

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1650 OF 2014

Pruthvi @ Pruthviraj Subhash Rajole

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. V. M. Thorat i/b Mr. M. V. Thorat for Applicant

Ms. P. P. Shinde APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : JANUARY 9, 2015

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 3151 of 2014 registered at Panchvati Police Station, Nashik for offence punishable under section 6 of Maharashtra Prevention of Malpractices at University, Board and other Specific Examinations Act, 1982 and section 66 of Information Technology Act, 2000.

2) It is the case of prosecution that present applicant happens to be a

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student of 2nd year MBBS and is studying at Government Medical College Nanded. It is alleged that examinations for MBBS 3rd year were in progress in the month of November 2014. On 28/11/2014, present applicant is alleged to have forwarded question paper, received by him on his 'Whats App' application on his cellphone to the students of 3rd year MBBS studying at Nagpur. It appears from the records that at about 2.40 am of 28/11/2014, applicant had received abbreviation of terminologies, which would appear in the examination on 28/11/2014. He had asked the friends to read the said questions and prepare accordingly. It appears that applicant had informed his friend that he is only forwarding messages received by him.

3) Learned counsel appearing for the applicant submits that applicant had not obtained or fabricated the said question paper. He had only forwarded the messages received by him and hence, he has committed offence under section 6 of Maharashtra Prevention of Malpractices at University, Board and other Specific Examinations Act, 1982, which is a cognizable and non bailable offence, however, the punishment contemplated on conviction is imprisonment for a period which may extend to one year or with fine which

may extend to Rs. 1,000/- or with both. Section 66 of Information and Technology Act is a bailable offence.

4) Learned APP in the morning session has submitted that custody of the applicant is necessary for recovery of the cellphone handset along with the sim-card as which would be vital piece of evidence in the course of trial. This Court had directed the applicant to hand over the cellphone handset along with sim-card to Vazirabad Police Station at Nanded. Police was directed to record the panchanama to that effect and seal the handset, to be handed over to the investigating officer in crime no. 3151 of 2014. Accordingly, report is received by fax message that the application had presented himself before Vazirabad Police Station and has handed over the handset to Vazirabad Police Station. The panchanama is also recorded to that effect. Report along with the panchanama is taken on record and marked as article 'X' for the purpose of identification. Investigating officer of crime no. 3151 of 2014 shall take the said handset from Vazirabad Police Station for further investigation in accordance with Law.

5) In the case of **Arnesh Kumar v/s. State of Bihar (2014) 8 SCC 273**, Hon'ble Apex Court observed thus:

“Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Code of Criminal Procedure. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasized time and again by Courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.”

6) In view of this, applicant who happens to be the student of 2nd year MBBS deserves protection. Observations made herein above are prima facie in nature and only restricted to consider the application under section 438 of Code of Criminal Procedure, 1973 and shall not be considered for quashing of

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F.I.R., discharge application or at the time of trial.

ORDER

- (i) Application is allowed.
- (ii) In the event of arrest, applicant be enlarged on bail on furnishing P. R. bond in the sum of Rs. 15,000/- and one or two sureties in the like amount.
- (iii) Applicant shall report to Panchavati Police Station, Nashik from 21/01/2015 to 24/01/2015 between 10.00 am to 12.00 noon and co-operate with the investigating agency to the best of his capacity.

Application stands disposed of.

(SMT. SADHANA S. JADHAV, J.)