IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO.935 OF 2016

Pranav Ramesh Dapurkar .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr. Subhash Jha a/w. Mr. Amit Kasbe, Ms. Sanjana i/b. M/s. Law Global, Advocate for the Applicant.
Mrs. J. S. Lohokare, APP for the Respondent – State.
Mr. A. B. Honmane, PI/LCB Palghar, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 9, 2017.

P.C. :

This is an application for anticipatory bail in connection with C.R.No.II-9/2015 registered with Palghar Police Station for the offences punishable under Sections 420 and 120-B of IPC and Section 7 of the Maharashtra Prevention of Mal-Practice at University, Board and other Specified examination Act, 1982.

2 The prosecution case is that the Revenue Department of the State of Maharashtra was conducting an examination for recruitment of the post of “Clerk” on 4th October, 2015 between

11.00 a.m. to 1.00 p.m. at Dandekar High School, Palghar. During the examination, one Raju Ambore, accused no.1 was found using cell phone no.8806086411 to answer the questions and, therefore, the same was seized. It is the prosecution case that the answers were received by accused no.1 from cell phone no.8308988651 allegedly belonging to accused no.6. It is further alleged that accused no.1 disclosed that accused no.3 would send answers to him using his cell phone whereas the accused no.4 would solve the questions. It is alleged that the accused no.5 would solve the questions and send answers to applicant (accused no.8) and so also to Amol Pinge, the accused no.7. It is further alleged that the applicant and Amol Pinge would send answers to candidates accused viz. A1 to A4.

3 FIR was lodged with the aforesaid police station as stated above. The applicant preferred anticipatory bail before the Sessions Court which was rejected. Thereafter, the present application is preferred by the applicant.

4 Learned advocate Mr. Jha appearing for the applicant submitted that there is no evidence to connect the applicant to the said crime. He submitted that Section 7 of the aforesaid Act

is not attributed in the present case and the applicant cannot be charged with the aforesaid provisions. He submitted that the applicant was nowhere near the examination hall which is requirement to involve section 7 of the said Act. Mr.Jha further submitted that regarding the complaint as it is, the offence of cheating is not made out against the applicant. He further submitted that the applicant is a government servant and in case of arrest, there will be drastic effect on his career, since on account of remaining into the custody for more than 48 hours, he would loose his employment. He submitted that he was grant interim protection by this Court and for a long period of time it was continued. He submitted that he is willing to cooperate with the investigating officer and the custodial interrogation of the applicant is not required. He further submitted that the case of the prosecution that the details of Sim card are not provided by the applicant has no merits because such details could be obtained by investigating officer from the service provider.

5 Mr. Jha relied upon several decisions of the various Courts wherein the Courts have considered the requirements of offence of cheating. He pointed out the decision of Madras High Court in the case of ***P.M.L. Kalyanasundaram Vs. State***[1]

1 2012(3) MWN (Cr.) 121

6 He further submitted that the facts in the FIR does not constitute the offence of cheating. He further submitted that the offence of conspiracy has to be read with the principle offence and the principle offence is not made out, the question of charging the applicant for the offence of conspiracy does not arise.

7 He, therefore, submitted that on the aforesaid ground the applicant may be released on anticipatory bail.

8 Learned APP has strongly opposed the application. She submitted that the applicant has played important role in commission of the crime. It is submitted that the prosecution has collected the evidence against the applicant which shows his involvement. She further submitted that the anticipatory bail applications preferred by three other co-accused were rejected by this Court. She placed reliance upon the said orders. The State has filed an affidavit-in-reply in which it is pointed out that during the course of investigation, the involvement of the applicant is disclosed. It is stated therein that during the course of investigation, it was found that the accused no.5 has given his examination and had sent answers in code language of question

papers by SMS through his mobile number 9765636892 to mobile no.9130776139 of accused no.8 i.e. the present applicant. It is further pointed out that during the course of interrogation about the ownership of the mobile phone and Sim card no.9130778139 used by the applicant at the time of examination, the applicant made a statement that the mobile is provided by accused Amar Khandalkar. The applicant – accused did not cooperate with the investigation and not provided any fruitful information regarding the said crime. It is further stated that during the investigation it was found that Sim card was registered in the name of Bhimrao Barde. The investigating officer recorded the statement of Bhimrao Borde in which it is stated that the Sim card is used by his son Ankush Bhimrao Barde. The statement of Ankush was recorded in which he disclosed that the applicant – accused is his friend and applicant approached him and requested him to give his Sim Card for use. On 30th September, 2016 Ankush Barde gave his Sim card to the applicant – accused in good faith. After 5 to 6 days when Ankush Barde demanded back his Sim Card from the applicant, the applicant told him that he had misplaced the said Sim Card. It is also stated that during the course of investigation statement of candidates were recorded and in their statement they have stated that accused Amar Khandalkar had

informed them that they will receive SMS from Mobile No.9130776139 regarding the answers of the question papers.

9 During the course of investigation, memorandum statement of accused no.5 was recorded in which the name of the applicant has been referred to. It is also submitted by the learned APP that from the tower location, it was revealed that the applicant was present near the place of crime i.e. near the examination centre.

10 Taking into consideration the facts and the nature of evidence collected by the investigating officer and also the fact that the application preferred by the co-accused has been rejected by this Court, I am not inclined to grant anticipatory bail to the applicant.

11 Hence, I pass the following order:

:: O R D E R ::

(i) Criminal Anticipatory Bail Application No.935 of 2017 is rejected;

(ii) Criminal Anticipatory Bail Application stands disposed of accordingly.

(iii) At this stage, Mr. Jha requested that the applicant is on interim protection for a long period of time and the same may be continued for the period of eight weeks. Learned APP opposed the same and submitted that eight weeks time is longer time and reasonable time may be granted to the applicant. Considering the fact that the applicant was protected by interim order, the same is continued for a period of six weeks from today.

(**PRAKASH D. NAIK, J.)**