

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

ANTICIPATORY BAIL APPLICATION NO.3572 OF 2022

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Dilip Popat Malave
VS.

..Applicant

The State of Maharashtra

..Respondent

Mr. D. N. Salvi a/w Mr. Sahil Deepak Salvi, Mr. Sagar Redkar
and Mr. Narendra Kalpoth for the Applicant.

Ms. P. N. Dabholkar, APP for the State.

Mr. Akil N. Sutar, ACB, Thane is present.

CORAM : M. S. KARNIK, J.

DATE : JANUARY 9, 2023

P.C. :

1. Heard learned counsel for the applicant and learned
APP for the State.

2. This is an application for pre-arrest bail in respect of
the offence punishable under Section 7 of Prevention of
Corruption Act (hereafter "the said Act", for short) in
connection with C.R. No.0317 of 2022 dated 09/12/2022
registered with Naupada Police Station.

3. Learned APP vehemently opposed the application for
grant of pre-arrest bail. The complaint was filed by the
complainant that there was a demand for an amount of

Rs.25,000/- by the applicant for not registering the FIR against the complainant. The applicant is working as a Police Head Constable currently posted at Wagle Estate Police Station. At the relevant time the applicant was posted at Naupada Police Station. The trap was laid. However, the trap was not successful.

4. Learned APP submitted that the applicant requested for a transfer and he was transferred from Naupada Police Station to Wagle Estate Police Station at his request. It is for this reason, the trap was not successful. Factually there is no acceptance of the illegal gratification of the amount by the applicant. The allegations, as it stand, is as regards the demand of Rs.25,000/-.

5. Learned counsel for the applicant relied upon the decision of the Supreme Court in the case of **Neeraj Dutta Vs. State (Govt. of N.C.T. of Delhi)** in Criminal Appeal No.1669 of 2009 to submit that proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a *sine qua non* in order to establish the guilt of the accused public servant under

Sections 7 and 13(1)(d)(i) and (ii) of the said Act.

6. Their Lordships have held that in order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. In the present case, *prima facie*, the trap has been unsuccessful and its not the case that the applicant has in fact accepted the amount of illegal gratification.

7. Learned counsel for the applicant submitted that the applicant will render all possible co-operation. Learned counsel further submitted that the applicant is willing to give his voice sample for the purpose of investigation.

8. In this view of the matter, the applicant can be granted pre-arrest bail as custodial interrogation is not necessary. Hence, the following order :-

ORDER

- (a) Application is allowed.
- (b) In the event of arrest in connection with C.R. No.0317 of 2022 registered with Naupada Police Station, the applicant-Dilip Popat Malave shall be released on bail on furnishing P.R. Bond to the extent

of Rs.25,000/- with one or more sureties in the like amount.

(c) The applicant shall report to the Investigating Officer of the Anti Corruption Branch, Thane on 13/01/2023, 14/01/2023 and 15/01/2023 between 11.00 a.m. and 2.00 p.m. and thereafter as and when called.

(d) The applicant to co-operate with the Investigating Officer.

(e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with evidence.

(f) The applicant shall furnish the details of his residential address and phone number to the investigating officer.

9. The Anticipatory Bail Application stands disposed of.

(M. S. KARNIK, J.)