

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

CRIMINAL APPLICATION (ABA) NO.764/2017

Shri Sidharth s/o Lahanu Gaikwad ..vs.. The State of Maharashtra through
PSO P.S. Jaripatka, Nagpur.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. S. W. Sambre, Advocate for applicant.
Mr. M. K. Pathan, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : JANUARY 11, 2018

1. Heard Mr. S. W. Sambre, Advocate for applicant and Mr. M. K. Pathan, A.P.P. for non applicant-State. Also perused the reply filed on behalf of the prosecution.

2. This application is filed by the applicant since he is apprehending his arrest in connection with Crime No.16/2017 registered with Police Station, Jaripatka, Nagpur for an offence punishable under Sections 420, 406, 469, 120B of the Indian Penal Code.

3. Presently the applicant is working as Deputy Commissioner of Social Welfare and discharging his duties in that capacity at Nagpur.

During the disputed period, the applicant was discharging his duties as Social Welfare Officer at Nagpur.

4. The FIR is lodged by a student whose name is Roshan Dilip Karwade. At the outset, this Court would like

to appreciate the alertness shown by the said student. It appears to me that he has stopped further loss to the State exchequer.

5. The first information report is dated 04.01.2017. The report shows that the first informant and one of his friends Akshay Brahmane obtained admission in Renaissance College, Nara Road, Nagpur. He is a Commerce graduate and was preparing for competitive examinations. In 2013, this Renaissance College used to advertise about diploma in computer hardware course and accordingly the first informant and his friend obtained admission by paying the admission fees of Rs.500/- each. It is stated in the FIR that at the time of obtaining admission, the Principal and the Director of the said college did not intimate or inform them that they are being admitted through Rashtrabhasha Prachar Samiti, Wardha. After completion of the said course in the year 2014, certificate was also given to the first informant. He has further disclosed in the FIR that an amount of Rs.2300/- was credited in his account in Union Bank, Jaripatka branch towards scholarship. Similarly, the amount of Rs.2300/- was also deposited in the account of his friend Akshay Brahmane which is in the Bank of Maharashtra, Nari branch.

6. It is further stated in the FIR that since an amount of Rs.2300/- was deposited in his account, he has approached to the office of the Social Welfare at Nagpur for inquiry and at that time, the personnel from the said office

has informed him that he was shown to have been admitted in the National College of Vocation Institute, Nagpur and for that scholarship also is being paid. He has stated in his report that he is unaware as to how he was shown as admitted in the said college. It is also stated that he obtained further information from one Shri Fatkar working in the Social Welfare Office. That time, it was revealed to him that the scholarship worth Rs.22,500/- is being shown for him so also the said amount was shown for his friend. Thus, he brought to the notice of the investigating officer that there is an misappropriation, defalcation of amount of Rs.45,000/-. He has also reported that the same thing has also happened to various other students.

7. On the basis of the said report since it was showing commission of cognizable offence, the investigating officer registered an offence vide Crime No.16/2017 against the Principal and Director of Renaissance College.

8. Reply is filed on behalf of the prosecution to oppose the anticipatory bail filed on behalf of the present applicant. In the reply, it is stated that the applicant was discharging his duties as Social Welfare Officer during the period 31.08.2010 to 31.07.2013. According to the reply, as per the Government resolution dated 01.11.2003, it was the obligation on the part of the Social Welfare Officer to verify the record. It is also stated in the reply that the National College and and the Professional Studies have forwarded the proposal of 78 students for scholarship in 2012-13 and out

of those, the proposals of 21 students were rejected while scholarship was granted for 57 students. The crux of the reply filed on behalf of the prosecution is that the applicant has failed to discharge his duties, in accordance with the guidelines and the Government Resolution and therefore opposed the anticipatory bail.

9. Mr. Sambre, the learned counsel for the applicant, heavily relied on the order passed by this Court in Criminal Application (ABA) No.760/2017 and submitted that the case of the present applicant is on far better footing than the applicant in the said case. Criminal Application No.760/2017 was filed before this Court by Principal and Director of the National College of Professional Studies, Nagpur whereat the applicant was shown to have been admitted and fees are recovered from the office of the Social Welfare Department. This Court had, vide order 06.12.2017 (Coram: Z. A. Haq, J.) granted anticipatory bail in favour of the said applicant. Copy of the said order is taken on record and marked "X" for identification. To a pointed query made to the learned A.P.P. by this Court as to whether the State has questioned the correctness or otherwise of the said order by the prosecuting agency, the reply is emphatically "No".

10. It is to be seen that all the documents were forwarded to the office of Social Welfare by Principal and Director of the said College and he has been granted anticipatory bail. Though the learned A.P.P. has admitted that it was the duty of the present applicant to verify the

documents, it is to be seen that the documents were already sent to the present applicant and those were seen by the present applicant. It is not the prosecution case that at any point of time, the applicant was under an obligation to physically verify the students admitted in the college. Further, it is not the prosecution case that that the present applicant, in connivance with the applicant in Criminal Application No.760/2017, has fabricated or created documents. Thus, at the most, the documents which were placed before the Social Welfare Officer were passed by the Social Welfare Officer i.e. the present applicant.

The origin of the fraud lies in the college. The college has prepared those documents and has forwarded them to the office of the Social Welfare. Thus, when the creator of the documents, who has fabricated the documents for his own benefits, has been released on anticipatory bail, in my view, the present applicant stands on better footing.

11. Further, presently, the applicant is not working in the said office and thus has no control over the documents in the office of the Social Welfare. Further, it was always open for the investigating officer to seize all the documents from the office of the social welfare or from the National College of Professional Studies. The reply is conspicuously silent that at any point of time, the applicant has presented or has created any hurdle in seizing the documents from his office.

12. The applicant is a Government servant having no criminal antecedents at his discredit. Thus, he can always be available to the course of justice.

13. Looking to the totality of the circumstances, this Court is of the view that since the main accused is already granted anticipatory bail, the applicant should not be denied the said relief.

14. In that view of the matter, following order is passed.

ORDER

(i) Criminal Application No.764/2017 is allowed.

(ii) In the event of arrest in connection with Crime No.16/2017 registered with Police Station, Jaripatka, Nagpur for an offence punishable under Sections 420, 406, 469, 120B of the Indian Penal Code, the applicant-Sidharth s/o Lahanu Gaikwad, be released on bail on he executing P.R. Bond in the sum of Rs.50,000/- with two solvent sureties in the like amount.

(iii) The applicant shall attend office of the Economic Offences Wing and shall join the investigation by attending the said office on 13.01.2018 and 14.01.2018 and shall be with the investigating officer from 11.00 a.m. to 05.00 p.m. and shall extend full cooperation to the investigating officer.

(iv) The applicant is further directed to attend investigating officer as and when required by him on a written communication giving the applicant 24 hours notice.

(v) The applicant shall not try to create hurdle in the ongoing investigation and shall not try to influence any of the prosecution evidence.

(vi) If any of the condition is breached by the applicant, it shall entail the consequences.

(vii) The observations made in this order are prima facie in nature and they are made only for the limited purpose for considering the application for anticipatory bail. The learned trial Court shall not get influenced by the observations made in the order.

The application stands disposed of accordingly.

JUDGE