

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1 BAIL APPLICATION NO.776 OF 2021

ARVIND KRUSHNARAO TAKALKAR
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. S.S. Deshpande
APP for Respondents: Mr. R.D. Sanap
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CORAM : V. K. JADHAV, J.
DATED : 4th OCTOBER, 2021

PER COURT:-

1. The applicant is seeking regular bail in connection with crime No. 27 of 2016 registered with Mandavi police station, District Nanded, for the offences punishable under Sections 167, 171, 193, 197, 198, 201, 203, 213, 214, 218, 221, 420, 419, 467, 468, 471, 120(B), 34 of I.P.C.. His application below Exh.187 in Special (ACB) Case No. 14 of 2019 with similar prayer came to be rejected by the learned Additional Sessions Judge-2, Nanded vide order dated 21.5.2021.

2. Learned counsel for the applicant submits that as per the prosecution case the applicant has appeared as dummy candidate for five original candidates appearing for the various competitive examinations. Learned counsel for the applicant submits that as per the prosecution story, one candidate viz. Bhaskar Madhukar Rathod has appeared for canal watchman (Kalwa Choukidar) on 5.10.2008.

It has been alleged that the present applicant has appeared in his place as dummy candidate under the name of Bhaslu Madhukar Rathod. Learned counsel submits that except the similarity in photograph to certain extent, there is no further evidence, either oral or documentary, to consider prima facie that the present applicant has appeared for the said Bhaskar Madhukar Rathod as dummy candidate.

3. Learned counsel for the applicant submits that so far as the candidate Shivprasad Vijay Dumne, who has appeared for examination of Assistant Civil Engineer, MHADA held on 1.11.2015 is concerned, except the allegations, there is no evidence against the applicant. Even the hand-writing expert's report is also not supporting the prosecution case.

4. Learned counsel for the applicant submits that so far as the candidate at Sr.No.3 Prabodh Madhukar Rathod is concerned, his examination record was not available since the said examination was held way back in the year 2007. Learned counsel submits that there is no evidence in any form indicating that the applicant has appeared for this candidate as dummy candidate in the examination of Senior Assistant, Zilla Parishad, Parbhani held on 16.6.2017.

5. Learned counsel for the applicant submits that so far as Nikhil Hirasingh Chavan is concerned, he was to appear for the

examination of Junior Clerk on 22.11.2015. It has been alleged that the present applicant has appeared for this candidate as dummy candidate. Learned counsel submits that it has been only revealed in the report of hand-writing expert that the examination was not given by the said Nikhil Chavan, however, there is no evidence against the applicant.

6. Learned counsel for the applicant submits that so far as the candidate Dnyaneshwar Bhikayya Kirtankar, who has appeared for the examination of Computer Assistant on 19.6.2016, is concerned, the applicant allegedly caught red handed. Learned counsel submits that the complaint came to be lodged by the Center Head viz. Mr. Sudhir Damodhar Pawar. However, the complaint came to be lodged against the younger brother of said Dnyaneshwar Bhikayya Kirtankar alleging that the younger brother of said Dnyaneshwar Bhikayya Kirtankar had appeared for the examination in his place as dummy candidate. Learned counsel submits that there is no evidence that the present applicant has appeared as dummy candidate for the said Dnyaneshwar Bhikayya Kirtankar and there is no report of hand-writing expert favouring the prosecution.

7. Learned A.P.P. for the respondent State submits that so far as Dnyaneshwar Bhikayya Kirtankar is concerned, the applicant was caught red handed and brought to the police station on the same day when he was immediately arrested by drawing arrest panchanama.

Learned A.P.P. submits that prima facie, there is strong case against the applicant. So far as the candidate Dnyaneshwar Bhikayya Kirtankar is concerned, the hand writing expert's report also favours the prosecution. Learned A.P.P. submits that there is prima facie strong case against the applicant. Leaned A.P.P. submits that the Hon'ble Supreme court has released co-accused Prabodh Rathod on bail, though he is the master mind, because of the delay in trial. Learned A.P.P. submits that this Court has released co-accused Somnath Parve Patil, whose case is different than the case of the present applicant. The applicant may not be released on bail.

8. I have carefully gone through the entire record. By order dated 19.3.2018 this Court has disposed of bail application No. 150 of 2018 filed by the present applicant as withdrawn with liberty to the applicant to file application for bail after receipt of the report of the hand-writing expert from Gujarat.

9. By exercising the said liberty after receipt of the report of hand-writing expert, the applicant had approached the trial court and since the trial court has rejected his application seeking regular bail, filed the present application.

10. As per the prosecution story, the applicant has appeared as dummy candidate for five persons viz. (1) Bhaskar Madhukar Rathod, (2) Shivprasad Vijay Dumne, (3) Prabodh Madhukar Rathod, (4)

Nikhil Hirasing Chavan and (5) Dnyaneshwar Bhikayya Kirtankar.

11. So far as the person at Sr. No.1 viz. Bhaskar Madhukar Rathod is concerned, I have perused the report about similarity in photograph. It has been opined by the Assistant Professor Forensic Photography, Raksha Shakti University, Ahmedabad that Exhibit S-1, Q-2 and Q-1 photos are of a male person. S-1 photo is colour photo and face details not so sharp Q-2 and Q-1 photos are black and white looks similar to each other. It is further opined that in biometric examination anthropological distances and ratio's differences in S-1, Q-2 and Q-1 is less than 0.50%. It is also opined that Exhibit S-1, Q-2 and Q-1 anthropological distances and ratio's differences is less than 0.5% it may be of a same person. Admittedly, there is no direct evidence to indicate that the applicant has appeared as dummy candidate for the person at Sr. No.1 Bhaskar Madhukar Rathod. Only on the basis of said report about similarity of photograph to certain extent and not to the full extent, nothing can be concluded at this stage.

12. So far as the candidate at Sr. No.2 Shivprasad Vijay Dumne is concerned, admittedly the said examination was online examination and it has been simply alleged that the present applicant has appeared for the said Shivprasad Vijay Dumne as dummy candidate. It has been revealed to some extent only to the effect that the said examination was not given by the said Shivprasad Vijay Dumne.

However, so far as the hand-writing specimen of the present applicant is concerned, there is no positive opinion given by hand-writing expert indicating that the applicant in any way is connected to the said examination held way back in the year 2015.

13. So far as the person at Sr. No.3 Prabodh Madhukar Rathod is concerned, it has been revealed during the course of investigation that the said examination was given in the year 2007 and as such, no examination papers are available. Consequently, except the allegations, there is no evidence against the applicant that he has appeared for the said Prabodh Madhukar Rathod as dummy candidate.

14. So far as the person at Sr. No.4 Nikhil Hirasing Chavan is concerned, it has been simply revealed that he has not given the examination held on 22.11.2015. However, hand-writing expert's report does not support the prosecution case to the extent that the present applicant has appeared for the said person as dummy candidate.

15. So far as the person at Sr. No.5 Dnyaneshwar Bhikayya Kirtankar is concerned, the prosecution alleges that the applicant was caught red handed while appearing for examination as dummy candidate.

16. I have carefully gone through the police papers. It appears that one Mr. Sudhir Damodhar Pawar, who was the Center Head of the said examination, has lodged a complaint on 19.6.2016 alleging therein that the younger brother of said Dnyaneshwar Bhikayya Kirtankar has appeared for the examination held on 19.6.2016 in Giants English Medium School, Yavatmal. It has not been stated in the complaint that the person, who was giving examination as dummy candidate, was taken to the police station and accordingly the Center Head Mr. Sudhir Pawar has lodged the complaint in the concerned police station. I have also carefully gone through the arrest panchanama. It has been simply stated in the arrest panchanama that the applicant came to be arrested at Wadgaon road and there is no reference as to whether the applicant was arrested either in the examination hall or in the police station since brought to the police station by the Center Head Mr. Sudhir Pawar. Learned A.P.P., though repeatedly questioned about it, was unable to point out as to whether the hand-writing expert report about the hand writing in respect of the said examination of Dnyaneshwar Bhikayya Kirtankar favours the prosecution. Even though the learned A.P.P. has taken help of the officer present in the court, however, none of them has pointed out the report of hand-writing expert pointing out fingers to the applicant.

17. So far as the co-accused Prabodh @ Pramod Madhukar Rathod, who is allegedly the master mind in this crime, is concerned,

came to be released by the Supreme court by order dated 13.7.2021 in criminal appeal No. 598 of 2021. The Hon'ble Supreme court released said Prabodh @ Pramod Madhukar Rathod by observing that he is in custody since 22.5.2017 in connection with the present crime and 32 co-accused persons have been released on bail. In the instant case, the applicant is in jail from 28.5.2017 in connection with the present crime.

18. In bail application No. 662 of 2021 preferred by co-accused Somnath Abhangrao Parve Patil, who allegedly appeared as dummy candidate for four persons came to be released on bail by this Court (Coram: R.G. Avachat, J.) by order dated 6.9.2021.

19. In view of above and even considering the merits of the application, I am inclined to release the applicant on bail with certain conditions. Hence, I proceed to pass the following order:-

O R D E R

- I. Application is hereby allowed.
- II. The applicant Arvind s/o Krushnarao Takalkar, in connection with crime No. 27 of 2016 registered with Mandavi police station, District Nanded, (Special (ACB) Case No. 14 of 2019) for the offences punishable under Sections 167, 171, 193, 197, 198, 201, 203, 213, 214, 218, 221, 420, 419, 467, 468, 471, 120(B), 34 of I.P.C.. be released on bail on furnishing personal

bond of Rs.20,000/- with one solvent surety of the like amount on following conditions:-

- a) The applicant shall not tamper with the prosecution evidence in any manner.

III. Application is disposed of.

(V. K. JADHAV, J.)

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