

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.324 OF 2022

KUNDLIK DAGADU JAYBHAYE AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. N.K. Kakade, Advocate i/b Mr. M.R. Khutwad, Advocate for applicants

Mr. V.M. Kagne, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 28<sup>th</sup> APRIL, 2022

PRONOUNCED ON : 05<sup>th</sup> MAY, 2022

**ORDER :**

1           The applicants are apprehending their arrest in connection with Crime No.676/2021 dated 09.09.2021 registered with Pathardi Police Station, Dist. Ahmednagar, for the offence punishable under Section 420, 120-B, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860. It will not be out of place to mention here that the applicants had approached this Court by filing Anticipatory Bail Application No.1311 of 2021, but it appears that it was withdrawn on 29.11.2021.

2            Heard learned Advocate Mr. N.K. Kakade instructed by learned Advocate Mr. M.R. Khutwad and learned APP Mr. V.M. Kagne for the respondent.

3            It has been vehemently submitted on behalf of the applicants that the applicants have been falsely implicated. It is stated that Military Intelligence, Deolali Camp, Nashik informed the officials of Local Crime Branch at Ahmednagar that the accused No.1 Maruti Shirsath and some other persons were preparing fake school documents by accepting amount and by using those fake documents the unemployed youths are getting Government services. Therefore, the investigation commenced on the basis of First Information Report lodged by one Police Constable Mr. Vinod Shivaji Masalkar. It is then stated that the accused No.5 Ajay and accused No.6 Shantaram were the students of Nagnath Vidyalaya, Pimpalgaon Tappa. They had taken admission from 9<sup>th</sup> standard for further education and it is stated that their documents were in respect of earlier school leaving certificate are fake. It is then stated that upon the inquiry and investigation it was revealed that the present applicants, who have been stated to be accused Nos.3 and 4, are preparing false documents. The applicants had approached the learned Additional Sessions Judge, Ahmednagar by filing Criminal Bail Application No.1502/2021. While granting interim protection, condition was

imposed that the applicants should remain present before the Investigating Officer as and when required on written notice. However, thereafter the present applicants approached this Court and said application i.e. Anticipatory Bail Application No.1311 of 2021 came to be withdrawn on 29.11.2021. Now, the investigation is complete and charge sheet is filed, therefore, it is required to be noted as to what evidence has been collected against the present applicants.

4           It has been further vehemently submitted that the charge sheet would show that certain ID number was falsely written and also raid was conducted at the spot, where accused Nos.1 and 2 were caught. A fake customer was sent to them and it was requested that a particular type of document be supplied to the fake customer. The numbered note was found with accused No.1. It was then disclosed by accused No.1 that he gets the work done from the present applicants. That means, the name of the applicants has been given by a co-accused and that statement is not admissible. Now, the main accused persons have been released on bail and, therefore, on the ground of parity the applicants deserve to be released on bail. The applicants are ready to cooperate with the investigation. The applicant No.2 is the Headmaster of the school and applicant No.1 is the Teacher of Nagnath Vidyalaya, Pimpalgaon Tappa.

5           The learned APP has strongly opposed the application and submitted that this Court had made query and allowed the Investigating Officer to file affidavit, as to why and under what circumstances he had not arrested the applicant No.1, who is a Teacher and applicant No.2, who was the Headmaster of the School and why those documents considering them as absconding were not attached to the charge sheet, when it is stated to have been filed under Section 299 of the Code of Criminal Procedure. Accordingly, those documents have been produced along with the affidavit. Many times the Investigating Officer or an authorized person on his behalf had gone to search the applicants. They could not find both of them. Statements of the Teachers from the school, where the present applicants are also serving, have been recorded and they have stated that since the offence has been registered against them they are not regularly coming to the school. They come as and when require and appear suddenly, make signature on the registers and go away. They say that police had come in search of the applicants, but at that time the applicants were not available in the school. Thus, there is evidence on record to show that the applicants are avoiding their arrest. Though this Court had allowed the application filed by the applicants to be withdrawn after the disinclination was shown to grant any relief, there is ample evidence against the present applicants and it cannot be said that the investigation is complete. Though under the forced circumstances the charge sheet is filed;

yet, further investigation is required because the applicants are the authors of the fake documents. The offence is more serious when the documents were produced getting employment in military. The school leaving certificates of those persons are fake. Documents to support such contention have been recovered and it can be seen that many persons have taken said fake documents. The magnitude of the offence is much more and, therefore, further thorough inquiry is necessary. Therefore, the custodial interrogation of the applicants is necessary.

6           Almost all the facts leading to the case of the prosecution have been stated and, therefore, they are not repeated. In fact, the information was given by Military Intelligence Office, Deolali Camp, Nashik. It shows that those facts have been taken seriously by the Military Department and, therefore, the Intelligence tip was given. Thereupon raid was conducted with the help of fake customer. At that time for getting a fake school leaving certificate accused No.1 charged Rs.2,000/-. That currency note was recovered from the search of the person of accused No.1. From the arrested accused it appears that the further facts have been revealed. The present applicants appeared to be the members of the racket, who have issued those documents. If such documents are got prepared and used for getting Government service, then, it is definitely serious and further it appears that it

is also used for getting employment in Military, which is a sensitive area as well as the job. Only genuine persons should be taken in such services. But if persons like Teacher involved themselves in such fake activities, then, it has to be deprecated and such persons cannot get sympathy or discretionary relief.

7           Charge sheet has been filed on 08.12.2021 i.e. after the withdrawal of Anticipatory Bail Application No.1311 of 2021 on 29.11.2021 by the present applicants. This Court had shown disinclination at that time and now also there is no change in the circumstances. The co-accused have been released under Section 437 of the Code of Criminal Procedure, for which criterion is different, though the Investigating Officer had shown that the charge sheet against these two applicants has been filed under Section 299 of the Code of Criminal Procedure. It is to be noted that, that section is only the enabling section for the Court to record the evidence in absence of absconding accused. It does not give any right to the Investigating Officer to file charge sheet under that section. It can also be seen that the Investigating Officer had not undertaken the procedure under Section 82 of the Code of Criminal Procedure to get the applicants declared as absconding. However, in order to show that the applicants are avoiding their arrest, he ought to have filed the documents along with charge sheet itself, but, now, in view of

the order passed by this Court those documents have been filed. They are basically in the nature of General Diary Entry and the statements of the Teachers. Interestingly, those statements are after the order passed by this Court. Therefore, those statements cannot be considered at all; yet, the facts remains that inspite of withdrawal of the application by the applicants why they have not surrendered before the police. It is also an indication that they are avoiding the arrest and, therefore, they do not deserve discretionary relief. Application, therefore, stands rejected.

**( Smt. Vibha Kankanwadi, J. )**

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