

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 187/2021

Amol S/o Manik Gote & ors V/s. State of Maharashtra

with

CRIMINAL APPLICATION (ABA) NO. 186/2021

Nitin S/o Ramesh Raut & anr. V/s. State of Maharashtra

with

CRIMINAL APPLICATION (ABA) NO. 199/2021

Subhash S/o Kacharu Ambhore V/s. State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri A. Mardikar, Sr. Advocate assisted by Shri P. S.
Chawhan, Advocate for applicants (ABA Nos. 187/2021 &
186/2021)
Shri K. S. Malokar, Advocate for applicant (ABA No.
199/2021)
Shri I. J. Damle, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.

DATE : 06.08. 2021.

Heard.

2. These applications are arising out of Crime
No. 34/2021 registered with Police Station Washim
(Rural), Dist. Washim for the offence punishable under
Sections 406, 409, 420, 465, 467, 468, 471, 472, read
with Section 34 of the Indian Penal Code. The
Sessions Court declined to grant pre-arrest protection,

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hence the applicants have approached to this Court.

3. The applicants have claimed bail on the ground of innocence and false implication at the instance of internal dispute in the management of the Education Society. It is argued that the applicants have neither prepared false documents nor their appointments were illegal. It is argued that the essential ingredients to constitute the charged offences are not made out. Moreover, it is contended that issue of legality of applicants' appointment is pending for adjudication in this Court. There is no need for custodial interrogation, hence pre-arrest protection has been claimed.

4. The State resisted bail by filing reply-affidavit. It is contended that the applicants of Criminal Application (ABA) Nos. 186/2021 and 187/2021 have obtained their appointments by deceitful means as well as approval letters of the Education Officer were forged and fabricated. The applicant of Criminal Application (ABA) No. 199/2021 has facilitated to the said illegal appointments.

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According to the State, the Inquiry Committee found that the appointments were against the Rules, illegal and as such, the applicants by drawing salary, have misappropriated an amount of Rs. 6,34,793/- on the basis of fabricated documents. According to the State, investigation is in progress and in order to find out the truth and for collection of useful material, applicants' custodial interrogation is necessary.

5. Learned counsel appearing for applicants has denied the very allegation that the ' appointments were illegal. He has produced the documents to substantiate his stand that on prior approval, public advertisement was issued and by following due procedure, applicants were appointed. Inasmuch as, the Education Officer has issued approval to these appointments. It is brought to the notice that initially the Inquiry Committee has floated the Rules of natural justice, hence this Court in Writ Petition No. 3985/2017 (Amol S/o Manik & others Vs. The Deputy Director (Education) & others) has set aside inquiry report. Latter on, again the authority reached to the same finding and cancelled the appointments.

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6. Apparently, there are fraction in the management of the Society and the dispute is pending before the appropriate authority. It reveals that certain complaints were made by one group against the appointments of the applicants on the teaching and non-teaching posts and suspected about the approval granted to the appointments. The Education Officer has again cancelled the appointments vide its order dated 02.06.2018. The applicants have challenged the order of cancellation of appointments in Writ Petition No. 7371/2018 (Nitin Ramesh Raut Vs. The Deputy Director (Education) Amravati Division and others.) with Writ Petition No. 7379/2018 (Amol Manik Gote and others Vs. The Deputy Director (Education) Amravati Division and others.), wherein initially stay was granted. The said subject about illegality in canceling of appointments is still pending. It reveals that one group of management has filed Criminal Writ Petition No. 951/2018 (Dnyaneshwar Shikshan Prasarak Mandal Vs. Deputy Director of Education, Amravati & ors.) seeking directions against the Education Officer for taking criminal action. The applicants have challenged the same in Criminal

Application (APL) No. 298/2021.

7. The complainant stated that Deputy Director of Education, Amravati has constituted three members Committee to inquire in respect of appointments of teaching and non-teaching staff. The inquiry report concluded that the appointments were against rules and approval was obtained on the basis of forged documents. According to the State, the Education Officer has denied of issuance of approval letters by denying his own signature. However, the prosecution is not able to point out expert's report to that effect. On perusal of case diary, it reveals that the question is about illegal appointments and procuring false documents. Though there is allegation of misappropriation, however, *prima facie*, it reveals that the applicants have rendered services for which the salary was disbursed. Whether the appointments were illegal or within the Rules is subject for consideration pending before this Court. The applicants are mere teachers who have served in the the Education Society. Applicant of Criminal Application (ABA) No. 199/2021 was the then Headmaster. Nothing specific has been brought on record against the Headmaster to show the

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necessity of his custodial interrogation. The alleged forged documents are already seized by the Police. The reason for seeking custodial interrogation to find out as to who has assisted the applicants, is not convincing. Already interim protection has been granted to all applicants which is prevailing till today. There is no complaint about the misuse of liberty. Having regard to the nature of accusation, the investigation can be proceeded by directing applicants to fully cooperate. In view of the matter, personal liberty of applicants cannot be curtailed. It is fit case to grant pre-arrest protection, hence following order:-

(I) Common ad-interim order dated 30.03.2021 passed by this Court in Criminal Applications (ABA) Nos. 186/2021, 187/2021 and 199/2021 is made absolute on the same terms and conditions with rider that the applicants shall attend concerned Police Station as and when called under written intimation.

(II) Applicants shall provide their specimen of handwriting and signature as and when required by the Police.

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(III) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also shall not tamper with the evidence.

(IV) All applications stand allowed and disposed of.

JUDGE

Gohane.