

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

CRIMINAL APPLICATION NO. 1495 OF 2022

Suraj Ramsing Jarwal
Age. 25 years, Occ. Education,
R/o. Dhondalgaon,
Tq. Vaijapur, Dist. Aurangabad.

.... Applicant.
[Ori. Accused]

Versus

The State of Maharashtra

.... Respondent

Advocate for Applicant : Mr. B.S. Chondhekar
APP for State : Mr. S.D. Ghayal

**CORAM : SMT. VIBHA KANKANWADI
& RAJESH S. PATIL, JJ.**

DATE : 7th SEPTEMBER, 2022.

JUDGMENT [PER : RAJESH S. PATIL, J.] :-

1] By the present application, the applicant is praying for quashing and setting aside the FIR bearing No. 275 of 2021 registered at Jalgaon Police Station, Dist. Jalgaon under Section 7 of the Maharashtra Prevention of Malpractices at University Board and other Specified Examination Act, 1982 and under Section 188, 420, 511 of IPC and resultant criminal proceeding in RCC No. 338 of 2022 pending in the Court of 6th Judicial Magistrate First Class, Jalgaon.

A. First Information Report contents :

2.1] On the complaint of informant Anant Devidas Patil, Police Constable, Police Station Erandol Dist. Jalgaon the FIR has been

registered. He states that he is working with the Erandol Taluka Police Station since about two years.

2.2] On 21.4.2021, at 8.30 a.m. till the end of examination, he was on duty at Vivekanant Pratishthan's English Medium School, Waghnar at Jalgaon, as directed by the Superintendent of Police, Jalgaon for the purpose of written examination conducted for recruitment of constables in the Zilla Police Shipai Bharti 2019. He was entrusted to prevent any illegal activities by the candidates at Hall No.7. He stood at the gate of Hall No.7. The candidates were allowed to enter the center at 9.30 a.m. They were allowed to enter the examination hall at 10.15 a.m. and the time of examination was from 11.00 a.m. to 12.30 p.m. Accordingly, the candidates started entering the hall at 10.15 a.m. The college administration were allowing the candidates to enter after checking/verifying their hall tickets.

2.3] At about 10.30 a.m. in hall No.7, one candidate came out of the hall and again went in. Therefore, the Supervisor in the hall Smt. Kanchan Vispute madam accosted him and warned him to keep quiet. However, as said candidate was doing suspicious movements, she called me in the hall and directed me to take his inspection minutely. Accordingly, the informant asked the candidate to come outside the hall and physically inspected him. It was found that on the right leg behind the knee cap there was a suspicious gadget. Therefore, when he asked the candidate to remove that, it was found that there was an electronic device hidden in the knee cap bearing yellow and black stripes whereon there was a mark of MASTERCARD. As he suspected something, he asked the said candidate about the same. He told that it was a blue tooth device and connected device is kept/hidden in his left ear. However, the said device was not visible from outside. Therefore, he asked the

candidate his name, he told his name as Pratapsing Guolchand Balod i.e. present applicant. He alongwith Smt. Vispute Madam, brought him outside the examination hall and informed this fact to the principal of the college. Thereafter, as the Principal informed this fact to Shri Santosh Bhandare, Parola Police Station, he also came there. Shri Patil asked the peon to remove the device from his ear. He was then taken to the office of the Principal. Thereafter, as the examination resumed, Mr. Patil, Police Constable again went to his duty. Thereafter, at 11.00 a.m. the candidate i.e. accused No.1 again came to the examination hall and from start till end he sat quietly in the examination. The Principal took out the device from his ear and his knee cap and handed it over to Shri Santosh Bhandare. He then handed it to the informant. He thereafter deposited the electric device worth Rs. 10000/- having written MASTERCARD on it, in which there was a sim card of Vi company and a blue tooth device of worth Rs. 2000/-.

Accordingly the FIR was registered against the accused No.1. Thereafter, on the basis of the statement made by accused No.1 in remand application, the name of applicant was added as accused No.2.

B. Submission in Criminal Application :-

3] There is nothing on record which prima facie shows that, applicant is involved in the crime punishable under Section 7 of the Maharashtra Prevention of Malpractices at University, Board and other specified Examination Act, 1982 and under sections 188.420, 511 of IPC.

3.1] That, there is no name in the FIR and no allegation made against the applicant. It is not the allegation that accused No.1 sent the

question paper out of hall. That, it ought to have been considered that, in the entire FIR/report, it is stated that in the examination hall only one electronic device and one blue tooth was taken from the custody of accused No.1. Therefore, role cannot be attributed to the applicant.

3.2] That the applicant states that on 4.3.2022 applicant has been selected for the post of Police Constable by the Nandurbar Police and due to this false crime, the Nandurbar police is not issuing appointment order to the applicant.

C. Arguments of parties :-

4] Heard Mr. Balaji Chondhekar, Advocate for the applicant and Mr. S.D. Ghayal, learned APP for the State

5] Learned counsel Mr. Chondhekar submitted that prima-facie there is no evidence against the applicant. That, a false and fabricated crime has been lodged by the prosecution against the applicant. There is no material to indicate the applicant in any way, directly or indirectly involved in the crime as alleged. Hence, the FIR needs to be quashed against the applicant.

6] He further submitted that admittedly, after finding suspicious activities, they separated the other students and accused No.1 before he could commit malpractices and alleged devices were recovered from the accused No.1. As such, there is no question of making allegation against applicant whose name was subsequently added as accused No.2 and hence, the FIR needs to be quashed and set aside.

7] It is then contended that there is no direct or circumstances evidence on record which shows that applicant is involved in series of acts which led inevitably in commission of the offence. Therefore, the FIR needs to be quashed and set aside.

8] It is further contended that, in the entire FIR/report, it is stated that, in the examination hall, only one electronic device and one bluetooth device was taken from the custody of the accused No.1. The applicant is no way concerned with the offence. Therefore, no role can be attributed to the applicant in the alleged crime.

9] The learned counsel for applicant further contended that the Investigating Officer unnecessarily made the applicant as accused NO.1. It is alleged that the accused No.1 in remand, took the name of the applicant stating the applicant supposed to help accused No.1 for mal-practice. However, the statement of accused No.1 under Section 27 of the Evidence does not mention the name of the applicant/accused No.2. Therefore, there being no evidence the applicant, the entire FIR and criminal proceeding needs to be quashed against the present applicant.

10] The learned counsel for the applicant further submitted that there was neither any intention nor any involvement, not any attempt to commit the crime. As such, the FIR needs to be quashed and set aside as against the applicant.

11] Per contra, the learned APP vehemently opposed the application by submitting that the present applicant is equally involved in the crime alongwith the accused No.1 and hence he is charged under

Section 7 of the Maharashtra Preventino of Malpractices at University, Board and other Specified Examinations Act, 1982 and under Sections 188, 420, 511 of IPC. The accused No.1 has named the present applicant during remand and hence, he is arrayed as accused No.2. Therefore, he should face the trial.

ANALYSIS :-

12] We have considered the rival submissions. Admittedly, the present applicant was later on arrayed as accused No.2 on the basis of the statement made by the accused No.1 in remand, that the applicant was supposed to help him for malpractice. It is the case of the prosecution in the FIR, that accused No.1 – Pratapsingh Gulchand Balod had appeared for the written examination conducted for recruitment of constables in the Zilla Police Shipai Bharti 2019. The timing of the examination was from 11.00 a.m. to 12.30 p.m. At around 10.30 a.m. the accused No.1 was found doing some suspicious movements. The Supervisor in the examination hall, therefore, directed the informant to physically inspect the accused No.1. On physical examination it was found that on the right leg behind the knee cap, there was a suspicious electronic gadget. When accused No.1 was asked to remove the instrument, it was found that there was an electronic device hidden in the knee cap bearing yellow and black stripes, whereon, there was a mark of Mastercard. When the accused No.1 was questioned about the same, he replied that it was a Bluetooth device and connected device is kept/hidden in his left ear. The said instruments were removed and accused No.1 was taken to the Principal's office. After confiscating the instrument, the accused No.1 came back to examination hall. It is alleged that electronic devices were found from the custody of the accused No.1 prior to the time when

examination started i.e. at about 10.30 a.m. During the whole examination, he was sitting idle.

So if the contents of the FIR are minutely perused, there is nothing incriminating against the present applicant. Neither his name appears in FIR nor any direct involvement is noticed. It was only in the remand, when accused No.1, informed the I.O., the name of present applicant that he was arrayed as accused No.2. In fact, nothing is recovered from the applicant. No role, either direct or circumstantial is attributed to him. Only statement against him by accused No.1 in remand is that, he was supposed to tell the answers to the accused No.1. Without any evidence against applicant, he cannot be said to have committed any offence.

13] We are, therefore, of the considered opinion that this is a fit case, wherein we should exercise our discretion under Section 482 of the Code of Criminal Procedure. Otherwise, the applicant will be required to unnecessarily face trial. The case is squarely covered by the ratio laid down in the case of State of Haryana Vs. Bhajanlal. Hence, we pass the following order :-

: O R D E R :

[A] Criminal Application stands allowed in terms of prayer clauses (B) and (B-A).

[RAJESH S. PATIL]
JUDGE

grt/-

[SMT. VIBHA KANKANWADI]
JUDGE