

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 85 OF 2016

Versus

Mr. Y.M. Nakhwa, , APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 4, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned
APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal
Procedure, 1973. The applicant herein is apprehending his arrest in
Crime No. 224 of 2015 registered at Sangli City Police Station for the
offence punishable under Section 408, 409, 420, 120(b), 201, 381,

read with Section 34 of the Indian Penal Code and Section 8, 13(1)(c) (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

3 It is the case of the prosecution that on 25/11/2015 examination of women health servant was to be conducted by Zila Parishad, Sangli through direct recruitment for the year 2015. It was noticed that Shahin and Shakira were found copying the answers. In the course of enquiry, Shahin had not cooperated and had only left the examination hall. That thereafter, information was given to Smt. T. V. Sakhalkar. It was noticed that the candidate had been supplied answers to the questions. Her sister was helping her to copy the material. Accordingly, first information report was lodged by Mahesh Dhotre who was working as deputy education officer, on the basis of which the offence was registered. Dr. Hankare had been informed. He had verified the answers in the examination. The information was given to the Chief Executive Officer of Zilla Parishad, Sangli.

4 In the course of investigation, it was revealed that there was a big scam in respect of the recruitment to the post of women health servant. The statement of the witnesses were recorded. It was revealed that there were 22 persons who were employees of Zilla Prarishad who were indulging into malpractices in holding the said examination.

5 That the statement of Shubhangi Patil was recorded and she had disclosed that she was acquainted with the present applicant as he was working as a health servant in Zilla Parishad at the health center at Bhoose. He was officiating as supervisor. She had filled in the form for the same examination and was to appear for the examination on 25/11/2015. That the present applicant had approached her husband on cell phone and had informed him that he would be able to manage the recruitment of his wife Shubhangi and for that he will have to pay Rs. 7 Lakhs. It was also informed that she would be picked up at the city bus stop on the day of examination. That Shubhangi had not disclosed anything further. Her statement is not

recorded under section 164 of the Code of Criminal Procedure, 1973. The statement of her husband is also recorded and he has reiterated the same. The statement of one Indutai Pandhere is recorded and she has submitted that she was not keeping well. She had not appeared for the said examination.

6 The learned APP on the basis of the papers of investigation, has submitted that in fact, Sanjay Kamble was indulging into such malpractices and the present applicant has assisted him in getting candidates. It is a matter of record that Sanjay Kamble was arrested. He has disclosed to the police that the present applicant had informed him that there are candidates, who can be recruited. That the applicant was to receive Rs. 50,000/- in lieu of the said candidates.

7 At this stage, the learned Counsel for the applicant submits that he knew that Sanjay Kamble was indulging into such activities and he has merely informed the candidates about the same. Learned APP has placed on record the provisional mark sheet and results, which shows

that that seat No. of Shubhangi Patil was 70697 and had secured 152 marks. After reexamination, which was done on 29/11/2015, it was seen that she has scored 94 marks.

8 The statement of the applicant was recorded. The applicant herein had appeared before the investigating officer. The questionnaire is supplied to him and he had denied all the allegations. He had categorically stated that he had not received any consideration, nor he had received any answers on WhatsApp. In the statement dated 13/12/2016, the question put to him was how many candidates he had supplied to Sanjay Kamble and what was the consideration. The answer is that he had recommended two candidates namely, Shubhangi Prakash Patil and Indutai B. Pandhare. He has also admitted that Sanjay Kamble has assured him that he would get the two candidates recruited and the money was to be paid after examination. He has also admitted that an amount of Rs. 7 Lakhs was to be paid. However, he had candidly stated that he has not received any consideration. He has also admitted that on

25/11/2015 he had referred the said candidates to Sanjay Kamble after taking them from bus stand. The answer by itself would show that he had helped Sanjay Kamble to recruit two candidates without they remaining present. It is clear that the applicant is involved in the said offence. He has misused the office of the public servant. It is admitted scam in recruitment of public servant.

9 The learned APP submits that there are in fact, 22 accused. 21 accused were arrested and then enlarged on bail. The learned Counsel for the applicant submits that as far as the other accused persons are concerned, the statements of witnesses were recorded under section 164 of the Code of Criminal Procedure, 1973, where a specific overt act was attributed to the said accused persons, whereas in the present case, the statement of Shubhangi and Indutai was not recorded under section 164 of the Code of Criminal Procedure, 1973, for the reasons best known to the Investigating Officer.

10 The papers of investigation would reveal that the applicant is involved in the said scam. Apart from the papers of investigation, the

answers given to the questionnaire by the applicant are more than sufficient to hold that the applicant aided and abetted Sanjay Kamble to indulge into malpractices. The statement of Sanjay Kamble would also show that the applicant was to receive Rs. 50,000/- towards consideration.

11 In view of this, the application being sans merits stands rejected and disposed of accordingly.

12 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of hearing application under section 439 of the Code of Criminal Procedure, 1973 or at the time of trial.

(SMT. SADHANA S. JADHAV,J)