I was forming a part of that Bench, so at the beginning itself when it was made clear whether the parties want to argue this application before me, both of them have consented for hearing it. It is for the reason that the division Bench has not expressed any opinion but only directed the respondents to take appropriate decision.

- (e) After this order, the Superintendent of Police, Satara conducted an enquiry and he has imposed penalty of demoting the applicant Mr. Shirke for two years. It was communicated to the Registrar of this Court by the letter dated 16 November 2022 which is at page no.141.

The action was also recommended against the applicant Ghanwat. Dr. Chandrachud placed on record a copy of a letter sent by the Superintendent of Police, Satara on 27 July 2020 to the Superintendent of Police, Pune Gramin thereby recommending for taking proper action. At that

time the applicant Ghanwat was working in Pune Gramin area. This is taken on record today and marked as “x’.

- (f) There was a complaint filed against the applicants before the Maharashtra State Police Complaints Authority.

Mr. Pasbola has invited my attention to deletion of respondent nos.2 and 3 therein (who are the present applicants). The said pursis is at page 147.

- (g) In the departmental enquiry, the witnesses who were examined have not corroborated with the allegations leveled by the first informant in the FIR. Those pages are pages 148 to 171.

- (h) According to him, as the complaint is filed beyond the period of limitation laid down under Section 161 of the Maharashtra Police Act, 1951, the complaint is not maintainable. In support of these contentions, he relied upon the following Judgments;

1. *K.K. Patel and anr vs. State of Gujarat and anr*¹

2. *Sankaran Moitra Vs. Sadhana Das and anr.*²

¹ (2000) 6 SCC 195

² (2006) 4 SCC 584

3. Virupaxappa Veerappa Kadampur Vs. State of Mysore ³

4. K. Kalimuthu Vs. State BY DSP ⁴

- (i) The Court of JMFC is not empowered to take cognizance of an offence under the provisions of the Prevention of Corruption Act, 1988, and as such again passed an order under Section 156(3) of Criminal Procedure Code, 1973. To buttress his submission he relied upon the judgment *Shri Sunil Garg Vs. The Officer in-charge* ⁵.
- (j) The Court of JMFC cannot take cognizance of an offence under the Prevention of Corruption Act, 1988. He relied upon the decision in the case of *Superintendent of Police, Central Bureau of Investigation (ACB) vs. Satish Sampatlal Surana* ⁶ and whereas according to Dr. Chandrachud, observations are overruled impliedly in case of *State through Central Bureau of Investigation, Chennai vs. V. Arul Kumar* ⁷

6. By way of reply, the learned advocate Dr. Chandrachud has

³ 1963 Supp (2) SCR 6

⁴ (2005) 4 SCC 512

⁵ 2018 CJ (Bom) 1478

⁶ 2016 CRA.L.J. 1150

⁷ (2016) 11 SCC 733

made the following submissions;

- I. The act complained of cannot be treated as done under the colour of office or in excess of the duty and as such provisions of Section 161 of Maharashtra Police Act, 1951 are not applicable.
- II. According to him, the act of detaining after sunset cannot at all be justified so also the act of demanding illegal gratification do not fall within the purview of performing a duty. He invited my attention to the averment in the application. According to him, his client is having audio and video clips of conversation. To buttress his submissions, he relied upon the following judgments;

- *State of Maharashtra v. Atmaram and ors.* ⁸
- *State of Maharashtra vs. Narhar Rao* ⁹

- III. In order to repel the contentions that there cannot be taking of cognizance by the learned Magistrate for the offence punishable under the provisions of the Prevention of Corruption Act, 1988, he relied upon the observations in the following judgment;

⁸ Manu/SC/2317/1996

⁹ (1966) 3 SCR 880

- *State through Central Bureau of Investigation, Chennai vs. V. Arul Kumar* ¹⁰ (more particularly paragraph 21)

- IV. He is trying to differentiate in between the nature of complaint made before the Maharashtra State Police Complaints Authority and the nature of reliefs sought before the learned Magistrate.
- V. According to him preliminary nature of complaint was for taking action against then Superintendent of Police Satara. He invited my attention to the complaint made to the Maharashtra State Police Complaints Authority on 30 December 2019 which is at page 142 and more specifically the subject of taking action against the Superintendent of the Police for not entertaining the first informant's complaint dated 5 December 2018.

In the said complaint, the present applicants have no role to play and that is how he justified the conduct of dropping these applicants from that complaint.

- VI. He submitted that this complaint is filed after persistent

¹⁰ (2016) 11 SCC 733

efforts before various authorities to take action against the present applicants and he further submitted that the applicants being the police personnel, the authorities were reluctant to take action against them.

VII He invited my attention to contents of complaint dated 4 December 2018 filed by the first informant to the Superintendent of Police Satara at page 117.

Consideration

7. It is true that the Hon'ble Supreme Court in the case of *V. Arul Kumar* (supra) in paragraph 21 has observed that the Special Judge under the provisions of the Prevention of Corruption Act, 1988 takes cognizance of the offence without commitment. It is true that the provisions of Section 193 of Code of Criminal Procedure, 1973 talks about taking cognizance of offence by the Court of Sessions whereas Section 190 of the Code of Criminal Procedure talks about taking cognizance of offence by the Magistrate. The Hon'ble Supreme Court observed that; "It, however, nowhere provides that the cognizance cannot be taken by the Magistrate at all". Further it is observed that; "Both the authorities are available....".

8. Further more, it is also true that Section 161 of the Maharashtra Police Act, 1959 lays down the period of limitation of six months for entertaining the prosecution. It can be instituted with a previous sanction of the State Government within two years from the date of offence. It is true that in the Judgment relied upon by Dr. Chandrachud, there is a discussion about meaning of the phrase “acts done under the colour of office”. He has read over relevant observations of those judgments. The emphasis is there has to be connection between the acts complained of and the nature of duty, if there is no connection the prosecution can not be entertained. It was also held that the police have no authority to beat on a person or demand illegal gratification. If such acts are complained, the protection as to limitations under Section 161 of the Maharashtra Police Act, 1959 did not come in picture.

9. Similarly, all observations in the Judgment quoted by the learned advocate Mr. Pasbola, there is some discussion about the necessary sanction under Section 196 of the Criminal Procedure Code, 1973. The decision rendered by the constitutional bench of the Supreme Court in the case of *Sankaran Moitra* (supra) is also relied upon by him.

10. It is true that the present first informant has alleged about the demand of illegal gratification that took place on 6 March 2017. It is also true that the first informant has protested about these acts by making complaint to the Superintendent of Police dated 4 December 2018. It is also true that he has knocked the doors of this Court. So also he approached the Maharashtra State Police Complaints Authority.

11. Both sides argued on the point of limitation, lack of competency of the Judicial Magistrate to take cognizance of the offence under the Prevention Corruption Act, 1988, about period of limitation, about withdrawal of complaint against the applicants before the Maharashtra State Police Complaints Authority.

12. Both of them also argued about the shortcomings in the complaint and whether they fall within the purview of those Sections or not.

13. However, a question arose before me is whether this Court is dealing with any petition challenging the FIR. The answer is certainly no. The Court is dealing with the question whether the case for anticipatory bail is made out or not. I think all above points can be agitated before the Court who is dealing with the relevant reliefs.

So I have restricted myself to the prayer for anticipatory bail.

14. The Court of Additional Sessions Judge, while rejecting the application at page no.61 onwards has observed that there are specific allegations in the complaint with sufficient details. The Court further observed that the allegations *prima facie* supported by the documentary evidence which are serious in nature. The Court has further observed that immediately after getting knowledge assigning investigation, applicant no.1 has taken all above actions in issuing notice under Section 41(1) of Criminal Procedure Code, 1973. The Court has further observed in order to ascertain whether they were extorted as alleged by them, interrogation of both the applicants is very essential.

15. It is true that the jurisdiction of this Court under Section 438 of the Code of Criminal Procedure, 1973 is not appellate Court, but it is co-ordinate jurisdiction. On this background, when I gone through the averments in the complaint, what I find is that the alleged incident had taken place in the year 2017.

16. Dr. Chandrachud also invited my attention to several correspondence about medical examination which are at page 91 and 92. It deals with making entries in the station diary about

medical examination. So what I feel is that so far as this grievance is concerned, already there are documentary evidence available. So for what reason the custodial interrogation is required ?

17. So far as the allegations of illegal gratification is concerned, there are avements in the complaint lodged before the learned Magistrate. That find place in paragraphs 5, 13, 14 and 20 in the complaint. The first informant further claims that on 22 October 2018, the applicant – Shirke called him on mobile. He is having audio record as well as CCTV footage that find place at paragraph 27. So what I feel, if this is the case, for what purpose their custodial interrogation is required ?

18. The prayer for anticipatory bail is to be decided on three aspects; one is the allegation in FIR, second is their seriousness insisting on custodial interrogation, and third is availability of accused at the time of trial. Both these applicants are public servants in service. Even though the allegation is serious, does it mean to say that the Court has to reject the application.

19. Considering the facts and circumstances of the case, I feel that pre-arrest bail need to be allowed. It is for the reason that custodial interrogation is not required and it is also for the reason that the first

informant has approached the concerned Court of JMFC after a gap of almost five years. Even it may be true that he has approached various authorities but ultimately it is the concerned Court which takes cognizance of the offence is important. Considering from all perspective, I feel that the applicants deserves to be granted pre-arrest bail. Hence, the following order is passed;

O R D E R

- (a) In the event of arrest, in connection with CR No.265 of 2023 registered with Satara City Police Station on 28 March 2023 for the offences punishable under Sections 120B, 193, 201, 342, 392, 384 r/w 34 of the Indian Penal Code, 1860 and Sections 7, 13 and 13(1)(d) of the Prevention of Corruption Act, 1988, the applicants be released on bail on furnishing personal bond and surety bond of Rs.50,000/- each.
- (b) The applicants shall not threaten the prosecution witnesses or allure them in any manner.
- (c) The applicants shall give attendance to the Satara City Police Station on 1st and 3rd Wednesday every month between 10 am to 12 noon till filing of the chargesheet.

(d) Needless to say, violating of the condition above will make the applicants liable for cancellation of anticipatory bail, after notice to the applicants.

20. Application is disposed of accordingly.

21. These are my *prima facie* observations and the trial Court may not be influenced by that.

22. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]