

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1902 OF 2017

PERDOOR VAMAN MALLYA

)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA AND ANR.)...RESPONDENTS

Shri Ashok Mundargi, Senior Advocate, a/w. Mr.Pranav Badheka, Ms.Sneha Herwade i/b. Krishnamurthy & Co., Advocate for the Applicant.

Ms.A.A.Takalkar, APP for the Respondent – State.

Mr.Raghu Bhilane, Police Inspector, EOW, Mumbai, is present in court.

CORAM : A. M. BADAR, J.

DATE : 3rd NOVEMBER 2017

P.C. :

1 The applicant / accused in Crime No.190 of 2017 registered with M.R.A. Marg Police Station, Mumbai, for offences punishable under Sections 409, 419, 420, 465, 468 and 471 of the Indian Penal Code (IPC), which is pending investigation with Economic Offences Wing (EOW), General Cheating-1 of Mumbai Police, by this application, is seeking pre-arrest bail.

2 Heard Shri Mundargi, the learned senior counsel appearing for the applicant / accused. The learned senior counsel argued that the applicant / accused is Director of Manipal Technologies Limited (MTL) (hereinafter referred to as Company for the sake of brevity), a company of repute having several contracts of similar nature throughout India. The learned senior counsel argued that in past three years, work of similar nature has been executed by the Company to the satisfaction of its principal employer. In all, about 13 lakh candidates are examined by the Company for agencies such as Bhabha Atomic Research Center, various central universities etc. There is no complaint whatsoever regarding the work entrusted to the Company by any of the agencies of the State throughout. The learned senior counsel further argued that in the case in hand, prima facie it appears that some irregularities are committed by either middle or lower level management or by Chanakya Software Services, to whom, the job of booking examination centers, training and appointing supervisors / invigilators for conducting examination was entrusted. The learned senior counsel argued that there were in

all 2434 posts which were required to be filled in, in the Department of Post and Telecommunications (hereinafter referred to as “DoP” for the sake of brevity). However, in very few cases, some irregularities appear to have been noted by the DoP. The applicant / accused, who is the Director of the Company, cannot be made liable for these irregularities, and therefore, his custodial interrogation is not warranted. The aspect which needs to be investigated is as to whether there are malpractices in the recruitment in the DoP and who has done those malpractices. The Director of a big company having several contracts cannot be attributed with minor malpractices in one recruitment process and therefore, custodial interrogation of the applicant / accused is not warranted. The learned senior counsel further argued that because of alleged malpractices, there is dispute in respect of payment and the matter is pending with the arbitrator. It is further argued that even the Investigator is not certain about the role of the present applicant / accused in the crime in question. Investigator has rightly directed Officers of the Project Department, namely, Shrivastav and Joshi, to answer the queries,

because after acceptance of the contract, the matter goes to the Project Department of the Company, which deals with it subsequently. At the stage of execution of the contract, the Director of the Company is not directly concerned with the subject matter. In this view of the matter, in submission of the learned senior counsel, custodial interrogation of the applicant / accused is not at all warranted.

3 The learned APP opposed the application by contending that intention to manipulate the recruitment examination by the applicant / accused, who is a Power of Attorney holder, apart from being the Director of the Company, is writ large from the fact that the work of actual conducting examination is entrusted to M/s.Chanakya Software Services. Under the agreement, the Company was not entitled to appoint an agent for conducting recruitment examination. The learned APP further argued that the fraud is of big magnitude, as reflected from the First Information Report (FIR) and it is not possible for an employee from lower rank of management to execute such

fraud. The learned APP drew my attention to the agreement entered into between the DoP and the Company and pointed out several clauses therein to demonstrate that it was the duty of the Company to conduct recruitment in the DoP and by strictly adhering to the norms. The learned APP further drew my attention to the FIR to point out illegalities in the recruitment in the DoP.

4 I have carefully considered the rival submissions and also perused the material made available including the FIR.

5 The FIR lodged by Rekha Sayyedqamar Abbas Rizvi, Assistant Post Master General of DoP is to the following effect :

(a) In all 2434 posts of postman/mailguard as well as multi task servant (hereinafter referred to as MTS for the sake of brevity) were available for recruitment with the DoP. The DoP decided to undertake the work of recruitment of these 2434 vacant posts by outsourcing through the selected Agency on “Turnkey Basis”.

Accordingly, the bids were invited and quotation of the Company i.e. Manipal Technologies Limited came to be accepted. Accordingly, the contract came to be executed between the DoP and the Company by written agreement dated 13th January 2015. The applicant / accused, being the Director of the Company and the authorized signatory of the said Company, had signed that agreement.

(b) At this stage, it is apposite to quote relevant provisions of the contract entered into between the Company and the DoP for the purpose of effecting recruitment of employees in the DoP. Clause (2) of the agreement deals with description of the work. The contract between the parties covers all examination relating work including assistance in designing of advertisement, collection of online applications, processing of applications received from all candidates, generation of admit cards, conduct of examination and the result processing. The agreement sets out the syllabus for the recruitment test. The eligible candidates were required to appear for examination in subjects – General Knowledge,

Mathematics, English and Regional Language. In the case in hand, the Regional Language is Marathi for candidates from Maharashtra and Konkani for candidates from Goa. 25 marks were earmarked for this test in Regional Language. Similarly, for Mathematics and English subject, 25 marks each were earmarked. The Company was entrusted with this examination related work.

(c) The contract contains procedure for handling the applications received from eligible candidates. The Company was to screen the applications and to generate the list of Eligible, Ineligible and Duplicate categories. The Company was also to print OMR attendance sheet with scanned image, photograph and signature of the candidate aspiring for the post. Thus, it was the duty of the Company to check the candidates at the time of the recruitment test in order to ascertain that he is the same candidate whose photograph is appearing on the online application.

(d) The contract between the parties further shows that the Company was to set and print question papers for the recruitment examination as per the syllabus provided to it.

(e) So far as conduct of the recruitment examination is concerned, the Company was to book Test Centers, deploy necessary staff, dispatch sealed question papers and answer sheets to all such centers and to collect the test material after the examination, and then to seal it. The contract further provides that after conducting the recruitment test, the entire data was to be sent to the recruitment Section of the Chief Post Master General of Maharashtra Circle, Mumbai, in a sealed confidential cover.

(f) Clause 7.3 of the contract deals with post examination activities. The work of opening of sealed answer sheets and its valuation, double scanning of the answer sheets, identification of double marking and other errors etc., was also entrusted to the Company.

(g) Clause 7.7 of the agreement is to the effect that no sub contracting of the contract is permissible. Clause 22.3 of the agreement is to the effect that the Company was not entitled to assign its rights or obligations under this agreement to any third party without the prior written consent of the DoP.

6 In the light of the provisions of the agreement set out in foregoing paragraphs, let us now ascertain what are the allegations against the present applicant / accused set out in the FIR lodged by the Assistant Post Master General. It is averred in the FIR that as per the contract, after conducting recruitment by the Company, selected candidates were posted in various divisions of the DoP. Amravati Division of the DoP lodged the first complaint in the matter to the Head Quarter on 29th April 2016, informing that an employee named Hardipsingh Lehersingh selected in the recruitment process is posted to the said Division, and that Division found that his online application form is having photograph of some another candidate. The next complaint was from North West Division of Mumbai. It reported that out of 194 freshly selected candidates posted to it, 25 candidates are not having knowledge of Marathi or Konkani and they had not undertaken education in Marathi or Konkani language. Still, they have secured more than 80% marks in Marathi. This prompted the Chief Post Master General to conduct Vigilance Inquiry in the matter by entrusting the matter to the Vigilance Department of the

DoP.

7 The FIR reflects following conclusion of the Vigilance Department of the DoP. Signatures on online application and answer paper was found to be different in respect of 32 selected candidates for the post of postman and 18 selected candidates for the post of MTS. Signatures of 3 selected candidates for the post of postman / mailguard and one candidate selected for the post of MTS was not found in the answer book. 24 selected candidates had given identical 12 cell phone numbers so far as the post of postman / mailguard is concerned, whereas, 21 selected candidates for the post of MTS had given 10 identical cell phone numbers. This implies that out of them atleast two selected candidates have given similar cell phone numbers for contact. From 11 families, two brothers are selected for the post of postman / mailguard and MTS. Out of 29 selected candidates for the post of postman / mailguard, 14 selected candidates had given the same address for communication. Out of 24 selected candidates for the post of MTS, 13 candidates have given the identical permanent address. Out of 32 selected candidates for

the post of postman / mailguard, 15 candidates have given identical permanent address. In the Vigilance Inquiry, it is also found that in respect of these selected candidates, answers given by them to the questions were identical.

8 The Vigilance Inquiry further reveals that out of 153 selected candidates for the post of postman / mailguard, 26 candidates are from out of Maharashtra State. They are not having Marathi as their mother tongue nor they had taken education in Marathi language. Still, they secured more than 80% marks in Marathi language. Out of 137 selected candidates, email-id of 48 candidates were found to be identical. Out of 57 selected candidates for the post of MTS, 24 had given identical email-id. In this way, 72 email-ids were found to be identical in respect of candidates selected by the Company.

9 In the Vigilance Inquiry, it is further found that the candidates who are selected from States other than Maharashtra, such as Haryana, Bihar, Rajasthan and Uttar Pradesh, their

addresses are from same locality. 81 candidates are selected for the post of postman / mailguard and 9 candidates are selected for the post of MTS from Haryana State, 45 candidates for the post of postman / mailguard and 7 candidates for the post of MTS are selected from Bihar State. 16 candidates for the post of postman / mailguard and 3 candidates for the post of MTS were selected from Rajasthan State. 6 candidates for the post of postman / mailguard and 4 candidates for the post of mailguard were selected from Uttar Pradesh State.

10 It is further found that a selected candidate Sandip Bansode had not even appeared for the recruitment test and signature of selected candidate namely Shivaji Karpe was not found on his attendance sheet. Signature of some other person was found against his name in the attendance sheet.

11 It is further found in the Vigilance Inquiry that selected candidate Hardipsingh was not having knowledge of Marathi. He had not signed online form nor his photograph was found on the online form. These are the findings of the Vigilance Inquiry

conducted by the DoP.

12 Undisputedly, the recruitment was for the public post which were 2434 in number. The learned APP submitted that during investigation it is found that selection of about 1124 candidates is suspicious.

13 Procedure of public employment in the sovereign, socialist, secular and democratic republic of India has been set down in the Constitution of India. By Article 16 of the Constitution of India, constitutional right has been created which guarantees equality of opportunity in the matter of public employment to all citizens of India. The appointment to any post under the State can be made only after proper advertisement, inviting applications from eligible candidates and holding selection process by an impartial body of experts. Selection is required to be done fairly and impartially by judging merits of the eligible candidates. The State is not expected to pick and choose from amongst the candidates for appointment of public posts.

This job was entrusted by DoP with utmost trust on the Company. The job of Company was right from advertising the post to selection of candidates and then their deployment to the various departments of DoP. Prima facie, it is seen that, the Company has breached the trust reposed by it and had shown nepotism and partiality in selecting the candidates for obvious reasons.

14 Anticipatory bail to some extent intrudes the investigation of the crime. It interferes with the statutory right of the police to investigate the crime in question. Therefore, the court is expected to be cautious and careful while exercising the discretion to grant anticipatory bail and such discretion cannot be exercised for protecting liberty of a person against whom there are serious allegations. It is well settled that custodial interrogation of apprehended accused is qualitatively more elucidation oriented. The case in hand appears to be a case of a big scam in recruitment in the DoP. The applicant/ accused is the Director of the Company to which the job was entrusted. Though it is argued that the work of actually conducting the examination was entrusted to Chanakya

Software Services, the same was not permissible under the contract, and even otherwise, as per pleadings in the application, it is seen that what was entrusted to Chanakya Software Services was merely conducting the examination at all centers. It is seen from the FIR that illegalities are committed not only during the recruitment process but even prior to recruitment test and since inception i.e. since receipt of online application forms. As such, the applicant / accused cannot shift the responsibility to the subcontractor or to the middle level or lower level management.

15 Considering the nature of offence and its repercussions as well as interest of the society and gross violation of fundamental rights enshrined in Article 16 of the Constitution of India, by the applicant / accused, the case in hand is not a fit case for grant of pre-arrest bail. It is reported that in past, similar offence is registered against him. Hence, the order :

ORDER

The application is rejected.

(A. M. BADAR, J.)