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

ANTICIPATORY BAIL APPLICATION NO. 862 OF 2021

Bhimrao s/o Shankarrao Mundhe,
Age : 49 years, Occu. Legal Practitioner and Notary,
R/o. 71, Venkatesh Nagar, Jalna Road,
Aurangabad. ...**Applicant**

Versus

The State of Maharashtra & Anr. ...**Respondents**

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Mr. V. D. Sapkal, Sr. Counsel i/b Mr. A. A. Mukhedkar, Advocate for the applicant
Mr. S. B. Narwade, APP for respondent / State

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CORAM : V. G. BISHT, J.

DATE OF RESERVING THE ORDER : 08th September, 2021
DATE OF PRONOUNCING THE ORDER : 15th September, 2021

PER COURT : -

1. This is an application under Section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0292 of 2021, registered with Jawahar Nagar Police Station, District Aurangabad, for the offences punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code.

2. As per Government Resolution dated 01.07.2016, 5% reservation is provided in Government services to the candidates, who are performing well in sports activity and possessing sport's

certificate. While scrutinizing applications for government post from sports quota reservation, the various sports association, who issues such certificate is required to forward the record of concerned candidate to the appointing authority of the Government for it's scrutiny. This record contains admission application in sporting activity, assessment, result, bond of association, bond of sportsperson, Aadhaar Card, Schedule-III copy. After scrutinizing these documents, the candidate is appointed in Government service from sports quota in A, B, C, D service category.

3. The prosecution further contends that from the year 2016 to 2019, total number of 262 candidates availed such certificates for seeking government service from sports quota. The Assistant Director of Sports and Youth Service Department, ordered an enquiry relating to sport certificates furnished by these 262 candidates, whereupon it was found that out of those 262 candidates, 259 candidates have procured forged and bogus sports certificates for availing 5% sports quota while entering in government service. Accordingly, FIR came to be lodged.

4. It further appears from the record that the applicant received a notice dated 01.06.2021 from the office of Assistant Police Inspector, Crime Branch at Aurangabad (City), u/s 91 of the Code of

Criminal Procedure. In the said notice, it is stated that during the investigation of the aforesaid crime it revealed that some of the accused persons in the said crime had got notarized stamp papers from the applicant and accordingly the applicant was asked to produce the record maintained by him regarding preparation of said notarized documents. The applicant accordingly remained present in the office of API Crime Branch on 21.06.2021 and furnished the information whatever he was having.

5. Mr. V. D. Sapkal, learned Senior Counsel for the applicant, submits that the work of applicant as a notary involves scrutiny of documents such as Identity Card etc. of the executants, before signing the documents in the capacity of notary and the applicant is not in any way concerned with the contents of the said documents. In case those candidates furnished some false information in those notarized documents, then the applicant would not be having knowledge of the same. According to learned Counsel, the applicant had notarized documents of some of the candidates relating to the said crime, however, the applicant had scrutinized the relevant documents such as sports certificates / Aadhaar / Identity Card, etc.

6. According to learned Counsel, as per provision contained in Section 13 of the Notaries Act, 1952 (hereinafter referred to as

"Notaries Act"), there is bar to cognizance of any offence against a Notary, save and except upon a complaint in writing made to Judicial Magistrate First Class by a Central or the State Government servant under the orders of the Government. Thus, in view of said protection provided under the Notaries Act, the applicant cannot be held liable in the present crime for the acts performed by him as a Notary. Learned Counsel also placed reliance in **Chandmal Motilal Bora v. State of Maharashtra** reported in 2005 (1) Bom.C.R. (Cri.) 823 and **Ayaz Ahamed Khan v. State of Maharashtra** reported in 2012 (3) Bom.C.R. (Cri) 611.

7. Learned Senior Counsel then lastly contended that the applicant is a legal practitioner and Notary, there are no criminal antecedents and he is ready to cooperate in the investigation. In such circumstances, the application deserves to be allowed.

8. Per contra, learned APP opposed the submissions by contending that the necessary notary registers submitted by the applicant during the course of investigation were not relevant to the case in hand. In fact, the relevant registers are not produced.

9. Here it may be noted that on 5th August 2021, this Court while passing the order recorded the statement that of learned Senior Counsel for applicant that on instruction, undertakes to produce the

notary register for verification to the Investigating Officer on or before 13.08.2021. However, on next date i.e. 13.08.2021, the learned Sr. Counsel again made a statement before this Court that the registers which were ordered to be submitted by the order of this Court, have been destroyed in heavy rain and could not be produced before the Investigating Officer. This Court then asked the learned Counsel to file an affidavit to that effect. Accordingly, learned Sr. Counsel filed an affidavit on 17.08.2021 wherein it is specifically mentioned that the office of applicant is situated in the underground premises and as in the month of July-19 there was heavy rainfall, water had entered in the notary office premises and because of the water logging the notary registers of year 2017-18, books, stationery, computer, printer etc. were completely washed out in the water, got damaged and destroyed. This is the reason the applicant could not produce the same before the Investigating Officer.

10. The above affidavit is countered by the affidavit of the Investigating Officer whereby he contests the contents of the affidavit of the applicant and terms it false and as an afterthought theory put forth by the applicant. Moreover, according to him, in the said affidavit the applicant has claimed for the first time that due to heavy rain in July-2019 there was water logging in his office premises resulting in damage and washing out of registers of the year 2017-18,

stationery, computer, printer and so on. Here immediately I would like to correct the Investigating Officer by pointing out that at the time of filing of the anticipatory bail application itself, in paragraph 5 of the grounds, it is clearly mentioned that in the year 2019 there was heavy rainfall due to which water had logged in the applicant's office and the things such as stationery, computer, printer, notary registers were washed out and got damaged.

11. Learned APP then submitted that there are statements of eye-witnesses which also reveal that the applicant used to do notary work in his office by accepting Rs. 1000/- for notarizing the disputed / bogus documents which also show his active involvement in the crime. According to learned APP, the custodial interrogation of the applicant is necessary in order to unearth the racket of forgery.

12. I have gone through the investigation papers. First of all, it may be noted from the notice dated 01.06.2021 issued under Section 91 of the Code of Criminal Procedure to applicant that as he had notarized certain forged documents submitted by other accused and for that purpose, the office of API summoned the applicant with his notary register. Before entering into the role of the applicant, I would like to note the relevant provisions for the purpose of present case.

13. Section 8 of the Notaries Act deals with functions of notaries and provides that by virtue of his office, a notary, *inter alia*, is expected to verify, authenticate, certify or attest the execution of any instrument, prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate and translate, and verify the translation of, any document from, one language into another. From the said section itself, it is apparent that a notary is clothed with a duty to verify, authenticate or attest the execution of any document and also authenticate any instrument intended to take effect in any country and so also the translation and verification of the translation of any document from one language into another. This section nowhere contemplates in an unequivocal terms that the notary shall also be responsible for the genuineness or otherwise of the contents of any document to which he has notarized. Therefore, there is substance in the statement of learned Senior Counsel that scrutinization of the relevant document encompasses is the verification of documents such as Aadhaar Card / Identity Card and the relevant sport certificates issued by the concerned Authority. The applicant was in no way concerned with the truthfulness or otherwise of very contents of those documents.

14. Then there is Section 13 of the Notaries Act relating to cognizance of offence and it reads thus :

> ***13.*** *Cognizance of offence : -*
>
> *(1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorized by the Central Government or a State Government by general or special order in this behalf.*
>
> *(2) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.*

15. Explaining the scope and importance of Section 13 of the Notaries Act, this Court in the case of **Chandmal Bora** (supra) observed as under :

> 10. Therefore, if any allegation is made against a Notary which touches the official performance as a notary, the Criminal Court is forbidden from taking cognizance unless the complaint in writing is made by an officer authorised by the Central Government or State Government by general or special order in this behalf. Therefore, whenever an official act of Notary comes in picture, it becomes the duty of the criminal Court to see, whether the allegations is directly concerned with his official duty or the performance which he has to do as indicated in Section 8 of Notaries Act. The Court which has been requested to take cognizance of the complaint has to apply its judicial mind and to see whether the act which is the subject-matter of the complaint is the official act of a Notary or it is an act which is beyond his official performance. Suppose if the notary is alleged to have committed an offence by his act directly in his personal capacity, then there is no need of sanction, because, the said act is not connected with his official performance, like an allegation showing that notary committed the murder or notary assaulted a person for the purposes of causing simple hurt, grievous hurt etc. If the allegations show that by an act which is not in accordance with the provisions of Notaries Act, the notary has been alleged to have committed an offence, there is no need of having a sanction to the complaint in writing of an officer as contemplated by provisions of

> Section 13 of Notaries Act. But if act alleged is touching his official performance, the Court has to be on guard when it has been requested to take cognizance of the allegations against the Notary.
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> 11. If such protection is not granted to the Notary, he would be involved, implicated and roped in, in number of offences, because number of documents are being notarised before him in his notarial register. Some documents may be purporting to be for the offence of cheating, blackmailing or offence of commercial transactions. He would be involved in number of offences concerned with the disposing of property, transfer of the property, sale of the property, exchange of property. He would be also coming in picture as an accused in number of offences connected with number of commercial crimes. A Notary is not supposed to know each and every person before him for the purpose of notifying a document in his notarial register. He is not supposed to know the truth behind the documents brought before him for entries. He is generally introduced to parties by persons who happen to be persons of his acquaintance. Such person may be an advocates, clerks of the advocates, or some persons who are connected with him by his profession as Notary or by his profession generally as a lawyer. If such protection is not granted to a notary, it would be very difficult for him to work as notary and members of public at large would be facing number of difficulties at every step and with this object Section 13 has been enacted by the Legislature with a foresight.

16. I am in respectful agreement with the aforesaid observations made by this Court in the case of Chandmal (supra).

17. Similarly, in the case of Ayaz (supra), the petitioner was notary advocate and had notarized the documents in respect the owner of the plot Smt. Vinita Deshpande concerning MHADA allotment. It subsequently revealed that Smt. Deshpande was abroad at material time when the document was purportedly notarized, and consequently, petitioner as a notary was prosecuted. The applicant and advocate & notary therein sought quashing and setting aside of the criminal proceedings and while allowing the application this

Court after referring Section 13 of the Notaries Act held that, Investigator had not prosecuted the advocate who had identified the said person before execution of document or notarizing the same, the Act of the petitioner as a notary has no other reason to travel beyond scope of notarizing the document, without there being any personal involvement to know text or texture of document or genuineness thereof. While notarizing he was not expected to know the genuineness of the party, as it is the advocate to whom the Notary identifies, who had identified the executant.

18. Coming to the case in hand, the prosecution has not produced the material on record to show that the applicant deviated from his official duty and this deviation has direct nexus to offence of cheating, forgery and using a forged document as genuine. All that is alleged is that the applicant had notarized the forged documents which were produced by other accused in order to secure employment in various category. In my considered opinion and as also the observations (supra) of this Court earlier, Section 13 takes care for the protection extended to such acts done during the course of performance as a Notary.

19. As far as another aspect of the matter is concerned, the submission of learned APP clearly shows that the computer which was

lying in the office of the applicant has already been seized. The applicant on his part has also shown willingness to cooperate with the Investigating Officer and in my considered opinion, that will take care of the case. The apprehension of the Investigating Officer reflected through his affidavit is that if the applicant is released on bail, the applicant will destroy the relevant record. There is no question of destroying the relevant record inasmuch as much water has flown since the time of granting of interim relief and even otherwise as per prosecution's own showing they are in possession of the computer of the applicant. The applicant is ready to join the investigation and in fact has joined the same pursuant to the order of this Court dated 05.08.2021.

20. In view of above, I am inclined to allow the present application. Hence the following order.

ORDER

i] In the event of arrest of applicant, namely, Bhimrao Shankarrao Mundhe in connection with Crime No. 0292 of 2021, registered with Jawahar Nagar Police Station, District Aurangabad, for the offences punishable under Sections 420, 465, 467, 468, 471 of the Indian Penal Code, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.20,000/- [Rs.Twenty

Thousand only], with one or two solvent sureties in the like amount.

ii] The applicant shall join the investigation till it is over.

21. The Anticipatory Bail Application stands disposed of in aforesaid terms.

[V. G. BISHT]
JUDGE