

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

ANTICIPATORY BAIL APPLICATION NO. 260 OF 2021

Shahaji s/o Balaji Mule ... **Applicant**
Age : 28 Years, Occu: Private Service
R/o Village Chikhali (Khurd)
Taroda Road, Nanded,
Taluka & District Nanded

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through the Officer Incharge,
Bhagya Nagar Police Station, Nanded
Taluka & District Nanded
2. The Superintendent of Police,
Nanded

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Devang R. Deshmukh,
Advocate for the applicant

Mr. V. S. Badakh, A.P.P. for the State.

Mr. R.D. Thorat, Advocate assists to P.P.

WITH

ANTICIPATORY BAIL APPLICATION NO. 387 OF 2021

Vijay s/o Rajabhau Kale ... **Applicant**
Age: 35 years, Occu: Service
R/o Amravati, Bhagya Nagar,
District Nanded

VERSUS

The State of Maharashtra, ... **Respondents**
Through Bhagya Nagar Police Station,
Nanded, Taluka & District Nanded

Mr. N. S. Ghanekar, Advocate for the applicant

Mr. V. S. Badakh, A.P.P. for the State.

Mr. R.D. Thorat, Advocate assists to P.P.

CORAM : V. G. BISHT, J.

RESERVED ON : 18th August, 2021.

PRONOUNCED ON : 27th August, 2021

ORDER:

1. Present applications under section 438 of the Code of Criminal Procedure, 1973 are preferred by the applicants seeking grant of pre-arrest bail in connection with Crime No.106/2020 registered with Bhagya Nagar Police Station, District Nanded for the offences punishable under Sections 406, 420, 465, 467, 468, 471, 120(B), 506, 170, 109 34 of the Indian Penal Code, 1860.

2. It is the case of the prosecution that accused Shamla Balaji Mule, Shahaji Balaji Mule (Applicant in ABA No.260/2021), Mangala Sanjay Jadhav, Sima Balaji Mule, Hema Balaji Mule, Rakesh Sadashiv Dhondge, Shivaji Kisan Khandre, Ram Annaji Ghate, Shailesh R. Dube and Kalesaheb (Applicant in ABA No.387/2021), in between March, 2014 to February, 2016, opened an office in the name of Indian Forest Office run by Central Government at Chhatrapati Chowk, Pawade Complex, Purna Road, Nanded. The prosecution alleges that the above said accused, with a view to deceive the people, posed that accused Shamla Mule and Mangala Jadhav of the Indian Forest Department are the Incharge of Maharashtra State and others are clerks. They also showed their forged appointment letters and authority letters. They further posed that they have good acquaintance with the officers of the Forest Department, Delhi and told the informant that they would employ his son and other 10 boys in the Forest Department as Field Officers. It is alleged that all the above said persons connived with each other and

thereby induced the informant to part Rs.64 lakhs. They have even given security against that amount in the form of cheques. Similarly, they also used Scorpio vehicle of the informant for about one and half year and did not pay rent amount of Rs.10 lakh.

3. The prosecution then alleges that accused Ram Annaji Ghate, Shailesh R. Dube and Kalesaheb (Applicant in ABA No.387/2021) also induced the informant that they would give employment to the sons of his relatives at Amravati and Yawatmal as clerks and after gaining his confidence, in collusion with each other, made the informant to part Rs.18 lakh and also gave security cheque against that amount in the form of cheques. Thus, the above said accused in all deceived the informant to the tune of Rs.82 lakhs.

4. Mr. Rajendra Deshmukh, learned Senior Advocate, appearing for the applicant in ABA. No.260/2021, first of all, submitted that during the period when the offence is registered, applicant Shahaji Balaji Mule was student at Pune and showed a receipt (Annexure C/88) of Agnihotri Group of Institutions dated 28.05.2014. Learned Senior Advocate then next submits that it was the informant who was kingpin behind the whole racket and then invited my attention to the rent agreement (Annexure 'D') showing that the informant had taken the premises at Pawade Complex, Chhatrapati Chowk, Purna Road, Nanded and from this place, according to the learned counsel, the informant used to

operate. In order to substantiate that the present informant was involved in the offence of cheating and forgery, the learned counsel invited my attention to the first information report bearing F.I.R.No.0007/2017, registered with Police Station Chakur, District Latur, for the offences under sections 420, 467, 468, 471, 306 read with 34 IPC at the instance of one Vinayak Sudhakar Khandare. In the said first information report, the present informant is one of the accused and allegations against him and others are that he and others had induced said Vinayak Sudhakar Khandare to offer employment and thereby made him to part Rs.18 lakhs giving a false and forged appointment letter. Even the accused in the present case namely Hema Balaji Mule and Sima Balaji Mule are the victims of the said racket and again to substantiate that, the learned Senior counsel invited my attention to the complaint (Annexure F) addressed by them to the Police Station, R.K. Puram New Delhi alongwith bogus appointment letter issued by one Amit Kumar. Needless to say, on the basis of the said complaint, the Police Station, R.K.Puram New Delhi registered the first information report (Annexure G) against Vinod Kumar @ Pravin Kumar, Asim Khan @ Sonu, Manish Verma @ Pankaj and Priyanka @ Rashmi. In the list of witnesses, Shivaji Kisan Khandre i.e. accused in the present first information report is cited as a witness.

5. As far as the applicant Vijay Rajabhau Kale (applicant in ABA. No.387/2021) is concerned, Mr. N.S. Ghanekar, learned counsel for the

applicant, submits that there are no allegation against him. Summing the submissions, the learned counsel would submit that whole case is based on documentary evidence. The investigation is nearing completion. In such circumstances, there is no necessity of custodial interrogation as the applicants are ready to abide by any condition which this Court may impose upon them. Therefore, the applicants deserve to be given benefit of pre-arrest bail, argued learned counsel.

6. Mr. V. S. Badakh, learned A.P.P., on the other hand, strenuously opposed the applications by contending that the informant and others have been induced by the applicants and the amount involved in the offence of cheating is colossal. Learned A.P.P. then took me through the investigation papers and pointed out that there is statement of one Mohan Madhaverao Pawade that it was Balaji Mule i.e. father of the applicant Shahaji Balaji Mule who had taken premises at Pawade Complex on rental basis with effect from February, 2014. Even he and others had displayed the board 'Indian Forest Department, run by the Central Government'. In that office, three daughters and son of said Balaji Mule used to sit along with 2/3 other persons and used to function with the help of computers. Learned A.P.P. then invited my attention to the statements of Sai Kamlakar Jaybhaye, Umakant Bapurao Kendre, and Govind Narayan Tavdewad. Learned A.P.P. further invited my attention to the authority letter purportedly issued by one Amit Kumar from Indian Forest Department including appointment

letters. Certain copies of cheques are also filed on record by the prosecution alongwith deposit receipts.

7. Learned A.P.P. then lastly submitted that having regard to the nature and gravity of the offence, custodial interrogation of the applicants are very much necessary in order to unearth the conspiracy and the persons involved and there being no merit in the applications, the same are liable to be rejected.

8. I have carefully gone through the documents filed on record by the learned Senior counsel for the applicant-Shahaji. As far as the submission of the learned senior counsel that at the relevant time applicant-Shahaji was a student of Agnihotri Group of Institutions and as also the receipt at Annexure C/88 to that effect are concerned, that will have to be appreciated by the learned trial Court at the time of appreciation of evidence and not at this stage.

9. It is seen that the informant in the present case had taken premises at Pawade Complex, Chhatrapati Chowk, Purna Road, Nanded and to that effect rent agreement Annexure-D does so show. It is also clear that the first information report bearing No. 0007/2017 is also registered against the informant of present case at the instance of Vinayak Sudhakar Khandare for the offence of cheating. So also accused in the present case namely Hema Balaji Mule, Sima Balaji Mule had also moved a complaint Annexure-F to the Police Station, R.K.

Puram, New Delhi on the basis of which F.I.R. came to be registered against some persons. It may be noted that in that complaint, the said accused have claimed themselves to be the victims of the offence of cheating and forgery. However, that complaint, at this moment, in my opinion, will not nullify the importance of the present first information report in which they have been arraigned as accused.

10. I have also gone through the compilation presented to me by the learned A.P.P. There is, at the beginning, a statement of one Mohan Madhavrao Pawade who states before the investigating officer that Balaji Mule i.e. father of the applicant-Shahaji, acquaintance of his father, had taken a hall for office purpose on the third floor of Tawade Complex from his father in the month of February, 2014 on a rental basis at the rate of Rs.6000/- per month. The significant part of the statement of this witness is that the father of the present applicant-Shahaji had displayed a board styled as "Indian Forest Department run by Central Government". Three daughters (accused) and son (applicant) used to sit there alongwith 2/3 persons and carried out their work on computer. This prima facie supports the version of the informant that the applicant-Shahaji and others had displayed the board of Indian Forest Department and from there they used to function. It is also seen from the statement of the said witness that, however, after one year, all of them, son and daughters of said Balaji Mule, disappeared after locking the office.

11. Then, there is statement of Sai Kamlakar Jaybhaye who states that there was an advertisement in Daily Punya Nagari, Aurangabad on 08.03.2014 wherein it was mentioned that the Forest Department, Mantralaya needs 235 male and female for field officer, clerk and driver posts, with phone numbers. Accordingly, he and his father visited the office of the applicants. At that time, accused Shamal Balaji Mule i.e. sister of the present applicant introduced herself as Incharge of Maharashtra Region and also introduced other persons as officers. She also showed their appointment and authority letters. She also opened Website and showed the names, designation and mobile numbers of the present applicant and other accused and also physically introduced them. After some conversation, the present applicant-Shahaji demanded Rs.7 lakhs which was brought by them and then accused Shamal Mule asked them to handover the said amount to accused Shivaji Khandre and Sima Mule. His statement further shows that after some days, the prospective candidates collected an amount of Rs.23 lakhs and again visited the office of the applicant-Shahaji and there his father was told by accused Shamal Mule to distribute the said amount in the sum of Rs.1,50,000 to Shivaji Khandre, Rs.2,50,000/- to Rakesh Dhondge, Rs.3,50,000/- to Sima Mule (Wanve), Rs.1,50,000/- to Hema Mule and Rs.4,00,000/- to Shahaji Mule i.e. the present applicant. Accordingly his father paid the amount and remaining amount of Rs.10 lakh was handed over to accused Shamal Mule. It is further alleged in the said statement that after 4 to 5 months, when they enquired with applicant-

Shahaji and accused Shamal Mule as to when the examinations would be held, then they were told that as some amount is yet to be paid by some of the candidates and said amount is to be forwarded to officers of Delhi, they should pay the remaining amount. Accordingly, all the said prospective candidates again contributed an amount of Rs.17 lakh and from time to time, deposited in the bank accounts of Shamal Mule, Shahaji Mule, Sima Mule (Wanve), Hema Mule, Rakesh Dhondge, Shivaji Khandre and also in the name of senior officers.

12. Next statement is of Umakant Bapurao Kendre who came to know about the functioning of the applicant and other accused from the father of witness Sai Kamlakar Jaybhaye. He, therefore, alongwith two candidates and amount of Rs.14 lakhs, visited the present applicant - Shahaji alongwith Kamlakar Jayabhaye. He was introduced to accused Shamal Mule, applicant-Shahaji Mule and other staff members by one Mangala Jadhav Madam. The amount of Rs.14 lakh was handed over on the say of said Mangala Jadhav Madam.

13. Next statement is of Govind Narayan Tawdewad who also supports the version that Rs.23 lakhs were distributed by accused Shamal Mule to various accused including the applicant-Shahaji.

14. Apart from above prima facie evidence, there are forged appointment letters purportedly issued by Amit Kumar alongwith some Xerox copies of cheques and saving pay slips.

15. Reading of the first information as a whole in conjunction with the above referred statements of prosecution witnesses, I am satisfied that there is prima facie case against the present applicant. Huge monies are involved which have been allegedly amassed by the applicant-Shahaji in connivance with others by deceiving the informant and others with the help of forged documents. This would definitely require thorough investigation. Seen in this perspective, the custodial interrogation of the present applicant-Shahaji Mule is necessarily inevitable.

16. In view of above, I am satisfied that applicant-Shahaji Balaji Mule has not been able to make out a case for consideration so as to cloth him with protective order of pre-arrest bail.

17. This brings me to another applicant namely Vijay Rajabhau Kale. It is alleged in the first information report that applicant Vijay Kale was given cash amount of Rs. 4 lakhs in respect of one candidate and when the applicant was asked to give security, as the applicant was not having cheque book, he allegedly gave borrowed cheque in the sum of Rs.3.50 lakh from one employee who was with him. However, it further appears from the first information report that said cheque of Rs.3.50 lakhs was taken away by one Gutte from the informant as the informant had not paid monies to him. It is not made clear in the first information report whether the informant was owing some amount towards said Gutte or said Gutte was also supposed to be given

amount towards the promise of employment. It is also not made clear as to why only security of Rs.3.50 lakh was given when the applicant was allegedly given Rs. 4 lakh. Be that as it may, the fact remains that this part of the first information report is vehemently denied by the learned counsel for the applicant Vijay Kale and vigorously contended that the applicant Vijay Kale had not given any cheque to the informant. Except bare allegations, there is nothing on record to substantiate that the applicant Vijay Kale had given any cheque towards security in lieu of amount of Rs.4 lakhs received by him in respect of employment of one of the candidates. This being so and the fact that no other material is forthcoming against the applicant Vijay Kale, his application deserves consideration with certain conditions.

18. For the aforesaid reasons, I pass following order:

ORDER

- i. Application of applicant Shahaji Balaji Mule bearing Anticipatory Bail Application No.260/2021 is rejected.
- ii. Application of applicant Vijay Rajabhau Kale bearing Anticipatory Bail Application No.387/2021 is allowed with following conditions:
 - (a) In the event of arrest of the applicant Vijay Rajabhau Kale in connection with Crime No.106/2020 registered with Bhagya Nagar Police Station, District Nanded for the offences

punishable under Sections 406, 420, 465, 467, 468, 471, 120(B), 506, 170, 109 34 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.25,000/- [Rs. Twenty five thousand only], with one or two solvent sureties in the like amount.

- (b) The applicant shall attend concerned police station as and when called and shall cooperate with the police in the investigation.
- (c) The applicant shall not tamper with the prosecution evidence in any manner.

(V. G. BISHT, J.)

JPC