

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 343 OF 2021

Ashok s/o. Sahebrao Vaiyda, Age 29 years,
Occu. Service, R/o. Jaman Jyot,
Behind Harsul Police Station, Village Harsul,
Taluka and District Aurangabad

.. Applicant

Versus

The State of Maharashtra

.. Respondent

....
Mr. Balaji P. Pande, Advocates for applicant
Mr. N. T. Bhagat, APP for respondent
...

CORAM : MANGESH S. PATIL, J.
DATE : 19.06.2021

PER COURT :-

This is an application under Section 439 of the Code of Criminal Procedure, 1973 in connection with Crime No. 317 of 2020 registered with Jawahar Nagar Police Station, Aurangabad for the offences punishable under Sections 420, 406, 465, 467, 468, 471 and 472 read with Section 34 of the Indian Penal Code.

2. Sum and substance of the prosecution case is to the effect that posing himself to be influential enough to secure jobs to various persons in different department of Government and Railway, the applicant induced them to part with money and made them to undergo mock training. He forged and fabricated appointment letters and thereby indulged in forgery and cheating. There are 19 such persons, whose statements were recorded by the Investigating Officer.

3. Learned Advocate for the applicant would submit that there are number of flaws in the investigation. The offence is triable by the Magistrate. The applicant is not likely to jump the bail. The trial is not likely to get over in near future. Though he has already been involved in such cases, he has been granted bail, and therefore, he may be released on bail.

4. Learned Advocate for the applicant would point out that stand of the victims and the witnesses in the cases initiated by them against the applicant for dishonour of cheques and their stand in their statements under Section 161 of the Code of Criminal Procedure, 1973 are completely contradictory in the proceedings under Section 138 of the Negotiable Instruments Act, 1881. They have come with a case that the cheques have been issued by the applicant for repayment of hand-loan, whereas, now they have been alleging in their statements recorded under Section 161 of the Cr.P.C. that the cheques were issued for repayment of part of the money received by the applicant while promising to supply the employment.

5. Learned Advocate for the applicant would further submit that going by the statements of these witnesses, few other persons have been named through whom, they are stated to have approached the applicant, but none of them is either arrayed as accused or their statements are recorded during the course of investigation. It clearly demonstrates that partisan investigation has been carried out by Investigating Officer, who has selectively chosen to implicate the applicant alone.

6. Learned APP opposes the application. He submits that offence is serious. Though it is triable by Magistrate, it is not the first instance where the applicant has indulged in such act. Already similar crime is registered against him with City Chowk Police Station, Aurangabad bearing Crime No. 237 of 2017 for similar offences, wherein, the allegations are about he having deceived several persons and made them to part with money, promising to get employment in the University. There is every room to believe that he is bent upon to commit such criminal activity, if he is released on bail. It is not a case of fraud practiced and deception upon them by the applicant, but several persons on different occasions have been duped in a similar manner. In view of such nature of offence, irrespective of other consideration, application for bail be rejected.

7. I have carefully gone through the copy of chargesheet made available by the applicant. The informant and several other witnesses, whose statements were recorded under Section 161 of Cr.PC. have come out with a similar version regarding deception and fraud practiced upon them by the applicant. They have stated that the applicant has promised them to secure the employment after receiving money for the purpose. He made them to undergo some sort of mock training and even issued appointment letters, which turned out to be false and fabricated. At this juncture, there is no material to reveal that the applicant indeed has cheated these persons and committed forgery.

8. Apart from the above state of affairs, admittedly, he has been involved in similar crime only a few years back and those cases are waiting for trial, wherein, he has been granted bail. Learned Advocate for the applicant informs that he was granted bail in that matter on 17th February 2018 and crime committed in the present matter pertains to period thereafter, meaning thereby that, despite having been implicated in similar crime, but having secured bail, the applicant has indulged in to dupe as many as 19 persons. His such tendency is quite alarming and needs to be taken seriously. There is every room to believe that the applicant does possess criminal mind would indulge in similar activity once he is released on bail.

9. Therefore, though the principles governing the bail are taken into consideration as laid down by the Hon'ble Apex Court in a case ***Sushila Aggarwal Versus State (NCT of Delhi) and another***, reported in ***(2020) 5 SCC 1***, in my considered view, it is exceptional case where the bail deserves to be refused.

10. The Bail Application is rejected.

11. It is clarified that the observations made here-in-above are restricted to the decision of the present application only.

(MANGESH S. PATIL)
JUDGE