

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION NO. 16049 of 2020**

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SANDEEPDAN AJITDAN GADHVI

Versus

STATE OF GUJARAT

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Appearance:

MR. YOGESH LAKHANI, SR. ADVOCATE WITH MR. KSHITIJ M

AMIN(7572) for the Applicant(s) No. 1

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2

MS. MOXA THAKKAR, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE A. P. THAKER****Date : 06/11/2020****ORAL ORDER**

1. Heard Mr. Yogesh Lakhani, learned Senior Counsel with Mr Kshitij Amin, learned advocate for the applicant and Ms. Moxa Thakkar, learned APP for the respondent State at length through Video-conferencing.

2. In view of the earlier order, the learned APP has submitted that the affidavit of the Investigating Officer along with the investigating papers and the same is taken on record.

3. Mr. Yogesh Lakhani, learned Senior Counsel with Mr. Kshitij Amin, learned advocate for the applicant has submitted that in this case, the trap was led twice and there is no demand made by the applicant herein. According to him, since trap has been failed, it appears that ACB Authority has filed the impugned FIR only on the basis of the so-called trap recording and the fact that the applicant herein is not available for interrogation. While inviting attention of this Court to Section 7 and 13 of

the Prevention of Corruption Act, 1988, learned Senior Counsel for the applicant has submitted that prima-facie no case is made out as there was no demand and both the traps were failed. He has also submitted that it being quashing petition, atleast some sort of interim relief be granted to the applicant who will cooperate with the investigation and as and when the applicant is summonsed and he has given his voice test. He has prayed to grant interim relief to the applicant. Learned Sr. Counsel has submitted that no summons was issued to the applicant to remain present before the concerned Authority and when no summons were issued no action can be taken against the applicant only because he did not remain present for inquiry.

4. Per contra, learned APP has vehemently opposed any grant of interim relief at this stage. She has also submitted that this matter is not for anticipatory bail and therefore at this stage, no interim relief be granted. She has further submitted that considering the material placed on record especially the conversation between the complainant and the applicant, it reveals that he demanded Rs.2,50,000/- and in that view of the matter, he was called for inquiry twice but did not remain present and thereafter FIR has been filed. While referring to the Certificate of the FSL, she has submitted that as per that Certificate, no tampering has been made with the conversation tape thereafter. She has vehemently submitted that the present applicant is a Police Officer and, therefore, he is not making himself available for inquiry and is absconding. She has further submitted that considering the conduct of the present applicant, no interim relief be granted.

5. Having considered the submissions made by both the sides and materials placed on record, it is admitted that the trap led by the ACB against the applicant twice has failed. It also reveals from the Statement of Jayeshbhai that at the time of complaint dated 5.9.2020, he has

specifically referred that he had recording of the conversation between him and the applicant. Thus, prima-facie it appears that evidence of recording of the conversation between Jayeshbhai and the present applicant is with the Authority since 5.9.2020. It appears that after failure of the trap twice, this conversation has been produced and it has been sent to the FSL.

6. Now considering the material on record, even reading of the affidavit of the concerned Police Inspector, it is not stated anywhere hat on which date the summons were issued to the applicant to remain present for the inquiry.

7. Prima facie it also appears that there is no demand, portion of demand is there. If it was only a departmental inquiry, the course thereafter is different from the Criminal Action. Considering the material placed on record, this application is required to be considered.

8. Therefore, **Rule** returnable on 7.12.2020. Learned APP waives service of notice of Rule on behalf of respondent State.

9. In the meanwhile, no coercive action be taken against the applicant however, investigation may be carried and with the condition that the applicant shall cooperate with the investigation and shall remain present as and when summons by the Authority. If the applicant does not cooperate then that the said fact be brought on record by the learned APP. If the applicant fails to remain present before the Investigating Officer, as and when summoned, that fact may dis-entitle him of any relief and the interim relief may be recalled.

(DR. A. P. THAKER, J)

SAJ/ DIPTI PATEL