

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL REVISION APPLICATION NO. 77 OF 2021**

Arvind S/o. Krushnarao Takalkar, **...APPLICANT**
Age-44 years, Occu-Service,
R/o. University Quarter NO. C-7,
Marathwada Agriculture University,
Parbhani, Tq. & Dist. Parbhani

VERSUS

The State of Maharashtra, **...RESPONDENT**
Through Police Sub-Inspector,
Police Station, Mandvi,
Tq. & Dist. Nanded

Mr. S. B. Deshpande, Advocate i/b Mr. Shreyas S. Deshpande,
Advocate for the applicant
Mr. S. P. Tiwari, APP for respondent/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 29-09-2022

PRONOUNCED ON : 23-11-2022

JUDGMENT:

1. This is an application filed by the original accused No.2 challenging an order passed on an application below Exh.148 in Special (ACB) Case No.14/2019 passed by the learned Additional Sessions Judge-2, Nanded rejecting application filed under Section 227 of the Code of Criminal

Procedure for discharge from case for the offences punishable under Sections 420, 419, 467, 471, 193, 197, 198, 213, 214, 218, 120(B) read with Section 34 of the Indian Penal Code and Sections 13 and 8 of the Prevention of Corruption Act registered with Police Mandvi, Kinwat, Dist. Nanded.

2. FIR is lodged by One Yogesh Dayanand Jadhav with Police Station Mandvi. It is alleged that one Prabodh Rathod from his village has indulged into practices of making arrangements for appearing in the examinations as dummy candidate. He fabricates the hall ticket I-card etc. by replacing the photograph of the original candidate with the help of computer. By doing such things he has cheated the government. The accused accepts certain amount from the persons who are selected with the help of dummy candidates. He has helped many persons getting appointments and jobs in the government. He gave the instance of one Sachin Shrimalwar to show that his hall ticket is fabricated by mixing done in the cybercafe run by one Pankaj Bawane. It is stated that Sachin Shrimalwar

appeared for examination held for recruitment by the Directorate of Social Welfare Department for the post of Lower Divisional Clerk. He thus, lodged the complaint only against Prabodh Rathod, Sachin Shrimalwar and Pankaj Bawane and some unknown person, dummy candidates in respect of exam held in direct recruitment service, 2014. Based on this information, a first information report came to be lodged and investigation started.

3. On the basis of this FIR the main accused came to be arrested on 22-05-2017. During the investigation, it is alleged that the name of this applicant transpired and he also came to be added as an accused. The main allegation against this applicant is that he appeared as a dummy candidate for persons with similar names at the instance of Prabodh Rathod. Main allegation is for an offence under Section 467. During the investigation, it is alleged that this applicant appeared as a dummy candidate for five persons; namely one Bhaskar Madhukar Rathod, Shivprasad Vijay Dumne, Prabodh Madhukar

Rathod, Nikhil Hirasing Chavan and Dnyaneshwar Bhikayya Kirtankar. After investigation charge-sheet came to be filed and case is registered as Special Case (ACB) No. 14/2019 and same is pending in the court of learned Additional Sessions Judge-2, Nanded.

4. The applicant preferred an application for discharge at Exh.148. However the same came to be rejected by an order dated 15-03-2021 which is impugned in this application. Main grounds on which the application is filed are that there is no case made out against this applicant as there is no material on record to frame charge against this applicant. It is only on suspicion that the name of the applicant is appearing in the charge-sheet. There are no documents to show any involvement of this applicant in an offence. He has been implicated only in view of the statement of one Dinesh Runwal. During the investigation the statement of an informant came to be recorded on 03-12-2015, wherein he stated the name of one Dinesh Runwal. It is stated that for the first time the name of applicant

appears in one seizure panchanama. On 28-05-2017 the applicant came to be arrested. It is alleged that this applicant by appearing as dummy candidate has taken amount of Rs.10 to 11 Lakhs. The amount of Rs.7 lakhs came to be seized vide panchanama wherein it is recorded one Amit Upadhye, brother-in-law stated that it is this applicant who had given him an amount of Rs.7 lakhs.

5. Learned advocate for the applicant submitted that this seizure panchanama itself is illegal and inadmissible. It cannot be taken as confession nor it can be taken as panchanama under Section 27 of the Evidence Act. This panchanama cannot be used to incriminate the applicant. It is not a confession made before the learned JMFC or before any person of confidence and thus this panchanama has no value. The applicant was arrested on 28-05-2017 and panchanama is dated 06-06-2017. The applicant at the time of panchanama was in custody. Handwriting & specimen signature was obtained of this applicant and the same was referred for handwriting

expert's opinion. However, even, the handwriting expert could not give any specific finding. This specimen was also taken when the accused was in custody on 03-06-2017. The applicant is made as accused in view of statement by one Dinesh Runwal who in fact should have been an accused and for this reasons also his statement cannot be relied. However, surprisingly Dinesh Runwal is neither an accused nor an approver. Even taking the statement of Dinesh Runwal as it is, he has stated only one instance that he alongwith Amol ShrimaIwar started for Yavatmal from Parbhani. He was told by Prabodh Rathod to contact this applicant. On contacting this applicant on phone Dinesh was told to come to Vasmat and from there they went to Yawatmal. While in the car Dinesh handed over the work stating that it is given by Prabodh to him. Thereafter, he stated that he came to know about arrest of applicant by reading news paper. This statement was recorded on 27-05-2017.

6. Learned advocate for the applicant has taken the court to one complaint dated 19-06-2016 lodged by Sudhir

Damodar Pawar, Centre Incharge, Tahasildar, in which it is stated that in place of candidate namely Dnyaneshwar one dummy candidate appeared for examination. However, this witness has not named this applicant & what comes is only that one dummy candidate appeared in place of Dnyaneshwar Kirtankar. Dnyaneshwar also has not named this applicant, his statement only shows that in place of Dnyaneshwar who happens to be his maternal cousin some dummy candidate had appeared in exam.

7. Dnyaneshwar only stated that he was not well prepared for the examination and therefore he contacted Prabodh Rathod. Learned advocate further submits that there are contradictory statements on record. While framing of charge there must be an evidence and not only suspicion. He further stated that the statement of Amit is not recorded. The alleged confession is before some other persons. At the most allegations against this applicant is that he appeared as dummy candidate for 5 to 6 candidates. However, the report of specimen signature

does not support the prosecution and therefore, the Investigating Officer sent specimen signature to one Raksha Shakti University of Gujrat. Even that report also shows that thumb impression of this applicant on Exh.6 to 9 does not appear to be of the same person. Thus, it is submitted that even this report is not of any help to the prosecution and it cannot be said to be a material against this applicant.

8. The report in respect of these documents show that in absence of proper & adequate data and identified characteristic for comparison, it was not possible to express any definite opinion as regards the identity or otherwise of the handwriting. Thereafter the documents were sent to Raksha Shakti University Gujrat. Even from the report from this University what is seen is that it does not connect the signature of this applicant with the signature on any of the documents sent by the prosecution for examination. Learned advocate at last submitted that in absence of sufficient material to implicate the accused, no charge can be framed and the accused needs to

be discharged. Considering the parameters as laid down in the judgments cited. It is submitted that the applicant need to be discharged. He relies upon following judgments:

- (i) AIR 1977 (SC) 1489 State of Karnataka Vs L Muniswamy,*
- (ii) AIR 1996 (SC) 1744 State of Maharashtra Vs Som Nath Thapa,*
- (iii) 2022 SCC Online SC 1222 Kanchan Kumar Vs State of Bihar*
- (iv) Judgment delivered at Principal Seat of this High Court in Writ Petition No.2281 of 2021 Dr. Swapna Patekar Vs the State of Maharashtra.*

9. Learned APP vehemently opposed the application and supported the order passed by the learned Additional Sessions Judge. He submitted that initially offence was registered by Local Crime Branch against Prabodh Rathod. The application for bail preferred by Prabodh Rathod was dismissed by the Sessions Court and thereafter criminal application No. 6595/2016 was filed before this court. In view of observations in the said bail application, an order dated 18-04-2017 came to be passed. On the basis of observations made by this court that proper investigation does not appear to have been done the same was handed over to CID and now in all 7 charge-sheets are

filed against total 37 accused persons. Learned APP submitted a compilation on record. He has taken this court through chart showing involvement of this applicant in the crime. He submitted that this applicant has appeared as dummy candidate for following persons 1.Bhaskar Madhukar Rathod in examination of Kalwa Chaukidar, 2.Shivprasad Vijay Dumne in exam of Civil Engineer Assistant MHADA, Mumbai, 3.Prabodh Madhukar Rathod in exam for Senior Assistant held by District Selection Committee, Zilla Parishad, Parbhani, 4.Nikhil Hirasing Chavan in exam for Lower Divisional Clerk, held by Education and ITI Vocational Education and Training Department, Mantralaya, Mumbai and last 5.Dnyaneshwar Bhikayya Kirtankar in exam for Computer Assistant held by District Selection Committee, Yavatmal. He further submitted that there is handwriting expert's report about Bhaslu Madhur Rathod, wherein photograph on the hall ticket of Bhaslu i.e. Bhaskar Rathod appears to be of this applicant. In respect of Shivprasad Dumne there is a report of specimen signature. However this report shows that since there is no adequate data, definite

opinion as regards the identity or otherwise of the disputed signatures could not be given. As regards Prabodh Rathod it is alleged that this applicant has appeared as dummy candidate for one Kailash who sat by side of the Prabodh Rathod and Prabodh successfully passed out in the said examination. In respect of Nikhil Chavan Crime No. 152/2021 is registered at Shivaji Nagar Police Station, Nanded. Lastly about Dnyaneshwar same is in respect of Crime No. 431/2016 registered with Wadgaon Road Police Station, Yavatmal. Thus, these are the instances which are forming part of other crime. Thus, it is the submission of the learned APP that all this material shows the involvement of this applicant and this material is sufficient to frame the charges against the applicant.

10. Learned APP relied upon the judgment reported in the case of Ghulam Hassan Beigh Vs Mohammad Maqbool Magrey and Ors delivered by the Hon'ble Apex Court in SLP (Cri) No.4599/2021. He submitted that the prosecution needs an opportunity to prove its case and therefore, the applicant

need not be discharged.

11. Learned advocate for the applicant thereafter submits that except in the case of Bhaslu Rathod that too except photograph which is allegedly matching with the photograph with the photograph on the I-card/Hall-ticket, there is no material. So far as the case of the Dnyaneshwar Kirtankar is concerned, a different offence is registered at Yavatmal. So far as the present case is concerned, there is nothing on record except so called statement of applicant himself in panchanama dated 06-06-2017 in the nature of confession. He submits that this cannot be considered as confession as already submitted in his initial argument.

12. Having considered the submissions and having gone through the record what comes is that in the FIR, there is no mention of the name of this applicant. Said FIR only states names of three persons Pramod @ Prabodh Rathod, Sachin Shrimalwar & Pankaj Bawane. He further made allegations

against unknown person who allegedly have appeared as dummy candidates in various examinations. Even as per the prosecution, the allegations in short are as below :

- (i) appearing in the examination as dummy candidate for.
- (ii) to prepare bogus hall-tickets, forging signature on the answer sheet and appearing for the examination.
- (iii) to give false information for the purpose of examination and appearing as dummy candidate by sitting by the side of candidate in examination.
- (iv) preparing false hall-tickets in fictitious names.
- (v) for being a part of gangs in all above acts
- (vi) acting in furtherance of common intention with Prabodh Rathod.

13. Thus, now main consideration is as to find out whether there is any material to frame charge against the applicant. As already stated in the FIR dated 03-12-2015 lodged by Yogesh Jadhav there is no mention of the name of this applicant. It appears that name of this applicant transpired only after handing over of investigation to CID on the basis of order passed by this court. This applicant came to be arrested on 28-05-2017. The prosecution is relying upon the seizure panchanama (recovery of amount) in respect of recovery of

amount of Rs.3 lakhs from one Amit Upadhye, brother in law of the applicant, who stated that the said amount was given to him by the applicant by way of hand loan. It is alleged that this applicant told him that applicant had taken loan for purchasing flat/house. In the said panchanama it is recorded that this applicant was present who at that time was arrested and was in police custody remand. As per this statement applicant confessed that he has appeared as dummy candidate for other persons in the examinations. He received amount of Rs.10 to 11 lakhs for doing this. Considering the nature of this documents, it is clear that it cannot be said to be confessional statement from any angle. Firstly, it is only a seizure panchanama (Though named as recovery panchanama). So this panchanama neither can be said to be recovery panchanama nor can be termed as confessional statement.

14. Next alleged material is a report of specimen signature that was obtained from the applicant. Looking at the report it is seen that because of inadequate material, specimen

signature could not be identified as that of the applicant. It also needs to be considered that this specimen signature was obtained when the applicant was in custody & thus the signature was not voluntarily given by the accused.

15. Next is the statement of Dinesh Runwal which shows that he was introduced to this applicant and it was told by Prabodh that this applicant appears for examination as dummy candidate for others. Statement further shows that this applicant and Dinesh had been to Yavatmal in car from Vasmat wherein he handed over the envelope to this applicant. He later on came to know that this applicant is arrested in connection with this crime. His statement is recorded on 27-05-2017. It is surprising that though name of Dinesh has appeared during the investigation he is neither shown as accused nor as approver. From this statement what appears is that this applicant has no personal knowledge.

16. Next is another complaint dated 19-06-2016 i.e.

lodged before the Wadgaon Road Police Station, Yavatmal. In this complaint, the allegations are against Dnyaneshwar Kirtankar showing that in place of Dnyaneshwar one Namdeo Bhikayya appeared as dummy candidate. This Namdeo has given a statement that he had appeared for his brother as dummy candidate. This statement forms part of another offence lodged at Wadgaon Road Police Station, Yavatmal.

17. From the documents filed by the learned APP it is seen that there is no sufficient material which can be considered as evidence. Taking the reports as it is does not lead anywhere as the same is inconclusive. The Investigating Officer, therefore, sent the said material for comparison to Raksha Shakti University, Gujrat. However, that report is again inconclusive for want of adequate data. The report in respect of thumb impression of Shivprasad Dumne also does not lead the prosecution in any direction as the report states that no definite opinion can be given. Then only document that remains is photo copy of the hall-ticket wherein the photograph allegedly

matches with the photograph of this applicant. However, report shows that it is not clear so as to come to a definite conclusion that it is a photograph of this applicant. As about Nikhil Chavan a crime is registered bearing No.152/2019 at Shivaji Nagar Police Station, Dist. Nanded. About role in the case of Dnyaneshwar Kirtankar the crime is registered at Wadgaon Road Police Station. About Shivprasad Dumne and Prabodh Rathod are in respect of present crime. So we need to consider only the report in respect of Shivprasad Dumne and Prabodh Rathod and Bhaskar Madhukar Rathod. In respect of Nikhil it is reported that investigation is going on. In respect of Dnyaneshwar charge-sheet is already filed in the court at Yavatmal. Even from the chart submitted by learned APP only material available with the prosecution seen is; (1) the photograph of the candidate in photo copy of the hall-ticket of the Bhaskar Rathod is closely matching with this applicant. Though it is observed by the Sessions Court that report from Raksha Shakti University, Gujrat shows that photograph of the applicant is pasted in place of Bhaskar Rathod on his identity card/hall-ticket. Perusal of the

report, however, does not state so with certainty. The identity card/ hall-ticket whether can be said to be a valuable security is also a question.

18. For considering all these aspects it would be necessary to consider the judgment cited before the court by the parties. First is reported in AIR 1977 AIR (SC) 1489 in case of State of Karnataka Vs L Muniswami. The Hon'ble Apex Court has held that the Sessions Court has a power to discharge the accused after perusing the record and hearing the parties. If it comes to a conclusion that there is no sufficient ground to proceed against the accused, for reasons to be stated, it is held that the high court is entitled to go into the reasons given by the Sessions Court. It is further observed that ends of justice are higher than the ends of mere law. Paragraph No.7 from the judgment is quoted below:-

“7-The second limb of Mr. Mookerjee's argument is that in any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is

too broad a proposition to accept. -[Section 227](#) of the Code of Criminal Procedure, 2 of 1974, provides that:-

"If, upon consideration of the record of the case, and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

This section is contained in Chapter XVIII called "Trial Before a Court of Sessions". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceedings against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to [s. 561-A](#) of the Code of 1898, provides that:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

In the exercise of this whole some power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the; ends of justice require that the proceedings ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction."

19. In the case of *State of Maharashtra Vs Som Nath*

Thapa (supra) in para 32 it is observed that court has to

consider that at the stage of framing of charge only what needs to be seen is the material on record. Para 32 is reproduced as below.

“32- The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

20. Though it was case under TADA it is discussed that it is material on record that needs to be considered at the stage of framing of charge.

21. In the case of *Dr. Swapna Patankar* (supra) this court has considered the forgery of valuable security and also what is valuable security. By considering the definition given in Section 30 of the IPC this Court by considering various judgments of the Hon'ble Supreme Court has come to a conclusion that there is no forgery committed by the petitioner therein. It is observed that the certificates showing the educational qualification cannot be termed as valuable security. Thus, considering Section 467

and Section 30 of the IPC it can be clearly said that the hall-ticket /identity card cannot be termed to be a valuable security. There is also nothing on record to show that it is this applicant who has committed act of forgery.

22. In the case of *Kanchan Kumar* (supra) the Hon'ble Apex Court has considered that the judge has a power to shift and weigh the evidence though for limited purpose to find out whether or not a prima facie case is made out against the accused under Section 227 of the Code of Criminal Procedure. The Hon'ble Court has stated that a scrutiny is required to decide an application under Section 227 which is reproduced as below.

“13. The threshold of scrutiny required to adjudicate an application under [Section 227](#) of the Cr.P.C., is to consider the broad probabilities of the case and the total effect of the material on record, including examination of any infirmities appearing in the case. In *Prafulla Kumar Samal* (supra), it was noted that:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under [Section 227](#) of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been

properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

23. After considering the material on record the Hon’ble Court allowed the appeal and discharged the applicant therein recording that there was no specific material on record.

24. Now, we have to consider the judgments relied upon by the learned APP in support of his case. In the case of *Ghulam Hassan Beigh* (supra) the Hon’ble Apex Court has considered the application for discharge. The learned Additional Sessions Judge had discharged the original accused person. The said order was set aside by the High Court of Jammu and Kashmir. In that case

only question was whether to frame charge under Section 302 or vide 304 part-II. Thus, there was a discussion in respect of framing of the charge under either of the sections. It was considered that once the accused person is discharged from the offence punishable under Section 302 of the IPC and the charge for lesser offence under Section 304 part-II is framed the prosecution will not be in a position to lead any evidence beyond the charge framed. It was, therefore, thought it fit to frame the charge under Section 302 of the IPC. This judgment in my humble opinion will not help the prosecution in this case.

25. In view of the discussion and in view of the material available on record in this case, this court has to proceed further and record its conclusion.

26. Considering the material on record produced by the prosecution alongwith charge-sheet and in the light of judgments of the Hon'ble Supreme Court and High Courts what emerges is that the prosecution needs to produce the material of

such a nature that if it is proved in the trial same would be sufficient to bring home guilt of the accused. The material as produced in this case does not show that even prima-facie the material is sufficient to prove the guilt of the accused. There is no conclusive opinion given by the handwriting expert or by the Raksha Shakti University about so called photograph on the allegedly forged admit card/hall-ticket. The handwriting expert's report only state that handwriting does not appear to be of the candidate who had appeared for the examination. There is no opinion or conclusion that said handwriting matches with the handwriting of this applicant so as to allege offence of forgery at the hands of this applicant. Some of the instances are of the year 2005, 2007, and thus naturally as on today, there is nothing on record. So today the prosecution relies only on the suspicion that it is this applicant who has committed forgery and who appeared as a dummy candidate for other person in the exams.

27. The prosecution is proceeding only on a suspicion that the accused may have been involved in the crime. However,

there is no sufficient material on record. The Hon”ble Apex Court in the case of Dilawar Balu Kurne Vs State of Maharashtra reported in (2002) 2 SCC 135 has observed in para 12 as below:-

“Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under [Section 227](#) of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under [Section 227](#) of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal & Another (1979 3 SCC 5)].”

Considering the ratio of this judgment it is clear that even in this case the accused is roped in only on the basis of suspicion.

28. Thus, only the material to implicate the applicant is a statement of Dinesh Runwal who has stated that in his car, this applicant accompanied with him from Vasmat to Yavatmal and during that period he handed over one packet to the applicant. From the statement of Dinesh it appears that he was also part of the conspiracy however still he is not made as accused. Further circumstance is the statement of Amit Upadhye brother-in-law of the applicant. The statement only shows that this applicant had given him some amount towards hand-loan stating that he was possessing the amount as he had applied for loan for purchasing of a flat. The statement in fact is not a statement as such as it is recorded in a seizure panchanama while seizing the amount from the said person. It is thereafter in the same panchanama it is stated that this applicant accepted that he had appeared in the exam as dummy candidate. It is not disputed that on the date on which the seizure panchanama was prepared i.e. on 18-06-2019, this applicant was in custody. About a statement that can be said to implicate the accused that is in respect of Namdeo. However,

same is the part of the offence which is registered with Wadgaon Police Station, Yavatmal. This court thus, finds that though the prosecution is lodged against this applicant, the prosecution has not produced any material sufficient to proceed against this applicant. Hence, the following order:

ORDER

- i] The criminal revision application stands allowed.
- ii] The impugned order dated 15-03-2021 below Exh.148 in Special (ACB) Case No.14/2019 for the offences punishable under Sections 420, 419, 467, 471, 193, 197, 198, 213, 214, 218, 120(B) read with Section 34 of the Indian Penal Code and Sections 13 and 8 of the Prevention of Corruption Act passed by the learned Additional Sessions Judge-2, Nanded is quashed and set aside.
- iii] The applicant is discharged from Special (ACB) Case No. 14/2019 pending in the court of learned Additional Sessions Judge-2, Nanded.

[KISHORE C. SANT, J.]