

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

BAIL APPLICATION NO.416 OF 2022

**SANJAY SWARUP RAJEBHOSALE
VERSUS
THE STATE OF MAHARASHTRA**

Mr.PS. Dikle, Advocate for the applicant.

Ms.Vaishali Patil – Jadhav, APP for the respondent/State.

**CORAM : SMT. VIBHA KANKANWADI, J.
DATED : 11.04.2022**

PC :-

01. The application has been filed under section 439 of the Code of Criminal Procedure (Cr.P.C.). The applicant came to be arrested on 22.02.2022 in connection with Crime No. 0101 of 2022 registered at Shevgaon Police Station, Dist. Ahmednagar for the offences punishable under sections 420, 465, 467, 468, 472, 474 read with section 34 of the Indian Penal Code (IPC). After undergoing police custody, he is now in magisterial custody.

02. Heard Mr.PS. Dikle, learned Advocate for the applicant and Ms. Vaishali Patil – Jadhav, learned APP for the respondent/State.

03. It has been vehemently submitted on behalf of the applicant that

perusal of the FIR lodged by Police Naik – Santosh Chandrakant Kakade attached to Shevgaon Police Station would show that he had received some information and then it is stated that police authority conducted raid at 15=40 houers on 21.02.2022. It is alleged that he was found possessing an identity card of handicapped person having seal of the Government of Maharashtra and it was containing about 8 pages. Also it had stamp of District Welfare Officer, Zilla Parishad, Dhule and Manager, State Transport. However, that identity card was not in anybody's name but it was blank. His vehicle was also seized by the police. It has been thereafter stated that Police Head Constable - Nakode asked him from where he has fetched said documents and then after cooperating with the investigation he has told that they are preparing such fake identify cards in the house of co-accused Parmeshwar Bade at Magar Vasti, Shevgaon. It is then stated in the FIR that thereafter the police, panchas and the applicant went to the house of said Parmeshwar Bade and conducted raid. Many documents are stated to have been recovered from that place. Therefore, whatever recovery except one document is from co-accused Parmeshwar. It is say of the applicant that when he had parked his vehicle – four wheeler, rear window was open and he got down from the vehicle and went nearby and when he came back to the car,

police had caught hold of him. Now, there is nothing to be recovered from the applicant. The applicant is suffering from illness. There was no conscious possession of the disputed document with the applicant. Learned Advocate for the applicant has given bunch of documents showing that the applicant is doing social work and making representations to various authorities against other Government servants and therefore lodging of the FIR against him is an act of his such active social work. The authorities, against whom he has made complaints, want to implicate him. The applicant has already undergone police custody. He is ready to abide by the terms of the bail.

04. Learned APP has strongly opposed the application and submitted that investigation is at very preliminary stage. It is yet to be revealed as to from which source those documents were got prepared. It appears to be joint venture of the applicant and co-accused Parmeshwar Bade. The possibility of accused involving himself in similar kind of activity cannot be ruled out.

05. At the outset when almost all the contents of the FIR have already been reflected in the aforesaid paragraphs, they are not repeated. We are

required to consider the role allegedly played by the present applicant and other criterias which are required to be considered while considering an application under section 439 of the Cr.P.C. The first and foremost fact is that the FIR clearly shows that there was specific information received by the police that the present applicant is doing the said business of selling fake certificates in respect of handicapped persons by taking money and it is then stated that he is doing that business by sitting in his car. Accordingly, raid was conducted and at that time one identity card of a handicapped person rather which could be used by handicapped person having Government seal and stamps of Government departments was found. We cannot take into consideration the defence of the accused at this stage regarding conscious possession. He will have to prove it at the time of trial. The FIR further states that when police made enquiry with the applicant, he gave information that he along with co-accused Parmeshwar prepared such documents in the house of Parmeshwar. Now it is required to be seen as to under which provisions of law this statement can be considered or whether it is admissible or not admissible. It would be too early to conclude it but the fact remains that when such statement was made by the present applicant as per the contents of the FIR, he was in the custody of police but he was not yet arrested. So, it will

have to be considered by the Trial Court as to whether there is bar of section 25 of the Indian Evidence Act or it can be considered under section 8 of the Indian Evidence Act, in view of the decision in **Aghnoo Nagesia Vs. State of Bihar, AIR 1966 SC 119**, which has been thereafter followed in many cases by either this Court or by the Hon'ble Supreme Court, that statement, however, has led to further discovery from the house of co-accused Parmeshwar. Many fake documents, which could be used by the alleged handicapped persons, were found. By use of all those documents, the handicapped persons would have received benefits from various authorities and therefore it is case of prosecution that by preparing such fake/forged documents and selling them to certain persons, the accused persons have committed offence under the sections above stated. Definitely, it would be a task of the Investigating Officer to investigate as to whether in the past they had sold such documents to anybody and whether any person is receiving the benefits from either the Government or the Semi-Government. It cannot be said that the investigation is completed. The investigation does not come to an end by the end of police custody period. Therefore, when the investigation is still going on, the discretionary relief cannot be used in favour of the applicant.

06. The bunch that has been produced by the applicant about his acts of taking objections with the authorities is concerned, it has nothing to do with the present case because it has not been pointed out that the applicant has ever taken any objection in respect of the duty or work of the informant.

07. As regards illness of the applicant is concerned, along with this application, he has not produced any document. Therefore, that cannot be considered at all.

08. In view of aforesaid reasons, the application stands rejected.

[SMT. VIBHA KANKANWADI, J.]