

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPILCATION NO. 1796 OF 2018

Narayan Shankar Pawar, Age 55 years,
Occ.Agriculture, R/o.C-Wing,
Flat Nos.101 and 102, Sarvor Darshan Tower,
Chandan Wadi, Near Thane Municipal Corpn;
Thane (West) ... Applicant

Vs.
State of Maharashtra ... Respondent

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Mr.Suhas Oak I/by Vinayak Patil for applicant.
Mr.Harshad Bhadbhade for intervenor.
Mr.S.R.Agarkar, APP, for State.
Mr.Sanjay Dhumal, Police Station, Naupada Police Station,
present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 26th February 2019

P.C.

1. This is an application under Section 438 of Code of Criminal Procedure seeking anticipatory bail in connection with CR No. 42 of 2018 registered with Naupada Police Station, Thane for the offence under Sections 420, 467, 468, 469, 471, 171, 199, 200, 120B read with 34 of Indian Penal Code.

2. The First Information Report was registered on 21st July,

2018 in pursuant to order dated 20th July, 2018 passed by 3rd Judicial Magistrate First Class, Thane in OMA No. 326 of 2018. The Officer Incharge of Naupada Police Station was directed to investigate the matter, if any cognizable offence is made out against the accused, register the offence and submit report before the Court under Section 156(3) of Code of Criminal Procedure.

3 It is alleged that Municipal Corporation Election of 2017 was contested by the applicant and while submitting nomination form he submitted false information regarding his educational qualification and produced false and fabricated documents of his educational qualification before the Election Officer. The complainant had contested against the applicant and he had lost the election. It is further alleged that the applicant had made a false propaganda in his election campaign while contesting the aforesaid election from Prabhat No.12A that he is graduate candidate and therefore the people should vote for him for electing as a Corporator in the said election. It was further alleged that the applicant had also made false declaration and representation in 2012 before the election commission from Ward No.13B, Thane Municipal Corporation, Thane and got elected as

Corporator. During the election conducted in January, 2012 the applicant had declared that he had passed the SSC examination from Saraswati Vidya Mandir, Saylegao Taluka Murbad, District Thane in March, 1982 and affidavit/verification was duly notarized on 30th January, 2012. The applicant also contested Vidhan Sabha Election for the post of MLA during September, 2014 from Ward No.148-Thane wherein he had declared that he has completed graduation from commerce stream from Dr. C.V.Raman University, Kargi Road, Kota Chandigarh during the period from January, 2012 – December, 2012. Said declaration was made in the affidavit/verification notarized on 26th September, 2014. It is alleged that by letter dated 27th August, 2013 issued by the University Grant Commission (Distance Education Bureau, New Delhi) addressed to the Vice Chancellor, Dr. CV Raman University, Kargi Road, Kota Billaspur, Chattisgarh, details of educational programmes which recognized the categories and duration of B.Com qualification was stated to be minimum 3 years and eligibility criteria for admission is at least 12th standard passed/completed.

4. Applicant preferred an application for anticipatory bail before the Sessions Court at Thane. Learned Sessions Judge vide

order dated 1st August, 2018 granted interim protection to the applicant. Application was subsequently rejected vide order dated 3rd September, 2018.

5. Learned advocate for the applicant submitted that during the pendency of application for anticipatory bail before the Sessions Court, interim protection was granted vide order dated 1st August, 2018 by giving reasons. The said interim protection was continued thereafter. It is submitted that on 17th August, 2018 the complainant preferred an application under Section 408 of Code of Criminal Procedure before the Principal District Judge seeking transfer of the application for anticipatory bail making baseless allegation against the Court. The applicant had filed a reply and prayed for dismissal of the said application. The applicant also preferred an application under Section 2(c) read with Section 15(2) of Contempts of Court Act seeking reference before the Court for having committed criminal contempt by the complainant. The application for transfer of the proceedings was rejected by order dated 31st August, 2018. The application seeking reference for contempt was also rejected. However, subsequently the application for anticipatory bail was rejected on 3rd September, 2018.

6. It is submitted that the criminal prosecution has been initiated out of vendetta. The complainant has lost the election against the applicant and hence with a view to cause harassment to the applicant the private complaint was filed in which directions were issued for investigation. It is submitted that the complainant has already preferred election petition challenging the election of applicant held in 2017 and unless the election is set aside by recording of finding against the candidate, criminal prosecution is not maintainable. The complainant has preferred election petition No. 1 of 2017 which is pending before the competent Court. It is submitted that the entire matter relates to documents and custodial interrogation of the applicant is not necessary. The applicant has co-operated with the investigation. The applicant filed additional affidavit dated 8th February, 2019. In the said affidavit it was contended that in the year 2004 he took admission with Sarva Sikshan Parishad for 10th i.e Distance Educational Programme. It is further contended that the applicant had successfully passed the senior secondary certificate examination. His role number was 100534 and he passed the examination in March, 2005. The copy of senior secondary certificate examination-cum-mark sheet has been annexed to affidavit. It is

further stated that subsequently, the applicant had appeared and successfully completed the higher secondary certificate examination -commerce in the year 2007 from Sarva Shikshan Parishad – Maharashtra and his role number was 200769. The copy of the certificate –cum-mark sheet dated 20th May, 2007. School Leaving Certificate/Migration/Transfer Certificate/No objection Certificate issued by Sarva Shikshan Parishad (HSC) has been annexed to affidavit. In the year 2010 the applicant had approached to the Dynamic Education Society which is affiliated with AISECT–NSDC learning centre. The said Dynamic Education Society is authorized information centre of Dr. C.V.Raman University, Billaspur (CG) affiliated with UGC and established under Section 2(f) of the University Grant Commission Act, 1956. Through Dynamic Education Society he took admission in the said University for distance B.Com Course Educational Programme. He had deposited the fees from time to time with Dynamic Education Society and the said Dynamic Education Society issued receipt for the same. He completed first year B.Com in January 2010 to December 2010, second year B.Com in January, 2011 to December 2011 and third year B.Com in January 2012 to December 2012. The copy of the mark sheet issued by Dr.C.V.Raman University and

the payment receipts issued by Dynamic Education Society has been annexed to the affidavit. It is further stated that vide letter dated 29th May, 2018, Dr. C.V.Raman University has communicated that his degree is cancelled on the ground as alleged in the said letter. The applicant is taking appropriate action in accordance with law against the decision of the said University. Learned counsel for the applicant relied upon the decision in the case of **Kisan Kathoray Vs. Arun Dattatraye Sawant and others** reported in 2014(4) ALL MR 917 (SC) and decision delivered by this Court in Criminal Writ Petition No. 3049 of 2014.

7. Learned APP submitted that during the course of investigation the Investigating Officer has visited the concerned University / School and Colleges and made correspondence about the said documents and it is prima-facie revealed that the documents regarding educational qualification of the applicant are forged and fabricated. The applicant has not obtained any such educational qualification. By producing forged and fabricated documents before the Election Officer, the applicant committed offences as alleged by the prosecution. It is submitted that there is no legal bar for investigating the First Information Report with

regards to the false documents prepared and utilized by the accused. The applicant has criminal antecedent. Custodial interrogation of the applicant is therefore necessary.

8. Learned counsel for the intervenor submitted that the applicant and other candidates had filed their nomination for contesting election conducted by Thane Municipal Corporation from Prabhat No.12. Said election was conducted on 21st of February, 2017 and result was declared on 23rd February, 2017. The applicant was one of the candidate and got elected. The applicant has made false propaganda in his own favour in election campaign in Thane Municipal Corporation that he is graduate candidate and common people should vote for him during election. Applicant had also made false declaration / representation in the year 2012 before the State Election Commission from Ward No.39 B of Thane Municipal Corporation that he is SSC passed from Saraswati Vidya Mandir Salegaon, Tal Murbad, District Thane in March, 1982 and got elected as Corporator. The applicant had contested Vidhan Sabha Election for the post of MLA during the September, 2014 from Ward No.148 wherein he declared that he is completed graduation from commerce stream i.e B.Com from Dr. C.V.Raman University, Kargi

Road, Kota, Bilaspur (Chandigarh) during the period from January, 2012 – December, 2013. It is further submitted that by letter dated 27th August, 2013 issued by UGC addressed to the Vice Chancellor it is clarified that the duration of B.Com course is minimum three years and eligibility criteria for admission should be at least 12th Standard passed. It is submitted that if the declaration made by the applicant are considered he was merely SSC as stated in affidavit dated 31st January, 2012 and he was B.Com in accordance with affidavit dated 26th September, 2014. Considering the fact that even if the applicant has cleared his HSC subsequently still the applicant could not have obtained any B.Com degree which is three years course by 2017. The complainant had made complaints to Naupada Police Station but the cognizance of the same was not taken. Hence, the complainant was constrained to file a private complaint in which directions were issued under Section 156(3) of Code of Criminal Procedure. It is submitted that vide letter dated 15th September, 2017 addressed to Senior P.I Naupada Police Station by Maharashtra State Code it was stated that in March, 1982 the applicant had not cleared his SCC examination. Letter dated 15th September, 2017 was addressed by Saraswati Vidya Mandir to the

police stating that in the year 1982 the applicant was student of the school. He had appeared for his SSC through the school on seat No. A-13736 and failed and since October, 1982 to September, 2017, the applicant had never applied for re-exam from the school. It is therefore clear that the applicant had filed false affidavit. It is further submitted that the notice under Section 91 of Code of Criminal procedure was issued to the applicant on 9th November, 2017 and 29th March, 2018 calling for mark sheet of SSC, HSC and degree/convocation of B.Com. The applicant did not respond to the said notice. The Education Board forwarded letter dated 3rd May, 2018 regarding verification of Mark sheet and it was revealed that the mark sheet of SSC and HSC of the applicant were verified and were found to be fake.

9. Having heard both the sides. I have also perused the documents. The prosecution case relates to the false and fabricated documents with regards to educational qualification submitted by the applicant during the election of 2017 as well as earlier election of 2012 and 2014. Considering the nature of allegations and the fact that the investigations relates to the documents submitted in 2012 and 2014 as well as in 2017, there is no merit if the contention of the learned counsel for the applicant

that since the election petition is pending before the competent Court, the prosecution ought not to have been launched and it is not maintainable in law. The Investigating Officer has visited concerned Universities/School and Colleges and made correspondence with them regarding the documents of educational qualification of the applicant and it prima-facie appears that the documents are either forged and fabricated or obtained by giving false information through the Universities/School and Colleges. In the affidavit dated 31st January, 2012 submitted by the applicant before the State Election Commission it was stated that the applicant was SSC passed from Saraswati Vidya Mandir, Salegaon, Taluka Murbad, District Thane in March, 1982 which was affiliated to Pune Board of Education. In the affidavit dated 26th September, 2014 filed by the applicant when he had contested Vidhan Sabha Election in September, 2014 it was stated that the applicant had completed graduation from commerce stream from Dr. C.V.Raman University, Kargi Road, Kota Chandigarh from January, 2012 to December, 2013. Letter dated 27th August, 2013 issued by UGC addressed to Vice Chancellor, Dr.C.V.Raman University indicates the educational programme which recognize the categories and stated that the duration of B.Com qualification

is minimum three years and eligibility criteria for admission should be at least 12th Standard. In accordance with affidavit dated 31st January, 2012 as per the declaration of the applicant he had completed his HSC examination. The affidavit dated 26th September, 2014 indicate that he had completed his graduation through Dr. C.V.Raman University. As noted above, degree course was of three years course after clearing 12th Standard examination. The Maharashtra State Board of Secondary and Higher Secondary Education forwarded letter dated 15th September, 2017 to Senior Inspector of Police Naupada Police Station stating that the applicant was a student of Saraswati Vidya Mandir and he had appeared for the said examination in March, 1982 and was declared failed. The school leaving certificate of Saraswati Vidya Mandir indicates that the applicant was declared failed in the SCC examination held in March, 1982. Letter dated 15th September, 2017 was forwarded by Saraswati Vidya Mandir to the police stating that the applicant had appeared for his SSC through the school on seat No. A-13736 and failed and since October, 1982 to September, 2017, the applicant has never applied for the re-examination from school. Vide letter dated 3rd May, 2018 the Maharashtra State Board of Secondary and Higher Secondary

State Board Examination informed the police inspector Naupada Police Station that the entries in the xerox copy of the statement of the marks of SSC examination of March, 2005 in seat No. A-19800 and Xerox copy of certificate of HSC of February, 2007 in seat No. M-191128 in respect of the applicant was received and have been verified and found to be fake. By letter dated 28th May, 2018 Dr. C.V.Raman University intimated to the police inspector Naupada Police Station that the B.Com degree issued by the said University to the applicant was declared as null. Prior to that by letter dated 13th April, 2018 the Deputy Registrar of the aforesaid university had intimated the Investigating Officer that the applicant had provided his qualifying testimonial for the admission of the B.Com degree course to the said University. The details of the documents were provided in the said letter which mentions that the mark sheet issued by the Maharashtra State Board of Secondary and Higher Secondary Education, Pune of March, 2005 for 10th Class and mark sheet issued by the Maharashtra State Board of Secondary and Higher Secondary Education Pune of 12th examination was forwarded by the applicant to the said University. Thus, degree issued to the applicant has been cancelled.

10. It is apparent that false documents were forwarded to

Dr.C.V. Raman University for obtaining the degree certificate. Apparently fabricated documents were utilized by the applicant in 2012 and thereafter. According to the prosecution for preparing the fabricated documents of SSC and 12th false rubber stamps and computer has been used. Investigation is required to be done by seeking the custody of the applicant. The investigation in relation to the documents forwarded to the Election Officer in the year 2017 while contesting the said election is in progress. The claim of the applicant that he is graduate during the election of 2017 was based on the certificate of Dr.C.V. Raman University which was apparently obtained on the basis of false documents. By filing an additional affidavit in the present proceedings the applicant had placed on record the certificate-cum- mark sheet dated 20th May, 2005 issued by Sarva Shiksha Parishad Maharashtra based refers as Senior Secondary Certificate examination. The applicant is also relying upon the certificate-cum-mark sheet issued by Sarva Shiksha Parishad Maharashtra in respect to higher secondary certificate-commerce dated 20th May, 2007 alongwith the leaving certificate, migration certificate / transfer certificate / non-objection certificate. It is pertinent to note that vide affidavit filed in 2012 the applicant had relied upon the HSC certificate issued by

Saraswati Vidya Mandir in March, 1982 which is found to be a fabricated documents. The applicant however now claims that he had passed the HSC examination through Sarva Shiksha Parishad and relied upon the certificate dated 20th May, 2005. The applicant also relied upon the 12th Standard examination certificate issued by the same Parishad on 20th May, 2007. However, in the affidavit / declaration of 2012 there was no reference of such examination being cleared by the applicant and on the contrary he relied upon the certificate which was issued in 1982. During investigation it was also found that the documents relating to 10th and 12th Standard examination relied upon by the applicant were verified and information was provided by the Maharashtra State Board vide letter dated 2nd August, 2018 stating that the said documents were issued in favour of another student. The decisions relied upon by learned advocate for applicant are not applicable in the present case. It was also pointed out that three other cases were registered against the applicant. According to applicant the case relating to CR No. I-230/2000 for offence under Section 420, 409 read with 34 of Indian Penal Code is pending. CR No. I-226 of 2000 registered for offence under Section 420, 409 read with 34 of Indian Penal Code is pending in

the Court. However, the applicant is acquitted in CR No. 419 of 2003 and CR No. I-64 of 2007. It is further stated that I-CR No. 312 of 2015 charge sheet is not yet filed.

However, considering aforesaid circumstances, I find that the applicant has not made out any case for grant of anticipatory bail and hence the application deserves to be rejected.

ORDER

- i. Anticipatory Bail Application No.1796 of 2018 is rejected;
- ii. In view of disposal of the anticipatory bail application, the intervention application does not survive and hence stands disposed off.

11. At this stage, learned counsel for applicant submits that the applicant intends to challenge this order before the Hon'ble Apex Court and hence the interim protection granted to the applicant on 5th September 2018 be extended. In view of submission, the interim protection is extended for a period of four weeks.

(PRAKASH D. NAIK, J.)