IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.264 OF 2019

RASHID KASIM @ KASHID TAMBOLI & ANR.)...APPELLANTS

V/s.

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

Mr.Gaurav Parkar, Advocate for the Appellants.

Mr.Vishwanath Patil, Ms.Manisha Phule i/b. Mr.A. Bharatkumar, Advocate for Respondent No.2.

Mr.S.V.Gavand, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 6th MARCH 2019

<u>ORAL JUDGMENT</u> :

1 Heard. Admit. Heard finally by consent of parties. This is an appeal under Section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the order dated 15th March 2018 passed by the learned Additional Sessions Judge, Solapur, in Criminal

Application No.339 of 2018 thereby rejecting the claim for anticipatory bail made by appellants/accused in Crime No.222 of 2015 registered with Sadar Bazaar Police Station, Solapur, for offences punishable under Sections 408, 409, 420, 467, 468, 471 read with 34 and 120B of the Indian Penal Code as well as under Section 13(1)(c) of the Prevention of Corruption Act and under Section 3(2)(v) and 3(2)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard the learned counsel appearing for appellants/accused. He vehemently argued that according to the charge-sheet, role attributed to the present appellants/accused is to the effect that some amount is credited to their accounts and similarly placed co-accused are granted anticipatory bail or regular bail either by the learned trial court or by this court. My attention is drawn to the order dated 21st July 2016 passed by this court in Criminal Anticipatory Bail Application No.1289 of 2015 with connected applications to demonstrate that co-accused Dhananjay Mahadev Chougule in whose account an amount of

Rs.2.10 lakh came to be deposited, is granted anticipatory bail by this court.

3 The learned APP opposed the appeal by contending that both appellants/accused are direct beneficiaries and substantial amount was credited to their accounts. Therefore, no case for anticipatory bail is made out.

4 I have considered the submissions so advanced and perused the material placed on record. The prosecution case, as reflected from the charge-sheet, is in respect of misappropriation of crores of amount meant for benefit of students belonging to backward class of the society.

5 Huge financial scam came to be unearth because of query made by RTI activists named -Tupsaminder to the Office of the Social Welfare Department. Simultaneously some complaints are also stated to have been received by the Mohol Police Station in respect of mis-appropriation in the scheme of scholarship,

warranting explanation from applicant-Manisha Phule, who at the relevant time was holding the post of Assistant Commissioner. According to the prosecution case, this financial scam in the scheme of scholarship is the outcome of conspiracy by accused persons headed by Assistant Commissioners, occupying the posts for the period from 2011 till filing of the FIR.

6 Perusal of the papers of investigation shows that the scheme for providing scholarship for the students belonging to Scheduled Castes and Scheduled Tribes, Nomadic Tribes, Vimukta Jati and Special Backward Class came to be formulated by the State. It appears to be the joint venture of the State Government as well as the Central Government. The State Government used to contribute funds for providing scholarship to special backward class students and students belonging to V.J. & N.T. categories. The scheme is for reimbursement of tuition fees as well as payment of scholarship to the students belonging to backward class of the society. The scheme is known as “e-Scholarship” and it was being implemented from the academic year 2011-2012. As

per the scheme, students of the backward class were supposed to make online applications to concerned colleges/educational institutions. Educational institutions were to verify those applications by getting hard copies of applications as well as supporting documents. Under the signatures of the head of those colleges/educational institutions, list of eligible students was to be forwarded to the Social Welfare Department by using Login ID of the Principal/Head of the college. It is seen that the State Government had hired services of “Mastek Company” for implementing the e-Scholarship Scheme. Lists received from the educational institutions were supposed to be examined by Inspectors attached to the Social Welfare Department and on scrutiny of such proposals, scholarship used to be sanctioned by the Assistant Commissioner. Approved list of beneficiaries was then required to be sent to concerned institutions. Simultaneously, lists of eligible students and institutions were required to be submitted to the Treasury for sanction of the amount to be paid to the beneficiaries of the scheme. Thereafter, on receipt of the amount from the Treasury, with covering letter signed by the

Assistant Commissioner, the list of eligible students and institutions was used to be sent to the concerned bank for effecting payment by ECS/ Nifty/RTGS. The amount of tuition fees used to be paid to the educational institution, whereas the amount of scholarship used to be paid to the concerned student of backward class. This is how the scheme of e-Scholarship Payment was used to be implemented. As seen from the statement of Ajit Dixit, Project Manager as well as from the papers of investigation. For this work the Mastek Company had deputed its three employees to the office of the Assistant Commissioner, Social Welfare Department. Accused Sarika Kale is one of such employees apart from other two employees named-Sunita Salunke and Sonali Pandey.

7 As noted in forgoing paragraphs of this order, the charge-sheet filed by the police and more particularly column no.17 thereof, states brief facts of accusation against the accused persons. According to the prosecution case, accused – Manisha Phule, Deepak Ghate and other accused persons misappropriated

the amount of scholarship by engaging in conspiracy. It is alleged as against accused - Deepak Ghate and Manisha Phule, who at the relevant time were the Assistant Commissioners of the Social Welfare Department that after sanction of bills regarding scholarship from the Treasury when the list of beneficiary students was sent to the bank for disbursement of the amount, names of ineligible persons used to be introduced in such list, thereby allowing siphoning of funds meant for the scholarship to candidates belonging to the backward class. It is alleged that during the tenure of accused - Deepak Ghate on 369 occasions amount totaling to Rs.2,39,86,399/- came to be transferred in accounts of ineligible beneficiaries. So far as accused – Manisha Phule is concerned, it is alleged in the chargesheet that amount totalling Rs.1,23,19,039/- came to be transferred from time to time on 176 occasions to accounts of ineligible persons.

8 In the backdrop of this scheme of the government, undisputedly, appellants Rashid Kasim @ Kashid Tamboli and Maryappa Gavali were not students taking education in any

educational institution. Still, appellant/accused Rashid Kasim @ Kashid Tamboli, for the period from January 2013 to February 2014 has received hefty amount of Rs.10,32,810/- in his bank account towards scholarship as well as reimbursement of tuition fees meant for students belonging to the backward class. He has also obtained an amount of Rs.1,25,000/- from the co-accused from the amount meant for reimbursement of tuition fees as well as scholarship to the students belonging to the backward class.

9 So far as Maryappa Gavali is concerned, though not a student taking any education in any educational institution, for the period from January 2013 to July 2013 he received hefty amount of Rs.8,61,000/- meant for scholarship and reimbursement of tuition fees to the students belonging to backward community.

10 The offence is virtually a fraud of constitutional provisions meant for upliftment of students belonging to backward class of the society. The offence alleged against

appellants/accused is an economic offence which certainly destroys social fabric of the entire community. The appellants/accused have received financial benefits in installments for more than fifteen times and they have not even cared to report this fact to the law enforcing agency to show their innocence. Rather they misappropriated the amount meant for grant for taking education by students belonging to backward class of community.

11 In this view of the matter, case for grant of anticipatory bail is not made out. No infirmity can be found in the impugned order passed by the learned Special Judge rejecting claim of anticipatory bail moved by both the appellants/accused. Hence, the order :

ORDER

The appeal is, therefore, dismissed.

(A. M. BADAR, J.)