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

Criminal Application [ABA] No.39 of 2015
(Rakesh Someshwar Peddurwar vs. State of Maharashtra, through P.S.O. Chamorshi, Dist. Gadchiroli)

with

Criminal Application [ABA] No.40 of 2015
(Vijay Vasantrao Kurewar vs. State of Maharashtra, through P.S.O. Chamorshi, Dist. Gadchiroli)

with

Criminal Application [ABA] No.41 of 2015
(Suraj Ramdas Bommawar vs. State of Maharashtra, through P.S.O. Chamorshi, Dist. Gadchiroli)

with

Criminal Application [ABA] No.42 of 2015
(Rohit Charandas Bommawar vs. State of Maharashtra, through P.S.O. Chamorshi, Dist. Gadchiroli)

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Office notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	*Court's or Judge's Orders*

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Mr. R.M. Daga, Advocate for the Applicant in ABA No.39/2015
Mr. N.B. Kalwaghe, Advocate for the Applicant in ABA No.40/2015
Mr. Firdos Mirza, Advocate for the Applicant in ABA No.41/2015
Mr. A.S. Mardikar, Sr. Adv. with Mr. Atul Pande, Adv. for the Applicant in ABA No.42/2015
Mr. A.H. Laddhad, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.
DATE : MARCH 19, 2015.

Heard.

These Criminal Application Nos.39, 40, 41 and 42 of 2015 are arising out of Crime No.107/2014, registered at Chamorshi Police Station, District Gadchiroli. The applicants are the office bearers of the institute namely Shri Sairam Bahuuddeshiya Gamin Vikas Sanstha, Saoli. Rakesh Peddurwar, the applicant in A.B.A. No.39/2015 is the Vice-President, Vijay Kurewar, the applicant in A.B.A. No.40/2015 is the Secretary, Suraj Bommawar, the applicant in A.B.A. No.41/2015 is the Treasurer and Rohit Bommawar, the applicant in A.B.A. No.42/2015 is the President of the institute.

Mr. Anil Mardikar, the learned Senior Counsel appears for the applicant in Application No.42/2015 and his submissions are the lead submissions, which are adopted by the other learned Counsel appearing for the other applicants adding one or two submissions. The report was lodged initially against the applicant-Suraj Bommawar. Thereafter the role of other applicants was revealed and they approached this Court apprehending their arrest seeking protection in the nature of pre-arrest bail. The report is lodged at the instance of one Chandak Lokhande, the Project Officer, Integrated Tribal Development Project, Gadchiroli. It is stated in the report that a secret information was received to the Government Office disclosing that the State Government provides scholarship to the needy students belonging to the Scheduled Castes and Scheduled Tribes categories in the tribal area. The institute namely Late Rahulbhau Bommawar College of Management and Technology, Chamorshi, which is being run by these applicants under the auspice of the institute i.e. Shri Sairam Bahuuddeshiya Gramin Vikas Sanstha. The said institute by showing the students from the Scheduled Castes and Scheduled Tribes categories admitted in the institute and the amount of scholarship was received in the name of these students, but the amount of scholarship did not reach to those students and the allegation is, the amount to the tune of Rs.1,06,31,015 was received from the Tribal Development Department and the Social Welfare Department by the institute. In the report, it is stated that though the intake capacity of this institute was 120 students, the institute admitted 209 students. The sum and substance of the report is, only on paper, the students were shown being admitted in the institute and for the admission of the student, the amount of scholarship though received by institute, but in reality did not reach to the students.

Learned Senior Counsel Mr. Mardikar vehemently submitted that the report itself is bundle of vague material. His submission was, the informant/complainant did not even bother to verify the record and referred to one Suraj Bommawar as the President of the institute, but in reality Suraj Bommawar is not the President of the institute. His other submission was, though initially the offence was registered under Section 409, 420 of the Indian Penal Code, certain offences were inserted i.e. Sections 465, 473, 474 read with Section 34 of the Indian Penal Code.

Mr. Mardikar, the learned Senior Counsel, by inviting my attention to the Government Resolution dated 01/11/2003 submitted that the Resolution dated 01/11/2003 gives guidelines and the procedures in relation to disbursement of the scholarship as well the tuition fees and the education fees/academic charges. Mr. Mardikar further submits that as the Central Government provides funds for the beneficial scheme of the students belonging to the Scheduled Castes and Scheduled Tribes categories and the State Government also contributes to the scheme, a streamline procedure is laid down. Mr. Mardikar further submits that initially the authority and power was with the Officers of Social Welfare Department for approval of the scholarship or grant of the scholarship, but as there were certain grievances raised and on the backdrop of considerable rise in the strength of the students and the institutes by the said Government Resolution, the authority is given to the Principal of Junior College or Higher Secondary Schools attached to Junior College. Mr. Mardikar, by placing reliance on Clause-16 of the Government Resolution, submitted that though the authority is granted to the Principal, the Government Resolution speaks of control by the Social Justice Department. Clause-16 then deals with the responsibility of the Principal. It further speaks that in case of delay and mischief, the responsibility would be fixed and action can be initiated against that institute. It may be a penal action or the departmental proceedings. Mr. Mardikar further submits that Clause-16 provides that in case of such mischief, the Principal of the institute would lodge report and in case the Principal himself is responsible in the mischief, the Special

District Social Welfare Officer would lodge the report. Mr. Mardikar then submits that these guidelines having a complete procedure, no role is to be played by any institute in the approval or the disbursement of the scholarship. Mr. Mardikar then invited my attention to the notice issued by the State Government through the Co-ordinature and the Joint Director, (Education), Directorate of Social Welfare, Maharashtra State, Pune. This notice is again the detailed guidelines for those students, who are seeking the scholarship. The notice deals with the procedure of availing option of filling applications online. Mr. Mardikar submits that it is for that students to enter the relevant information in filling the online scholarship form. He submits that under this scheme, every college is provided through I.D. and password. The learned Senior Counsel then submits that this notice deals with the procedural formalities to be conducted by the clerk of the college and then the approval of the Principal. Mr. Mardikar submitted that on the last stage of approval of the scholarship, all sequence is also referred in Clause-9 of the notice. As the institute of the applicants is a permanent non-grant institute, the sequence is, the online application filled by the students, received by the clerk of the institute to be submitted before the Principal of the institute. The principal would then forward the application to the clerk of the Social Welfare Department in turn the clerk of the Social

Welfare Department would submit the confirmation to Special District Social Officer. Mr. Mardikar then invited my attention to the communication by the Co-Ordinator through the District Social Officer and the District Social Welfare Officer informing that the procedure of this online application form is to be properly followed and relevant staff, who is trained periodically, is to see that no irregularity is caused. Mr. Mardikar thus submits that at no stage, the intervention of the office bearers of the institute is referred to in the Government Resolution and the guidelines. Mr. Mardikar, the learned Counsel then submitted that the mischief attracting Section 409 of the Indian Penal Code is alleged against these applicants. Mr. Mardikar submits that these applicants are not coming in any of the category referred to in Section 409 of the Indian Penal Code, namely, public servant, banker, merchant or agent. He then submits that even attracting Section 409 of the Indian Penal Code is an erroneous act on the backdrop of the fact that there was neither entrustment of the property to the applicants nor the applicants having any domain over the property. Mr. Mardikar submits that the report itself states that the amount was received by the Social Welfare Department and the Social Welfare Department then directed their amount to be deposited in the account of the institute. Mr. Mardikar then by inviting my attention to the reply filed by the State before the learned Sessions Judge submitted that the investigating agency on a vague material opposed the application. His submission was, in the reply itself, it was stated that due to bogus account number, scholarship amount was not being deposited in the account and the same was returned back to the said office and then it was deposited to the account of the college where the peon Chandrakant Baburao Kunghadkar of the college was shows as Principal of the College and the accounts were opened at Bank of Maharashtra, Branch Chamorshi and State Bank of India, Branch Chamorshi on his name, the applicant withdrawn whole amount of the scholarship by obtaining the signature of the said peon. Attacking heavily on this reply, Mr. Mardikar submits that the institute by passing a appropriate resolution opened the joint account for the institute to be operated by the Principal and the President jointly. He then submits that the resolution was passed on 30/10/2010. He then submits that though it is alleged that Mr. Kunghadkar shown as Principal, whereas he was a peon, this statement in the reply itself was not in consonance with the record. Mr. Mardikar submits that Mr. Kunghadkar was appointed as a principal by the institute and there was no question of showing him as principal. Mr. Mardikar, therefore, submits that though not admitting but assuming the material alleged against the applicants, it only reflects of showing additional number of students against intake capacity of the institute. Mr. Mardikar submits that to show the bona fides, the applicants are ready to deposit the amount which is alleged against these added number of students and allegedly received by the institute. Mr. Mardikar then submits that the only ground of opposition reflected in the reply of the State before this Court is the recovery of the amount, which is allegedly received by the institute. Mr. Mardikar submits that this course is not at all approved by the higher forum or higher Courts. The prosecution or the investigating agency cannot curtail liberty of an individual on the ground that it requires to collect some amount. Mr. Mardikar then submits that the applicants, who were protected by the interim orders of this Court, had complied the orders of this Court and extended their co-operation to the investigating agency. He then submits that it is stated in the reply that the registers are collected from the institute. The submission of Mr. Mardikar is, as the major material is collected by the investigating agency, which is in the form of documents/ registers, there is no need of custodial interrogation of these applicants. Mr. Mardikar also placed heavy reliance on the judgment of the Apex Court reported in the matter ***Arnesh Kumar vs. State of Bihar and another,*** reported in ***(2014) 8 SCC 273.***

Mr. Daga, the learned Counsel for the applicant-Rakesh Peddurwar (Vice President) in Criminal Application

No.39/2015 refers to some wrong statement made in the reply filed by the State that the applicant had not attended the investigating agency, in fact the application of the applicant seeking interim protection in another crime was already allowed and as such there was no reason for the applicant to attend the investigating agency.

Mr. Kalwaghe, the learned Counsel appearing for the applicant-Vijay Kurewar in Criminal Application No.40/2015 submits that applicant is the Secretary of the institute. He is not named in the F.I.R. and his role is only of being a party to the resolution passed by the institute in respect of opening an account in the name of the society and being operated by the President and the Principal of the College.

Mr. Mirza, the learned Counsel appearing for the applicant-Suraj Bommwar in Criminal Application No.41/2015 submits that the applicant is the Treasurer of the institute and he is similarly circumstanced with the applicant-Vijay and the allegations against him is also vague of being a party to the resolution.

Mr. Laddhad, the learned A.P.P. vehemently opposes the applications. He made available the material collected by the investigating agency in the process of investigation. I have gone through the material collected by the investigating agency. On the backdrop of the submission of the learned Counsel Mr.

Mardikar that the allegation against the applicants is only in the nature of admitting more students than the intake capacity and there was no intervention of these applicants at any level like filling of online application forms or scrutiny of the forms, which is the job of the clerk of the institute and the clerk of the Social Welfare Department, the perusal of the material collected by the investigating agency shows that the State Government through its Higher and Technical Education Department granted permission to the institute for opening new courses in the academic year 2010-11. The institute received permission for four courses i.e. Diploma in 3D Animation and Graphics-DA- 2 years course having intake capacity of 60 students, Diploma in Dress Designing and Manufacturing-DM- 2 years course having intake capacity of 60 students, Diploma in Bueaty Culture and Hair Dressing-BC- 2 years cours having intake having intake capacity of 60 students and Diploma in Stenography and Secretarial Practice-ST- 2 years course having intake capacity of 40 students. Now with these backdrop, the other material assumes an importance. The said institute having capacity of 60 students or 40 students respectively, through either the applicants themselves or their representatives approached large number of students. Thus, against the intake capacity of students, additional number of students were admitted in the institute and their application forms seeking scholarship were shown to be filled in. It is very interesting to read the statement of those students. One of the students states that though the application form was in his name, the details were totally contrary to the facts, namely, photograph annexed to the application form was not of him. ***He then stated that there was a signature shown of his father, whereas his father is an ill-literate person and the signature was in English*** (emphasis supplied). He then states that the application form is annexed with College Leaving Certificate issued by Shri Sant Gajanan Maharaj College of Technology, Salod (H.). He states that he was never admitted in that college. He states that the application form was annexed with Income Certificate issued by Naib Tahsildar, Nagbhid, District Chandrapur. He states that he was approached by the representative of the college submitting that if he provides some documents, he will be entitled to receive scholarship amount of Rs.2,300/-. This student under an impression that he will receive the amount of scholarship provided the documents. Then again there is another interesting statement of a student. In his case also, the application form is filled in his name, but the details are stated about his parents. The application form was bearing signature of father of the student. ***The statement of the student shows that the father of the student expired 10 years back. In spite of this fact, the application form was bearing signature of his late father*** (emphasis supplied). The application forms and the statements are perused by me. These application forms show that the application forms are filled up giving the details, showing the student's bank account details, the statement of the students annexed with the photograph. Now the photograph of this actual student and the photograph of the student in the application form of the institute are different. The application form filled in the name of a lady student Archana bears the photograph of a male. There are many such statements and the application forms. In all these application forms, a common thread of identity of the applicant is different from what the application form shows. The income certificates annexed to the application forms show to be issued by Tahsildar, Saoli. There is seizure of six stamps used for the Certificates issued under the seal of Tahsildar. The statement of Tahsildar of the said Tahsil is also recorded by the investigating agency. The investigation material then reflects that there are three accounts being operated by these accused/applicants, two accounts at Chamorshi, one account at Saoli.

The investigation papers also reveals that there is also other interesting material. Then there is a statement of a person, who is aged 42 years and his family consists of his mother, his wife and two daughters. In the application form, wherein the name of these person is referred to, the photograph of an another person is attached to the form showing the name of mother of this person is Valangabai, whereas in the application form, the name of the mother is shown as Maheswari. In all the statements of these persons, who were shown as students, they have stated that though they never filled the admission forms, as it is reflected from the statements of these persons that the applicant have approached them and collected some documents from them. This material clearly shows that the application forms were not filled in by those students themselves. If these students would have filled these application forms, they would not have committed such blunders in their applications. Therefore, it clearly reflects that some documents were collected from these students and with the help of these documents, the application forms were filled in in the name of these students. In view of these facts, the submission of the learned Counsel Mr. Mardikar that the applicants played no role and the online forms were filled in by the students according to the government guidelines can not be accepted.

The learned A.P.P. submitted that the Officers from the Social Welfare Department in connivance with the applicants and as such they are also co-accused. The application forms of these students refers to certain bank accounts. These bank accounts were not in existence. The other material collected by the investigating agency i.e. the note issued by the Office of

Social Welfare Officer/Tribal Welfare Department reads that as the bank accounts of the students to whom the benefit of scholarship was granted are not traced and the amount of the scholarship be deposited in the account of the institute. The note reads that as there is a mistake in the account number of these students, the cheque be deposited in the account of the institute. The investigating agency's material then reveals that the said amount is transferred in the personal account of the applicant-President. There are the corresponding entries in the material collected by the agency, wherein it is referred to that the amount received under the title of examination fees, scholarship is transferred to the personal account of the applicant through R.T.G.S.

Considering these facts, the submission on behalf of the applicant-President that there was no intervention of the institute or any office bearers of the institute and it was completely an affair of the students of filling up the online application forms and the department, which was supposed to control over these application forms cannot be accepted. As it is referred to above, it is not the case of one or two students, wherein a mistake is committed or it is also not a case that the mischief revolves around only in addition to the students against intake capacity. Right from the stage of selecting the students alluring them, if they only provide certain documents, they will be entitled for scholarship, collecting the documents from these students then filling up these forms per convenience, as this reflects from the statement of the students and then referring to some fictitious bank account, the certificate shows that it is the certificate issued by the Tahsildar in respect of the income wherein the said Tahsildar Office has not at all issued such certificate, the intention is clearly reflected and that is to receive the amount of scholarship from the government in the name of students by preparing fabricated documents. All these facts show that this is more than mere additional intake capacity. The submission of the Senior Counsel Mr. Mardikar, though at first blush was looking attractive, on perusal of this material, it reveals that this is a matter where the real beneficiaries, who could have prosecuted their studies receiving proper support from the Government, were deprived of that benefit and this benefit is mis-utilized for personal gain. The canvas of the offence/crime is a bigger one. The target of this mischief is a large number of students from the tribal area. It will be not out of place to mention that a constant effort is there in the society and by the State Government to see that those students, who are in the tribal area, should come forward and they should be provided better facilities of education and to bring them in many stream. By such mischief, not only the object is frustrated, but the whole scheme gets misused and misdirected. Though it was an attempt of the learned Counsel appearing for the other applicants to submit that no role was played by the other applicants, the statements of various students clearly reveal that they were approached by these applicants and assurances were given by these applicants that merely providing same documents, they would be entitled for scholarship to the tune of Rs.2,300/-.

The learned Counsel Mr. Mardikar submits that the material to which the investigating agency was placing reliance was not referred to in the reply and as such the applicants were put to surprise and breach is caused to these applicants. I am unable to accept this submission of the learned Counsel Mr. Mardikar for the reason that the reply refers to the fact of vague admission and grabbing of the government funds with a modus operandi. The reply also refers that certain rubber stamps were used for creating false documents.

The learned A.P.P. made available the material collected in the process of investigation, which supports the submissions made in the reply. It is also an accepted position that as the investigation is under way and the process is still going on, the applicants before this Court are seeking protection in the nature of pre-arrest bail. Certainly, the applicants cannot insist for the material, which is still under way and the investigating agency is justified in showing the direction and lead, wherein the investigating agency is proceeding. The investigating agency will have to conduct a deep probe. Certain material is collected by the investigating agency. Mere because that some registers are collected by the investigating agency, it cannot be said that the investigation is practically over.

Considering the statements of the students, the material collected by the investigating agency, the submission of the investigating agency that further material is needed to be collected, the ground raised by the applicant submitting that by interim order, the applicants were protected and they have extended their cooperation to the investigating agency, there statements are recorded by the investigating agency. Mere presence before the investigating agency and the statement recorded on a solitary instance would not suffice to unearth all the aspects of this mischief. The investigating agency is certainly entitled to conduct a deep probe in the matter, wherein the students in particular are defrauded and the students community in general is kept deprived of their rightful benefit.

Considering this aspect, in my opinion, the applications are meritless and deserves to be rejected. Accordingly, the applications are rejected.

JUDGE

At this stage, the learned Counsel for the applicants submit that the applicant would like to approach the Hon'ble the Apex Court in challenge to the order passed by this Court and pray for extension of the interim protection granted by this Court.

Considering the fact that the applicants were protected by this Court by an interim order and the applicants wish to approach the Hon'ble the Hon'ble Apex Court, the protection granted by this Court is extended by a period of two weeks.

Needless to state that the protection granted by this Court to the applicants shall remain in force till 1st of April, 2015 only.

Authenticated copy of this order be supplied to the learned Counsel appearing for the parties to act upon.

JUDGE

**sdw*