

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.320 OF 2023

Gopal Baijnath Agrawal

Vs.

State of Maharashtra through PSO Dattapur, District Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. P. V. Navlani, Advocate for applicant.
Mr. M. J. Khan, APP for non-applicant /State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 05/06/2023

1. The applicant is seeking anticipatory bail in the event of his arrest in respect of Crime No.196/2023 registered at Dattapur Police Station for the offence punishable under Sections 406, 409, 420, 467, 468, 120B of the Indian Penal Code and under Section 3 of the MPID Act.

2. The applicant is apprehending his arrest at the hands of police as one Jitendra Vinayakrao Chaudhary has lodged a report against the applicant at Dattapur Police Station, on the allegation that he had deposited an amount of Rs.11,00,000/- with the applicant, who is the Government Contractor and also dealing with the auction of the sand. The applicant has deposited the amount with Government for taking the tender of the said sand Ghat. The applicant/accused had

already returned Rs.2,00,000/- from the said amount and the balance amount is yet to be returned. It is further alleged that the applicant is the Government Contractor. The Collector, Amravati had floated e-tender for auction of sand Ghat in December 2020 for the auction of sand in Amravati. The applicant had taken part in the said auction process and he was the successful bidder with highest bid. The informant is a registered Zilla Parishad Contractor and always in need of sand. As the informant came to know that the applicant has got the tender of sand Ghat he approached and offered the applicant to purchase the same. He had purchased the sand worth of Rs.9,00,000/- till 19.04.2021 from the applicant and the applicant had returned Rs.2,00,000/- to the informant. Thus, the account was separated and after the settlement of the account with the informant, the informant was asking for more sand. As the applicant has refused without payment of the same and therefore, the false report was lodged against the applicant in respect of the theft. The above said dispute was also compromised. Thereafter, the informant had lodged false report against the present applicant with ulterior motive for extracting the money.

3. As per the contention of the applicant that investigation is practically completed hence his physical custody is not required. The dispute between the informant and the applicant is of civil nature and

therefore, applicant be released on anticipatory bail in the event of his arrest.

4. The said application is strongly opposed by the learned APP Mr. Khan, for the non-applicant/State on the ground that during the investigation, the Investigation Officer drawn the spot panchnama and also recorded the relevant statements of the witnesses. The statement of the informant is as per the First Information Report lodged by him. The statement of other two witnesses also revealed that applicant has received the amount from the informant and the entire transaction took place in their presence. The investigating agency has also collected the copy of Bank statement of account of the informant and the copy of the notice issued by the informant and the copies of the documents in respect of auction of sand Ghat in favour of the applicant. Since the registration of the crime, the applicant is absconding. If he is released on bail in the event of his arrest, the investigation would be hampered. The offence is of serious nature and therefore, physical custody of the applicant is required.

5. Heard learned Advocate Mr. Navlani for the applicant who submitted that the dispute between the applicant and the original informant is of civil nature. Initially, the informant has lodged the complaint against the applicant with the police. The police have not taken

any action on the said complaint. There was compromise between the applicant and the informant. After the said compromise, the informant had lodged false report against the present applicant. In fact, physical custody of the present applicant is not required as nothing is to be recovered from the applicant. Custodial interrogation is not at all required as investigation is practically completed.

6. Whereas learned APP Mr. Khan for the non-applicant/State strongly opposed the application on the ground that physical custody of the applicant is required for the investigation purpose. A huge amount is involved, hence application deserves to be rejected.

7. Heard both the sides. Perused the investigation papers. It appears that there was a transaction between the informant and the applicant regarding the purchase of the sand and the dispute arose between them. From the recitals of the FIR itself it reveals that the applicant had already returned Rs.2,00,000/- and Rs.9,00,000/- yet to be returned. Thus, *prima facie*, nature of the dispute appears to be civil nature. The Investigating Officer has already recorded the relevant statements of the witnesses. Spot panchanama is also drawn. Physical custody of the present applicant/accused is not required. It further reveals that initially also there was a dispute between the

applicant and the original informant which was amicably settled. It reveals from the said settlement that present applicant has received the tender of sand Ghat and he has sold out some sand to the original informant. Out of the said transaction the dispute arose between them. Considering the nature of the allegations, admittedly, the physical custody of the applicant is not at all required. The investigation paper shows that investigation is practically completed. In view of that, the interim anticipatory bail is granted in favour of the applicant deserves to be confirmed by imposing certain conditions. In view of that, I proceed to pass the following order:-

(i) The applicant is released on anticipatory bail in the event of his arrest in connection with crime No.196/2023, registered at Dattapur Police Station for the offences punishable under Sections 406, 409, 420, 467, 468, 120B of the Indian Penal Code and under Section 3 of the MPID Act on furnishing PR bond in the sum of Rs 20,000/- with one solvent surety in the like amount.

(ii) The applicant shall attend the Police Station as and when required for the investigation purpose.

(iii) The applicant shall not tamper the prosecution evidence or hamper the investigation and shall co-operate the investigating agency.

(6)

28.aba.320.2023

8. Criminal Application is disposed of.

(URMILA JOSHI-PHALKE, J.)

Sarkate