

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AT AURANGABAD.**

Criminal Application No. 4589 of 2016

District : Aurangabad

Syed Azharuddin s/o. Syed Naseruddin,
Age : 35 years,
Occupation : Professor,
R/o. Shah Bazar, Aurangabad. .. Applicant.

versus

The State of Maharashtra. .. Respondent.

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Mr. M.A. Latif, Advocate, for the applicant.

*Mr. S.J. Salgare, Addl. Public Prosecutor, for
the respondent.*

Mr. Amol N. Kakade, Advocate, for the respondent.

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CORAM : A.M. BADAR, J.

DATE : 23RD SEPTEMBER 2016

ORAL ORDER:

The applicant / accused in Crime No. 173/2016 for offences punishable under Sections 420, 467, 468, 471, 409, read with Section 34 of the Indian Penal Code, registered with City Chowk Police Station, Aurangabad, District Aurangabad, by this application, is seeking pre-arrest bail.

2. Heard the learned Counsel appearing for the applicant / accused. By drawing my attention to the appointment order of the applicant, the learned Counsel for the applicant argued that the applicant was appointed as Assistant Professor and he had not worked as Accounts Clerk. He was appointed at Millennium Institute of Management, Aurangabad, of whose Dr. Shaikh Saleem is the Director. The learned Counsel further argued that there is rival educational institute by name Maulana Azad college of which Dr. Maqdoom Farooqui is the head. Because of rivalry in those two institutions, according to the learned Counsel for the applicant, Dr. Shaikh Saleem had lodged report against informant Dr. Maqdoom Farooqui with an averment that Dr. Maqdoom Farooqui had used forged caste certificate for obtaining employment. As a counter blast, according to the learned Counsel for the applicant, the accused in that case viz. Dr. Maqdoom Farooqui had lodged report with 22 months delay without any explanation, allegedly on the basis of Auditor's report. The learned Counsel further argued that initially the Auditor had raised some queries but later on those queries were replied. The learned Counsel for the applicant argued that in the final audit report for the financial year 2013-14, nothing is found by the Auditor against the applicant. The present applicant has no criminal antecedents.

3. The learned Counsel for the applicant relied on following judgments and contended that the Hon'ble Supreme Court has held that custodial interrogation of accused persons needs to be avoided and if the case is based on documentary evidence, then anticipatory bail should be granted :-

- (1) Judgment of the Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre Vs. State of Maharashtra* [(2011) 1 Supreme Court Cases 694].
- (2) Judgment of Hon'ble Supreme Court in the case of *Joginder Kumar Vs. State of U.P.* [(1994) 4 Supreme Court Cases 260].
- (3) Judgment of the learned Single Judge of this Court in the case of *Jagannath Vs. State of Maharashtra* [1981 Cri.L.J. 1808].
- (4) Judgement of the learned Single Judge of this Court in the case of *State of Maharashtra Vs. Ishan Vasant Deshmukh @ Prasad Vasant Kulkarni* [2011(3) Bom. C.R.(Cri.) 118].
- (5) Judgment of the learned Single Judge of this Court in the case of *Mehboob Kadar Shaikh Vs. State of Maharashtra* [2014(3) LJSOFT 38].

The learned Counsel for the applicant further argued

that as per the ratio of these rulings, arrest can be done only in cases of heinous offences.

4. The learned Addl. Public Prosecutor as well as the learned Counsel appearing for the informant opposed the application by contending that papers of investigation do show that the present applicant was in-charge of the work of maintaining accounts of the educational institution. The learned Addl. Public Prosecutor drew my attention to the statement of students as well as statements of co-workers of the applicant and argued that this material shows that the applicant had in fact received fees from students of the educational institution but has not accounted the same in the account books of the educational institution. The learned Addl. Public Prosecutor drew my attention to the communication of the Auditor - M.M. Singhvi & Company and submitted that the Auditor has categorically pointed out discrepancies and mentioned that there is an outstanding amount against the present applicant.

5. I have carefully considered rival submissions as well as judgments relied by the learned Counsel for the applicant. During investigation, the investigator has recorded statements of some students who have categorically stated that they had deposited their fees with the present applicant but still in college record, fees

is shown as outstanding in their names. Similar is the statement of co-worker of the present applicant. The investigator has collected receipts, which according to the prosecution, are forged receipts of payment of fees issued by the present applicant. Then there are statement of employees of the educational institution which shows that the applicant was not willing to hand over the charge and he was trying to escape from the educational institution. These employees are stating that then bag of the present applicant was checked and it was found to be containing forged receipt book of the educational institution. Even report of the Auditor also shows that there is outstanding amount of more than Rs. 1,00,000/- against the present applicant. With this material on record, prima facie it cannot be said that the applicant has not indulged in cheating or forgery of valuable documents of the educational institution. The material collected by the investigator do show criminal breach of trust by the employee of the educational institution. The designation by which the appointment order is issued, does not matter. The offence alleged is serious. It needs to be investigated in proper manner. For effective investigation of the crime, custodial interrogation of the present applicant is warranted. The rulings cited by the learned Counsel for the applicant, as such are of no application to the facts of the present case.

6. The Application is accordingly rejected.

(A.M. BADAR)
JUDGE

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