

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**927 ANTICIPATORY BAIL APPLICATION
NO.834 OF 2020**

**VIJENDRA S/O. GULABSINGH JADHAV
VERSUS
THE STATE OF MAHARASHTRA**

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Mr.S.G.Chapalgaonkar, Advocate for the applicant.

Mr.V.M.Kagne, APP for the respondent-State.

Mr.Rajendra Deshmukh, Senior Counsel i/b.

Mr.Indraneel S.Godsay and Devang R.Deshmukh, Advocate for the informant.

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CORAM : V.L.ACHLIYA,J.

DATE : 02.12.2020

P.C.

1] On an apprehension of arrest in connection with Crime No. 0408 of 2020 registered with Jinsi Police Station, Aurangabad, for the offences punishable u/s. 406, 420, 468, 471 r/w. 34 of the IPC, the applicant has preferred this Application seeking anticipatory bail.

2] Heard learned counsel for the applicant-accused, learned APP for the respondent-State and advocate representing the informant, who has been permitted to assist the prosecution.

3] In brief, it is the contention of the learned counsel for the applicant that the applicant is innocent and likely to be arrested and humiliated for no offence committed on his part on account of false and frivolous complaint lodged at the instance of informant on account of *inter se* dispute amongst trustees of the trust.

4] It is submitted that on 04.09.2020, Baburao Pawar, the informant, lodged a complaint alleging therein that the present applicant, who was Secretary of Nisargadip Education Society, appointed 27 Lecturers in the year 2019 by creating a farce that the procedure required to be followed for

appointment has been duly followed. It is alleged that though no advertisement was published in daily news paper 'Sakal' in its edition published on 01.08.2019 still the documents have been created to show that the advertisement was published in said news paper in edition published on 01.08.2019, inviting application to fill up the vacant post of the Lecturers. So also false undertaking were prepared and submitted to competent authority showing that the lecturers so selected are not employed and working in any other institution. By creating such false and fabricated documents approval of the University was obtained to appointment of 27 Lecturers.

5] In the background of the allegations made in the complaint, learned counsel submits that the complaint filed is *per se* false and frivolous and nothing but an

attempt to implicate the applicant in a false case with a *motive* and to take over the control of the Education Society of which the applicant is Secretary. It is submitted that the applicant is serving as Headmaster in a school run by Saibaba Education Society of which informant is the Chairman. The applicant is also the Secretary of Nisargadip Education Society, which runs Tuljabhavani Arts and Science College at Chitepimpalgaon. The informant is interested to take over the management of the Nisargadip Education Society and in that attempt he joined hands with the brother of the applicant and raised dispute before the Charity Commissioner and change reports have been filed by the rival groups claiming to be office bearers of the trust. The matter is subjudiced before the Assistant Charity Commissioner. With an attempt to oust the applicant from the management, initially the informant got

lodged complaints through Mangilal Chavan with Kranti Chowk Police Station and Chikalthana Police Station making same allegations. Since the police have refused to take cognizance of the complaints, the Complainant Mangilal Chavan filed Criminal Misc. Application No.1471 of 2020 and Criminal Misc. Application No.1578 of 2020 in the Court of Judicial Magistrate First class, Aurangabad, seeking direction u/s. 156 [3] of the Cr.P.C. to register and investigate the complaints filed against the present applicant and other members of the trust. However, no such direction was given in those two applications. Since attempt made through Mangilal Chavan to register criminal case against the applicant failed, the informant Baburao lodged complaint with Jinsi Police Station making same allegation though no cause of action arose within jurisdiction of Jinsi Police Station to register and

investigate the complaint against the applicant.

6] By referring to allegations made in the first information report, learned counsel submits that the allegations made in the complaint are false and baseless. In fact no advertisement was published on 01.08.2019 by the institution to fill up any post. The allegations made in complaint in that respect are vague and imaginary. On the contrary, the University has granted permission to fill up the post and to issue advertisement vide communication dated 30th July, 2019. Subsequent to permission granted by the University, an advertisement was published on 23.08.2019 in daily news paper 'Sakal' inviting application for the post of Lecturers to be appointed temporarily on clock hour basis for a period of six months. It is submitted that as the education session

was to start from the month of June, 2020 the persons already working were given continuation. The University has granted approval to those temporary appointments which were made for limited period of six months. The alleged undertaking were not furnished by the applicant but same were furnished by two Lecturers, who were selected but not joined the post after their selection. In that view, there is no substance in the allegations made in respect of cheating, fabrication of documents and commission of act of criminal breach of trust on the part of the applicant. On the basis of such false and frivolous complaint lodged by informant to anyhow involved applicant in criminal case there is likely that applicant was arrested, humiliated and harassed for no offence committed on his part.

7] On the other hand, learned APP

supported the order passed by the learned Additional Session Judge and submits that in order to conduct proper investigation, the police may require custodial interrogation of the applicant. However, learned APP fairly conceded that the allegations made in the complaint as to publication of advertisement in news paper 'Sakal' in its edition dated 01.08.2019 made by the informant found to be without any basis. In fact the advertisement was duly published on 23.08.2019 in daily news paper 'Sakal' thereby inviting applications for the post of Lecturers. So also the alleged undertakings were not given by applicant. Those undertakings were given by two applicants appeared for interview. Learned APP further conceded that in the complaint lodged there are no allegations of alleged misappropriation of amount of scholarship etc. on the part of the applicant.

8] Learned advocate representing the informant opposed the application with contention that in order to conduct proper investigation, the custodial interrogation of the applicant is necessary. By referring to overall facts of the case, nature of accusations made against the applicant, learned counsel submits that there is *prima facie* case to connect the applicant with the offence registered against him. It is submitted that the University has granted permission vide communication dated 30th July, 2019, to publish an advertisement inviting application to fill up the post of Lecturers. The advertisement was published on 23.08.2019. However, the appointment orders were issued prior to the permission granted by the University to publish advertisement and to fill up the post. In that the procedure prescribed for appointment was not

followed in appointment of Lecturers. The applicant has manipulated the process and indulged into act of making illegal appointments.

9] It is further submitted that although the applicant is not holding the post of Secretary of the Nisargadip Education Society, still he is posing himself to be Secretary of the trust. He has opened the account with the Bank of Maharashtra, showing himself to be a Secretary of the trust. It is further submitted that there is scope to draw inference that the scholarship received by the trust might have been misused and misappropriated by the applicant. In order to conduct proper investigation, the custodial interrogation of the applicant is necessary.

10] I have carefully considered the submissions advanced in the light of overall facts of the case, nature of accusations made

against the applicant and the order passed by the learned Additional Sessions Judge, rejecting the application, seeking anticipatory bail filed by the applicant.

11] If the allegations made in the first information report are taken into consideration then the allegations made in the complaint confines to creating farce of publication of advertisement in daily news paper 'Sakal', in its edition dated 01.08.2019 inviting application for the post of Lecturers and filing of false undertaking. In the complaint lodged, there are no allegations made as to misappropriation of amount of scholarship by the informant.

12] So far as allegations made as to farce being created of publication of advertisement in the news paper 'Sakal' in its edition dated 01.08.2019, learned APP has fairly conceded that no substance found in

the said allegations. In fact there was due publication of advertisement in news paper 'Sakal' in its edition dated 23.08.2019.

13] Similarly, the allegations made as to giving false undertaking, no such undertaking found to be given by the applicant. Those undertakings were given by two candidates, who were selected the posts but not joined the posts. In that view, the allegations made in the complaint found to be *prima facie* false and without any basis.

14] Thus, on the face of allegations made in the complaint, no *prima facie* case exist to invite registration of offence under Section 406, 420, 468, 471 r/w. 34 of the IPC.

15] Perusal of the order dated 19th September, 2020 spells out that the application has been rejected only for the

reason that there are allegations as to misappropriation of Rs.17,60,878/- received towards scholarship and amount of Rs.40,53,745/- received towards grant in aid by the trust. The observations made in para nos. 16 and 17 reads as under:

16. So far as the appointment of the 27 posts of the assistant professors in the said college etc. are concerned, the original documents like the proposal for approval etc. appear to have been filed with the said University and the same can be recovered during the course of investigation from the office of said University. It can also be verified from the office of said newspaper whether such advertisement was issued at any point of time. It can also be verified from the office of the said University whether it had approved the temporary appointment of the 27 teachers for the year 2019-2020. For that purpose the custodial interrogation with the applicant does not appear necessary.

17. However, there are allegations about receipt of certain funds towards

the grant in aid and the scholarship to be given to the students from the Government and its credit to the account of the said Trust / college in the Bank of Maharashtra. The presence of the applicant appears necessary for the custodial interrogation relating to appropriation or relating to allegation of its misappropriation. There are allegations that an amount of Rs.17,60,878/- towards scholarship and an amount of Rs.40,53,745/- towards the grant in aid has been received by the said Trust / college. However, accounts for its disposal are not given by the applicant. The investigating officer has expressed apprehension that there is every possibility of fraudulent financial transactions. Under such circumstances, his presence for custodial interrogation relating to same would be necessary.

16] It is very surprising that learned Additional Sessions Judge has rejected the application to enquire into the allegations, which never form part of the complaint lodged by the informant. Learned APP and counsel representing the informant has fairly

conceded that in the complaint filed by first informant no allegations of misappropriation of amount of scholarship and grant in aid have been made against the applicant. Learned counsel for the informant submits that the above quoted observations came to be recorded in the order as during the course of hearing the informant has expressed his apprehension as to misappropriation of amount received towards scholarship. In view of absence of any allegations as to misappropriation being made in the complaint, the learned Additional Sessions Judge should not look into those allegations and rejected application on the basis of such vague allegations made by informant during the course of submission. The role of the informant during the course of hearing was confined to assist the prosecution. He cannot steps into shoes of prosecution. If the informant had received any such information as to misappropriation

of amount of scholarship or grant in aid it was expected on the part of the informant to have filed specific complaint to that effect.

17] The applicant has filed an affidavit stating therein that institution has been permitted to run the college on permanent no grant basis and the institution has not received any grant in aid from Government. Learned counsel for the applicant also pointed out that from last two financial year no amount of scholarship payable to student has been received from the Central Government. On 29.09.2020, a request letter was sent to Central Government to release the scholarship for the financial years 2018-19 and 2019-20. It is submitted that if the scholarship itself not received from the Central Government, there is no question of same being misappropriated by applicant or any body else. The allegations made in the

complaint make out no *prima facie* case to attract the offences as registered against the applicant.

18] Thus, on due consideration of the submissions advanced in the light of overall facts of the case, nature of accusations made against the applicant and the allegations made in the first information report which are found to be baseless, I am of the view the applicant deserves to be extended protection under Section 438 of Criminal Procedure Code. Hence the following order :

ORDER

i] The application is allowed.

ii] The interim bail granted vide order dated 29.09.2020 is confirmed and made absolute on same terms and conditions.

iii] The applicant shall appear before the Investigating Officer as and when

directed by the Investigating Officer and co-operate in investigation.

iv] It is clarified that the observations made in the order are made for limited purpose of deciding the present application and none of the observations to be treated as observations made as to the merits of the case of the prosecution against the applicant.

[V.L.ACHLIYA]
JUDGE

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