



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

CRIMINAL APPLICATION (ABA) NO. 143 OF 2024

Sureshkumar s/o Maganbhai Patel V/s State of Maharashtra

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. D.M. Dixit, counsel with Mr. J.S.Chilotra, counsel for the applicant.
Mr. M.J.Khan, APP for non-applicant/State.
Mr. L.B. Patel, counsel for Assist to Prosecution.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 12/04/2024.

1. Apprehending the arrest at the hands of police in connection with Crime No. 878/2023 registered with Police Station Kalamna, District Nagpur for the offence punishable under Sections 420, 468, 471 of the Indian Penal Code, 1860, the applicant approached this court for grant of pre-arrest bail.

2. The applicant is apprehending arrest at the hands of the Police as one Bharat Lakhashibhai Patel has lodged the report, alleging that he got acquaintance with the applicant at Amravati in the meeting organized by the B.J.P. Workers, where the applicant represented that he happens to be the President of Hindu Jagaran Mach – Rashtriya Swayamsewak Sangh, Gandhi Nagar, Gujarat and the Member of the Central Board of Director and Taxes (CBDS Finance Ministry) Government of India. Thereafter, there was a communication between the applicant and the informant on a mobile phone, and the

present applicant represented him that he is having acquaintance with the various leaders, and officers which made the informant to trust him. The applicant represented the complainant that he has an acquaintance in the Food Corporation of India (FCI) and offered a post of Board Director in the said FCI, and demanded some amount by offering the said post. It is alleged that the present applicant informed the complainant that for appointing him on the said post, he has to pay Rs. 1.5 Crore to the concerned Ministry Officers of the FCI. After discussion with the family members, the complainant paid the initial amount of Rs. 25,000/- on 22/07/2022 through Paytm to the applicant, and Rs. 37,500/- twice through Google Pay from the account of one of his relative-friend Shrinivas of Hyderabad. Thus, a total amount of Rs. 1,00,000/- was paid as a token, and subsequently, he has paid some of Rs. Rs. 1 Crore 28 Lakhs to the applicant from time to time.

3. It is further alleged that thereafter, the applicant sent a WhatsApp message that the complainant was nominated as a Member of the Consultative Committee in FCI, and therefore, the members of his community congratulated him. One letter was also issued to him showing that he was nominated as a Member of the Consultative Committee in the FCI, subsequently, it reveals that the said letter was a fabricated one. On the basis of said report, the police have registered the crime against the present applicant.

4. Learned counsel for the applicant submitted that there was a business transaction between the present applicant and the informant, as they agreed to enter into the partnership and purchase the rolling mill, and therefore, there was a transaction of exchanging the amount. The present applicant has also filed one complaint at Gandhi Nagar Gujrat against the informant, and to give a counterblast to the said complaint, this false complaint is lodged against the present applicant. He further submitted that in the crime registered on the basis of the report lodged by the present applicant, said Bharat Patel is released on anticipatory bail. He submitted that as far as the transaction between the applicant and the informant is concerned, which is of a civil nature, custodial interrogation of the applicant is not required.

5. In support of his contention, he placed reliance on the decision of the Hon'ble Apex Court in the case of *Ashok Kumar Vs State of Union Territory Chandigarh in Special Leave Petition (Cri.) No. 9949/2023 dated 01/03/2024* wherein the Hon'ble Apex Court held that there is no gainsaying that custodial interrogation is one of the effective modes of investigating into the alleged crime. It is equally true that just because custodial interrogation is not required that by itself may also not be a ground to release an accused on anticipatory bail if the offences are of a serious nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail

that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima facie why the custodial interrogation of the accused is required for the purpose of investigation.

6. He also placed reliance in the case of ***Dilip Singh Vs. State of Madhya Pradesh and another in Criminal Appeal No. 53/2021 (arising out of SLP (Cri) No. 10484 of 2019) dated 19/01/2021*** wherein the Hon'ble Apex Court reiterated the factors to be taken into consideration, while considering an application for bail, and he also relied upon decision of this Court in the case of the ***State of Maharashtra V/s Naresh Rajeshwarrao Patil reported in 2016 ALL MR (CRI) 2888***, wherein also this Court has reiterated the basis principals which has to be kept in mind while considering the prayer for grant of anticipatory bail.

7. The learned APP strongly opposed the said application on the ground that there is a prima-facie material against the present applicant. He submitted that the recitals of the FIR, and the statement of the witnesses namely Rajesh Narayanbhai Patel and Dipesh Purushttom Patel shows that on representing by the present applicant, he was having acquaintance with the various Officials of FCI, the complainant can be appointed as a Member of the said FCI, and obtained money from him. The statement of Dipesh Purushottam Patel shows that, in his presence, the complainant has paid the amount of Rs. 20 Lacks to the present applicant.

8. He also invited my attention towards the letter issued by Jitendra Ahalawat, whose reference is made on the fabricated letter that the complainant is appointed as a Member of the Consultative Committee of the FCI. The letter issued by Jitendra Ahalawat shows that the said letter does not bear his signature, and it is a forged letter. The letter produced on record by the I.A. shows that the said letter bears the signature of the said Jitendra Ahalawat. Thus, from the statement of the said Jitendra Ahalawat, it reveals that his signature who is the Deputy Secretary, to the Government of India was forged, and the forged letter was issued to the complainant showing that he was appointed as a Member of the Consultative Committee of the FCI.

9. Learned APP also invited my attention towards the chatting between the present applicant and the informant, which shows that the present applicant has demanded some amount from the complainant to appoint him as a Member of the Consultative Committee of FCI, and submitted that considering the prima-facie case, the custodial interrogation of the present applicant is required to ascertain, whether there is involvement of any other persons. The name of the Government Official is used to obtain the money, and in his name, the letter was fabricated. Therefore, the investigation as to the fabrication of the document is also required to be carried out and prays for the rejection of the application.

10. Learned counsel for the informant has also endorsed the same contention and prays for rejection of the application.

11. Having heard learned counsel for the applicant and learned APP for the State and counsel for the informant, perused the investigation papers. From recitals of the FIR, it reveals that it is alleged that the present applicant represented himself that he is connected with the BJP as well as represented himself to the President of Hindu Jagaran Manch Rashtriya Swayamsewak Sangh, Gandhi Nagar, Gujarat. During the communication between the present applicant and the informant represented that he is also having an acquaintance in FCI and offered a post of Board of Director in the said FCI and obtained the amount from him. As far as the allegation regarding obtaining the amount is concerned, which is substantiated by the statement of the two witnesses namely Dipesh Pursuhottam Patel and Rajesh Narayanbhai Patel. The chatting between the present applicant and the informant also shows that the present applicant has demanded some amount from the complainant.

12. The letter issued by Jitendra Ahalawat who was the Deputy Secretary to the Government of India shows that he has not issued the letter showing that the complainant is appointed as a Member of the Consultative Committee of FCI. The fabricated letter is also collected during the

investigation by the Investigating Officer which bears the signature of the said Jitendra Ahalawat. The letter of Jitendra Ahalawat specifically reflects that he has not issued such type of letter and it does not bear his signature. Thus, it appears that the signature of the Deputy Secretary who has been attached to the Government of India is also fabricated.

13. It further reveals that from the investigation papers, though the notice is issued under Section 41-A to the present applicant, initially he attended the Police Station twice, and subsequently, he has not cooperated with the investigating agency. One receipt is also collected during the investigation, which shows that the transaction entered into by the present applicant is the nature of the Hawala Transaction. Thus, prima-face case is made out against the present applicant, considering that the transaction which entered into by the applicant with the informant.

14. The learned counsel though placed reliance on the decision of this court and the decision of the Apex Court, wherein the principals are reiterated considering the prayer for anticipatory bail. There is no dispute as to the fact that the considerations for grant of anticipatory bail are there should be no likelihood of the accused absconding, the nature of seriousness of the accusation, the nature of the prosecution evidence, the severity of the likelihood punishment in the case, the prosecution subsists and the status of the case.

15. From the recitals of the FIR and the investigation papers, it reveals that a huge amount is invested by the complainant, which is handed over to the present applicant. The factors which are taken to be consideration while considering the application for bail and the nature of the accusation and the severity of the punishment in the case of the conviction and the nature of the materials relied upon by the prosecution. At this stage, the statement of the witnesses and the investigation papers, and investigation carried out by the investigation officer shows the involvement of the present applicant. There is a reasonable possibility of tampering of the witnesses as well as apprehension that the applicant would be flee away from the justice cannot be ruled out.

16. While exercising the discretion for grant of bail, it is expected to take into consideration all these aspects. The Hon'ble Apex Court in the case of Ashok Kumar Vs State of Union Territory Chandigarh (referred Supra) has observed that it is equally true that just because of custodial interrogation is not required that itself may also cannot be a ground to release an accused on anticipatory bail if the offences are of a serious in nature. However, a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient. The State would have to show or indicate more than prima-facie why the custodial interrogation of the accused is required for the purpose of investigation.

17. Learned APP has pointed out that the applicant was using two mobile phones, one mobile phone is already verified by the Investigating Agency, his another mobile phone is yet to be seized. The second ground raised is that, the fabricated letter is prepared to show that the informant is appointed as a Member of Consultative Committee of FCI. The interrogation and investigation as to the fabrication of the said document is required, and for that purpose, the custodial interrogation of the applicant is utmost important.

In view of that, the application for grant of ad-interim anticipatory bail deserves to be rejected. Accordingly, I proceed to pass the following order:

- a] The criminal application is **rejected**.
- b] The learned trial Court shall not influence by the observation made by this Court which is only for the purpose of bail.

[URMILA JOSHI-PHALKE, J.]