IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 37 of 2020

Sanjay Kumar Agarwal .....Applicant

Vs.

State of Uttarakhand .....Respondent

Hon'ble Alok Kumar Verma, J.

This is the second bail application for grant of regular bail to the applicant, who has been arrested in connection with Case Crime No.132 of 2019, registered with Police Station Muni-Ki-Reti, District Tehri Garhwal for the offences punishable under Sections 406, 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code, 1860. The first bail application of the applicant has been rejected by this Court vide order dated 05.03.2020, passed in First Bail Application No.357 of 2020, Sanjay Kumar Agarwal Vs. State of Uttarakhand.

2. The second bail application is filed along with the Exemption Application (CRMA) No.968 of 2020 to exempt the applicant from submitting the Court Fees as well as the affidavit of Mr. Harish Malhotra, relative of the applicant, who is doing pairvi on behalf of the applicant-accused. These applications along with the annexures are filed through e-mail during COVID-19, pandemic lockdown.

3. Heard Mr. Aditya Singh, learned counsel for the applicant-accused and Mr. J.S. Virk, Additional Government Advocate for the State of Uttarakhand through video conferencing.

4. The learned counsel for the respondent has no objection on the exemption application.

5. The Exemption Application (CRMA) No.968 of 2020 is accepted with the condition that the directions of the Notification No.86/UHC/Admin.B/2020 dated 11.04.2020 and Notification No.89/UHC/Admin.B/2020 dated 18.04.2020 of this High Court will be followed by the applicant.

6. Facts, to the limited extent necessary, are that the State of Uttarakhand issued Government Order dated 28.06.2006 and Government Order dated 25.07.2006, whereby the process of scholarship had been fixed to be given by the Department of Social Welfare to the students belonging to the Scheduled Castes, the Scheduled Tribes, Backward Classes and Minority Classes. These scholarships are given to encourage the parents from these Classes to send their wards to schools and colleges, and to ensure that education is not denied due to the poor financial condition of their families. The object of this scholarship scheme is to support the parents of these Classes for educating their wards. This scheme is collectively funded by the Central and the State Governments.

7. In the scholarship scam, in compliance of the Order of this High Court dated 05.09.2019, passed in Writ Petition (PIL) No.33 of 2019, Aashis Kumar, Sub-Inspector, informant, was appointed as a member of the Special Investigation Team (SIT). After inquiry, the informant lodged an F.I.R. against Swami Poornanand Degree College of Technical Education (in short as 'the Institution'), Social Welfare Department and other unknown persons.

8. A list of 61 students was sent by the Institution to the Social Welfare Department for scholarship of these students. The Social Welfare Department approved only 50

students for the said scholarship. It is alleged in the FIR that the distribution of Scholarship had been illegally shown by the Institution, whereas no education had been taken in this Institution by related students. Thus, embezzlement of Rs.14,88,500.00 was found.

9. The learned counsel appearing for the applicant submits that 53 students belonging to the SC/ST category had applied for scholarship; 47 students had been granted scholarship out of which it is an admitted case in the F.I.R. that 25 students had deposited the scholarship money into the account of the college; such students after receiving the scholarship money had left after taking admission in the Institution; the allegations against are that the addresses and the mobile numbers of the said students were not found to be recorded in the record of the Institute; the allegation that the college after having a letter written from respective students had got the money transferred into its account was neither here nor there; it is an admitted fact that a sum of Rs.2,500/- had been withdrawn by the students from their respective accounts; therefore, it cannot be said that admission of the students was a wrong admission; the money had been transferred in the accounts of the respective students by the Government and seats had been allotted to respective students, who had secured admission on the strength of scholarship; it cannot be said that there had been any unjust enrichment by the college; in the year 2014-15, the State Government had taken a decision to “Implement Online Scholarship Scheme” and G.O. dated 14.11.2014 was issued; in para 7 of the G.O., it is clearly provided that the concerned student would be responsible for the particulars mentioned in the application form as well as in the annexures attached therewith; in case of furnishing of any incorrect information, appropriate legal proceedings would be taken against the

concerned student including proceedings for recovery of the scholarship amount; as per para 8 of the G.O., a method has been devised by way of providing Bar Coding in the online software for filtering fake Applications. As per clause 9 of the G.O., it was made mandatory for the concerned Institute to get their Institutions registered online and this registration was to be approved by the concerned Social Welfare Officer; as per para 10 of the said G.O., it was incumbent of the Head of the concerned college/Institution to forward the online application form of students seeking benefit of the scheme after their inspection, to the Social Welfare Officer, who in turn had to proceed for granting approval or disapproval or cancellation of the application; as per clause 12 of the G.O., the proposal was to be provided to the concerned Assistant Social Welfare Officer for investigation; clause 15 of the said G.O. provides that the amount of scholarship of fees would be deposited directly in the CBS Bank account of the students opened in CBS branches of the Nationalized Bank; in case of any violation of any provision of the G.O., it is clearly mentioned in the G.O. that the responsibility would of the concerned District Social Welfare Officer; till date no order has been passed by the State Government for recovery of any amount nor any order has been passed for debarring any student of the applicant's Institute for any fictitious admission; no action till date is taken by the State Government against the concerned officers; the offences under Sections 409, 420, 467, 468 and 471 of the I.P.C. are not made out against the applicant; the investigation is still going on and charge-sheet has not been filed against the applicant. The learned counsel for the applicant further submits that the applicant will deposit Rs.7.5 Lacs. The learned counsel for the applicant submits that the applicant is 53 years old, he is in custody since 06.02.2020 and the submission regarding G.O. dated

14.11.2014 could not be taken on the previous occasion, but, the learned counsel for the applicant could not show any reason for not taking the submission regarding the said G.O. earlier.

10. The learned counsel for the State opposed the bail application and submits that the present second bail application is not maintainable.

11. This Court on March 05, 2020 made following order:-

"8. In the case of **State of U.P. vs. Amarmani Tripathi, (2005) 8 SCC 21**, the Hon'ble Apex Court has held that it is well settled that the matters to be considered in an application for bail, are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence, (ii) nature and gravity of charge, (iii) severity of the punishment in the event of conviction, (iv) danger of the accused absconding or fleeing, if released on bail, (v) character, behavior, means, position and standing of the accused, (vi) likelihood of the offence being repeated, (vii) reasonable apprehension of the witnesses being tampered with, and (viii) danger, of course, of justice being thwarted by grant of bail.

9. In determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. While dealing with an application for bail, there is a need to indicate in the order, reasons for prima facie considering why bail is being granted particularly where an accused is charged of having committed a serious offence. Any order dehors reasons suffers from nonapplication of mind as observed by the Hon'ble Apex Court

in **Ram Govind Upadhyay Vs. Sudarshan Singh and others, (2002)3 SCC 598**.

10. In **Niranjan Hem Chandra Sashittal Vs. State of Maharashtra, (2013)4 SCC 642**, the Hon'ble Apex Court observed that corruption is not to be judged by degree, for corruption mothers disorder, destroys societal will to progress, accelerates undeserved ambitions, kills the conscience, jettisons the glory of the institutions, paralyses the economic health of a country, corrodes the sense of civility and mars the marrows of governance. The Hon'ble Apex Court further observed that immoral acquisition of wealth destroys the energy of the people believing in honesty, and history records with agony how they have suffered; and the only redeeming fact is that collective sensibility respects such suffering as it is in consonance with constitutional morality. The emphasis was on intolerance to any kind of corruption bereft of its degree.

11. In **Asian Resurfacing of Road Agency Private Limited and another Vs. Central Bureau of Investigation, (2018)16 SCC 299**, the Hon'ble Supreme Court observed that the cancer of corruption has, as we all know, eaten into the vital organs of the State. Cancer is a dreaded disease which, if not nipped in the bud in time, causes death.

12. In **Nimmagadda Prasad Vs. Central Bureau of Investigation, 2014 (1) CCSC 120**, the Hon'ble Apex Court observed unfortunately, in the last few year, the country has been seeing an alarming rise in white collar crimes, which has affected the fiber of the country's economic structure. In controvertibly, economic offences have serious repercussions on the development of the country as a whole.

13. The role of the present applicant is not at par with the co-accused persons, who have been granted bail by this

High Court. According to the investigation, the present applicant being the Manager/Secretary of the Trust submitted the fake list of SC/ST candidates for obtaining the scholarship from Social Welfare Department. During the investigation, the said persons of the Scheduled Castes clearly stated that they never studied in this institution and they were not aware with the scholarship, sanctioned on their name. During the course of investigation, it is found that Rs.7,50,000.00 had been transferred into the account of this Institution from the account of beneficiaries. From the perusal of the evidences, collected during the investigation, it prima facie appears that the applicant was involved in this scholarship scam.

14. In view of the facts and circumstances of the case, there is no force in the submissions of the learned counsel for the applicant/accused and no good ground has been made out for enlarging the applicant on bail at this stage, therefore, the bail application is liable to be rejected. The bail application is rejected accordingly.

15. It is clarified that the observations made regarding the bail application are limited to the decision, in the light of the facts, provided by the parties at this stage, as to whether the bail application should be allowed or not and the said observations shall not effect the trial of the case."

12. In **State of Madhya Pradesh Vs. Kajad, (2001)7 SCC 673,** the Hon'ble Apex Court has held that it is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances, the second bail application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law.

13. In **State of Maharashtra Vs. Captain Buddhikota Subha Rao, AIR 1989 SC 2292,** the Hon'ble Supreme Court has observed, ".....Once that application was rejected there was no question of granting a similar prayer. That is virtually overruling the earlier decision without there being a change in the fact-situation. And when we speak of change, we mean a substantial one which has a direct impact on the earlier decision and not merely cosmetic changes which are of little or no consequence. ....."

14. The applicant had opportunity to raise all his contentions on the previous occasion. The contention of the learned counsel for the applicant that the age of the applicant is 53 years, he is in custody since 06.02.2020 and the investigation is going on would not amount to change in the circumstances.

15. Therefore, it is not open to the applicant to make successive bail applications even on the grounds already rejected by this Court earlier.

16. On overall consideration of the application and also in light of the fact that any change in circumstances is not established, after dismissal of first bail application on merits, I do not find any change in circumstances to entertain present second bail application. The second bail application does not deserve to be entertained. Consequently, the present second bail application is rejected.

(**Alok Kumar Verma, J.**)
21.04.2020

Sanjay