

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

Criminal Application [ABA] No.135 of 2015

(Shahbaz s/o Mohd. Safdar Khan

vs.

The State of Maharashtra, through P.S.O. 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. Shyam Dewani, Advocate for the Applicant.
 Mr. A.H. Laddhad, A.P.P. for the Non-Applicant/State.

CORAM : PRASANNA B. VARALE, J.

DATE : APRIL 23, 2015.

Heard Mr. Dewani, the learned Counsel for the applicant.

The applicant is before this Court apprehending his arrest in connection with Crime No. 18/2015, registered at Police Station Gadchiroli for the offences punishable under Sections 409, 420, 465, 468, 471 of the Indian Penal Code.

The learned Counsel for the applicant, by inviting my attention to the report lodged at the instance of one Chandak Lokhande, the Assistant Project Officer, I.T.D.P., Gadchiroli, submits that the report revolves around the allegation of mischief played in the scholarship of the students and it is alleged that the Society namely Haji Abdul Subhanbhai Multipurpose Society running a school in the name and style as Aspire College of Technology, Gadchiroli submitted the applications forms for the scholarship to 58 scheduled castes

students. It reveals that the documents annexed to the application forms were forged and fabricated documents. Thus, it was alleged that by showing these students as the beneficiaries of the scholarship, the institute caused loss to the government and played mischief. The learned Counsel submits that in the report itself, it is alleged that the accused Smt. Moina Shahbaz, the President of the Society, Mr. Shahbaz Haidar, the Secretary of the Society and Amol Khaparde, the Principal of the Institute. With this backdrop, the learned Counsel then invited my attention to the certain documents placed on record. It is the submission of the learned Counsel that the applicant, who is a highly qualified person and possessing doctorate at his credit, was appointed in the year 2005 as a lecturer in Anjuman Hami-E-Islam Society's Anjuman College of Engineering and Technology for teaching the subject Applied Chemistry. The learned Counsel then invited my attention to the order of the appointment of the applicant of which a copy is placed on record at Annexure-B. He submits that since then till today, the applicant is discharging his duties regularly. He submits that the career record of the applicant is clean and unblemished. He further submits that the Society viz. Haji Abdul Subhanbhai Multipurpose Society approached the applicant and in a view to discharge the social obligation, the applicant entered in the Society as a Vice President. He then invited my attention to the

documents placed on record viz. the certificate issued by the Assistant Registrar, Cooperative Societies to the said Society and the Memorandum of Association, wherein the applicant is referred to as Vice President of the Society. He then invited my attention to the bye-laws of the society. He submitted that the duties and power enlisted in the bye-laws deals with the overall powers of the President and the general and particular powers of the Secretary. Insofar as the applicant is concerned, being Vice President, he could have exercised the powers in absence of the President, is the submission of the learned Counsel for the applicant. The learned Counsel then submitted that as the applicant was discharging his duties as a lecturer in a college, all the while he was engaged in his academic activities. He then submitted that there was no occasion for the applicant to actively participate in the affairs of the Society, much less the day-to-day affairs of the admission process or the applications in respect of some Government benefits like scholarship at Gadchiroli. The learned Counsel for the applicant, therefore, submits that though the report referred to the allegations against the accused and the accused were the President, the Secretary and the Principal of the Institute, on the backdrop of a general allegation that the mischief was played by the President, the Board of Directors and the Principal, the applicant had approached the learned Sessions Judge for seeking protection in

the nature of pre-arrest bail. He submits that the applicant was protected by an interim order passed by the learned Additional Sessions Judge on 20/02/2015. The learned Counsel also submits that the Secretary of the Society one Mr. Shahbaz Haidar and the President of the Society Smt. Moina Shahabaz also approached the learned Sessions Judge for seeking protection in the nature of pre-arrest bail. He submits that under an erroneous impression, the learned Sessions Judge rejected the application of the applicant. He also submits that the learned Sessions Judge was travelled under an impression that either the applicant is the Principal or he is one Shahbaz, who is the Secretary, against whom the material allegations in the report were levelled and submitted to the Court. He then submits that the learned Sessions Judge while accepting the submission on behalf of the President that no active role was played by Smt. Moina Shahabaz, the President of the Society, and the Secretary of the Society was doing all the activities in her name allowed the application of Smt. Moina Shahabaz. He submits that the applicant was also similarly circumstanced with Smt. Moina Shahabaz, as all the activities were being carried by the Secretary Shahabaz Haider, and the applicant was the Vice-President of the society. The learned Counsel thus submitted that there is absolutely no material against the applicant to show any active involvement of the applicant in the affairs of the

Society or in the affairs of the alleged scholarship scam. He then submits that the applicant being a person actively involved in academic field, there is no apprehension that the applicant would flee away from the justice or may not cooperate the investigating agency. The learned Counsel for the applicant further submits that in case of the conduct of the investigation, the same can go on without the custodial interrogation of the applicant and for any assistance to the investigating agency, the applicant is ready to cooperate the investigating agency. Thus the learned Counsel prays for protection to the applicant in the nature of pre-arrest bail.

Mr. Laddhad, the learned A.P.P. opposes the application.

I have gone through the material placed on record and the reply filed by the State. It seems that in the reply, the investigating agency erroneously referred the present applicant as the Principal of the College, whereas in the report itself, it is stated that one Mr. Amol Khaparde is the Principal of the college, Smt. Moina Shahabaz is the President and Mr. Shahabaz Haider is the Secretary of the Society. Though the report deals with a mischief played in the scholarship of the scheduled castes students, neither any active nor any positive role is referred in the report. In the reply filed by the State also, the allegations and the mischief relate to the Secretary of the Society and the

other officers of the Government.

From the perusal of the material collected by the investigating agency and the reply filed by the State, no reason is coming forward seeking a custodial interrogation of the applicant. It is not in dispute that the applicant is actively involved in the academic field. There is nothing on record to shows that the applicant at any point of time played role as Vice President in absence of the President.

Considering all these aspects, in my opinion, the learned Counsel has made out the case for the protection, as claimed.

In the result, the application is allowed. The interim order passed by this Court on 13/03/2015 in favour of the applicant stands confirmed with a condition that the applicant to attend the Police Station Gadchiroli once in a month on any Sunday between 09:00 a.m. to 12:00 p.m. and maintain diary of his attendance duly countersigned by the Police Station Officer or the Investigating Officer, till filing of the charge-sheet.

The application is disposed of in above terms.

Hamdast granted.

JUDGE

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