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# IN THE HIGH COURT OF BOMBAY AT GOA

## CRIMINAL WRIT PETITION NO.13 OF 2024

Tarak Arolkar … Petitioner

*Versus.*

State of Goa through Police Inspector
Office In Charge and Anr. … Respondents.

**Ms Maria Caroline Collasso, Advocate** *with* **Mr Jagdish Toraskar, Mr Ambarish A. Gavandalkar** *and* **Mr Kamlakant Poulekar, Advocates** for the Petitioner.

**Mr Pravin N. Faldessai, Additional Public Prosecutor** *for Respondents.*

**CORAM: M.S. KARNIK & VALMIKI MENEZES ,JJ.**

**DATE: 8th July, 2024**

**ORAL JUDGMENT** ***(Per. M. S. Karnik, J).***

**1.** Heard Ms Collasso, learned Counsel for the petitioner and Shri Faldessai, learned Additional Public Prosecutor for the Respondent.

**2.** By this Petition under Article 226 of the Constitution of India and under Section 482 of the CrPC, the petitioner prays for quashing and setting aside the FIR No.47/2023 dated 11.04.2023 of the Crime Branch Police station, Ribander, Goa, where he is shown as accused no.34. The petitioner is a Councillor in the Mapusa Municipal Council. The petitioner claims to be a social worker conducting various charitable activities.

**3.** On 15.04.2023 at around 6.30pm the officers of CID/CB Police Station came to the office of petitioner at Peddem,Mapusa asking him to attend the Crime Branch Police station, Ribander for investigation in Crime No. 47/2023. The petitioner co-operated with the Officers. The petitioner was informed by the Officers of Respondent No.1 that they are arresting him in Crime No.47/2023. FIR No 47/2023 dated 11.04.2023 was lodged for offences u/s 419, 420 r/w 120B IPC and Section 66-C and 66-D of Information Technology Act, 2000 and Information Technology Amendment Act, 2008 against the petitioner and 33 other accused by the respondent No.1. The petitioner was granted bail by the trial Court by order dated 16.04.2023.

**4.** The allegation against the petitioner is that he is the brother of the owner of the suit premises also comprising of basement where the illegal activity of running a fake call centre was being carried out by the co-accused persons. The petitioner had executed Leave and Licence Agreement dated 01.08.2022 with one Mr Mukeshbhai Padhiyar, in respect of the suit premises. The Leave and Licence Agreement was signed by the petitioner in his capacity as Power of Attorney Holder of his brother Vikas Arolkar who is also shown as one of the accused.

**5.** According to learned Counsel for the petitioner, in addition to the contention that no notice under Section 41-A of the Cr.P.C was served which violates the guidelines of the Supreme Court in the case of ***Satender Kumar Antil Vs. Central Bureau of Investigation and Ors decided on 11.07.2022,*** there otherwise is absolutely no material to justify such prosecution against the petitioner. It is submitted that the petitioner was not aware of any of the activities indulged by the co-accused in the premises. The petitioner had only executed Leave and Licence Agreement with one Mr Mukeshbhai Padhiyar. The co-accused were found running a fake call centre in the premises owned by his brother. It is submitted that there is absolutely no material on the record to connect the petitioner with the activities indulged into by the co- accused.

**6.** Shri Faldessai, learned Additional Public Prosecutor appearing for the Respondents vehemently opposed the Petition. It is submitted that the materials on record clearly demonstrate that the petitioner was actively involved in the commission of the offence. It is submitted that the Leave & Licence Agreement is not registered or notarised document and that considering the large number of co-accused who were found operating the false call centre from the suit premises, it is impossible to believe that the petitioner did not have knowledge about the activities that were being carried out in the said premises. Relying on the clauses of the Leave & Licence Agreement, learned Additional Public Prosecutor submitted that the petitioner had access to the premises at all times, therefore, it is not for the petitioner to now contend that he was not aware of the activities that were going on in the premises. The petitioner ought to have been diligent and now at this stage cannot plead ignorance. It is further submitted that the premises consist an area of 254 sq.mts. which is a large area and hence it is impossible that the petitioner was unaware of the activities.

**7.** Undoubtedly, the investigation is still in progress. We have perused the FIR. We perused the material on record as well as that produced for our perusal by the learned Additional Public Prosecutor. We are satisfied that there is no material to connect the petitioner with the allegations which are subject matter of the FIR. This Court must be slow in quashing the FIR qua the petitioner when the investigation is in progress. The allegation that a fake call centre was operating in such a systematic manner on this scale is serious and needs a thorough investigation. The FIR was registered as far back as on 11.04.2023. Thereafter the petitioner was arrested on 15.04.2023 and on 16.04.2023 was enlarged on bail. This Petition is filed on 26.07.2023.

**8.** From the perusal of the FIR and the materials on record, we find that the only material against the petitioner is that he signed the Leave and License Agreement as a Power of Attorney holder of the owner of the premises. There is absolutely no material on record to indicate the petitioner's alleged involvement in the offence. Assuming the entire material is taken at its face value to be true, there is nothing on record to indicate that the petitioner was even remotely aware of the running of the fake call centre in the said premises or that he was privy to or associated in any manner with the co-accused in connection with the call centre. That the Leave & Licence Agreement is not a notarised/registered document or that the building is unauthorised, may have its own consequences but that by itself is not sufficient to continue the prosecution qua the petitioner having regard to the nature of the allegations and the materials as they stand against the petitioner. The allegations in the FIR taken at its face value, do not satisfy the ingredients constituting the alleged offences under Section 419, 420 r/w 120B IPC and Section 66-C and 66-D of Information Technology Act, 2000 and Information Technology Amendment Act, 2008 qua the petitioner.

**9.** The investigation is going on since 11.04.2023. We are of the firm opinion that present is a case which satisfies the well settled tests laid down by the Supreme Court for quashing the FIR. The Petition, therefore, succeeds and is accordingly allowed in terms of prayer clause (A) qua the petitioner. Needless to mention, the investigating agency can always resort to appropriate remedies if there are materials justifying the petitioner's prosecution at a later stage.

**VALMIKI MENEZES, J.** **M. S. KARNIK, J.**