

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

ANTICIPATORY BAIL APPLICATION NO.852 OF 2020

Vilas s/o Ramesh Pattekar

...Applicant

Versus

1. The State of Maharashtra

2. The Police Station Incharge
Tofkhana Police Station,
Ahmednagar.

3. The Superintendent of Police
Ahmednagar.

...Respondents.

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Mr. G.P. Darandale, Advocate for the applicant.
Mrs. R.P. Gaur, APP for the respondents-State.

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**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 11th DECEMBER, 2020.**

ORDER:-

. Present applicant is apprehending his arrest in connection with Crime No.121 of 2020 registered with Tofkhana Police Station, District Ahmednagar for the offences punishable under Section 417, 419, 420 of the Indian Penal Code and under Section 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examination Act, 1982 and, therefore, he has filed present application under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. G.P. Darandale for the applicant and learned APP Mrs. R.P. Gaur for respondents-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant is serving as Data Entry Operator at Mahila Bal Vikas Department, Washim. He has been arrayed as an accused in connection with the said offence, however, perusal of the FIR would show that he has not been named in the same. From the remand report it can be seen that accused no.1 had disclosed while in police custody that, his documents were handed over to one Kisan Singh on the say of the present applicant. Thus, on the basis of the statement of co-accused, present applicant is tried to be involved infact, present applicant has nothing to do with the examination in respect of which some malpractices are stated to have been used. The affidavit has been filed by the present applicant stating that he had never appeared for the examination as a candidate for the post of Talathi on 12.01.2020, nor he was the dummy candidate. The custody of the present applicant is absolutely not required for the purpose of investigation. The prosecution has not stated role of the present applicant. There is no question of any recovery or discovery at the hands of the present applicant. The present applicant is not acquainted with any of the accused persons who have been arrested in this matter. The learned Advocate for the applicant, therefore, strongly prayed for grant of anticipatory bail.

4. Per contra, the learned APP submitted that the FIR has been lodged by the Awwal Karkun of Collector Office

Establishment and it is in respect of the dummy candidates those were found giving examination for the post of Talathi. 5 persons out of 13 candidates were found giving examination through dummy candidate and therefore, initially 5 persons were named as accused and other 5 were unknown persons. No doubt, the statement of the accused has been taken as base for investigation and then, the name of the present applicant was revealed. However, further investigation has been done on the basis of the information that was supplied by accused no.1. In fact, the present applicant has acted as a middle man between the original candidate and the dummy candidate. When present applicant was searched at his residence, he fled away and therefore, message was left to his brother and father that he should be made available for investigation. The accused-applicant has not appeared before the police. On the day of examination, there was talk between accused no.1 and the applicant on phone and CDR to that effect have been fetched. A copy of CDR is made available however, it appears that it is at a very preliminary stage. Further there is also a statement of witness, who has stated that he had received phone call from the present applicant in the morning and then on his say, the documents which were made available to the witness were handed over to the accused. Therefore, there is connecting evidence showing involvement of the present applicant. His custody is required

to see the mechanism that was used for impersonating the candidates. The said examination was for the post of Talathi, which is a government job and by such impersonation, the government has been tried to be cheated. The offence is serious and therefore, physical custody of the applicant is required for the purpose of investigation.

5. The fact is not in dispute that the examination for the post of Talathi and driver was undertaken. It was the examination that was taken from the scheduled caste category to fill the vacancy that was created under the said reserve category. The examination was taken between 11.00 am to 12.30 pm on 12.01.2020. The result was declared on 14.01.2020 and 13 candidates were selected for the further rounds. The work of scrutiny of their documents was undertaken on 20.01.2020. Video recording has been done of the entire proceeding and at that time by comparison of the CCTV footage, at the time of examination and the recording of the programme of verification was done and it was found that 5 persons were the dummy candidates.

6. The investigation papers would show who is the original person who was expected to write the examination and the person who actually gave the examination have been made available. Further, identification parade has been held in respect of those 5 persons, who have been named in the FIR.

Now when it comes to the present applicant, it is revealed apart from the statement of accused no.1 that, one witness had received phone call from the present applicant in which he states that the present applicant had requested him to hand over the documents to accused no.1. He was not knowing the contents of the packet of the documents but then he has handed over that packet. Further at this stage, it is demonstrated by the investigating officer that accused no.1 had received phone call from the present applicant. It appears that said part of the investigation is at a preliminary stage. Now the prosecution has come with a case that the present applicant is a master mind or main accused, who has acted as a middle man between original candidate and the dummy candidate. Under such circumstance, definitely though he had not personally appeared for the examination, yet, his physical custody is definitely required for the purpose of investigation to know what kind of mechanism was used by him. If the custody is not handed over when the procedure is yet to be revealed, the further progress cannot be made in respect of the investigation. When investigation would hamper if anticipatory bail is granted, then such discretionary power cannot be used in favour of the applicant. Hence, the application stands rejected.

(SMT. VIBHA KANKANWADI, J.)