

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO. 1435 OF 2021

Shaileshkumar S/o Narbada Dube Applicant

Versus

The State of Maharashtra Respondent

Mr. S. S. Gangakhedkar, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for respondent/State.

WITH
BAIL APPLICATION NO. 1698 OF 2021

Gautam S/o Eknath Fanase Applicant

Versus

The State of Maharashtra Respondents

Mr. G. K. Naik Thigale, Advocate for the applicant.
Mr. G. O. Wattamwar, APP for respondent/State.

CORAM : M.G. Sewlikar, J.

RESERVED ON : 15th FEBRUARY, 2022.
PRONOUNCED ON : 15th MARCH, 2022.

PER COURT :

1. Both these applications are disposed of by common order
as they arise out of the same offence.

2. Both these applicants have filed these applications under

Section 439 of the Code of Criminal Procedure for releasing them on bail in connection with Crime No. 0153/2021 registered with Vasmat City Police Station, Dist. Hingoli, for the offences punishable under Sections 420, 463, 464, 468, 471, 473, 120-B, 201 read with Section 34 of the Indian Penal Code.

3. Facts leading to these applications in nutshell are that one Akshay Kishor Mahajan is the friend of the informant by the name of Pandit Sudhakar Dhavale. Through Akshay Mahajan, the informant got acquainted with Santosh Banwarilal. The said Santosh Banwarilal misrepresented the informant that he would help the unemployed people in getting employment in Government sector i.e. Railway Department. Therefore, on 19th July, 2018, informant paid Rs. 1,50,000/- to Santosh Banwarilal. Again on 21st September, 2018, the informant paid Rs. 40,000/- to Santosh Banwarilal for the same cause. Again on 26th September, 2018, he paid Rs. 1,00,000/- to Santosh Banwarilal. Informant again paid Rs. 30,000/- to said Santosh Banwarilal on 20th November, 2018 and 31st July 2019. In this manner, he paid Rs. 3,50,000/- to Santosh Banwarilal. The informant kept on asking said Santosh Banwarilal as to when the informant would get the call letter. Said Sntosh

Banwarilal demanded Rs. 5,00,000/- for being paid to the officer and Rs. 1,50,000/- to be paid to the clerk and stated that the informant would get the letter of appointment within eight days. Informant paid this amount to Santosh Banwarilal in the presence of Shubham Manoj Shewate and Dinesh Vajinath Parswale. Informant again called up Santosh Banwarilal. He told the informant that the officer had gone on leave for eight days. Thereafter, he waited for eight days and again called up said Santosh Banwarilal but his phone was switched off. Thereafter, he realised that he was cheated by Santosh Banwarilal. Accordingly, he lodged report in the police station.

4. Investigation was taken up. Statements of the witnesses were recorded. During investigation, it transpired that one Ravindra Dayanidhi Shankhuwa and Narendra Vishnudev Prasad were also involved in this racket of deceiving the people by inducing them to pay money on the assurance of giving employment in Government sector. During the interrogation of Ravindra Shankhuwa, the name of Gautam Eknath Fanase, applicant in Bail Application No. 1698/2021 was disclosed. During investigation, the name of one Abhay Meghashyam Redkar was also disclosed. In the interrogation of Abhya Meghashyam Redkar, name of Shaileshkumar Narbada

Dube, applicant in Bail Application No. 1435/2021 came to be disclosed.

5. Heard Shri Gangakhedkar, learned counsel for the applicant in Bail Application No. 1485/2021, Shri Naik Thigle, learned counsel for the applicant in Bail Application No. 1698/2021 and Shri Wattamwar, learned APP for the State.

6. Learned counsel Shri Gangakhedkar submitted that the name of the applicant Shaileshkumar Dube does not appear in the First Information Report. The First Information Report is lodged after an inordinate delay of two years. According to the informant, the alleged payment was made on 19th July, 2018, whereas First Information Report came to be lodged on 13th May, 2021. He further submitted that the name of applicant Shaileshkumar Dube came to be disclosed during interrogation of accused Santoshkumar Saroj also called as Pandey. However, the same cannot be used against the applicant in view of provisions of Section 25 and 27 of the Evidence Act. There is no recovery from the applicant. No witness states that any amount was paid to the applicant by any of the witnesses. He further submitted that statement of one Anita Ishwarlal Sonawane

shows that she had paid Rs. 2,00,000/- to accused No. 7 Abhay Redkar. Accused No. 7 introduced applicant Shaileshkumar Dube to Anita Sonawane. At the instance of accused No. 7, an amount of Rs. 2,60,000/- was transferred from the account of Shilpa Shinde in the account of one Khedapatti Constructions. Statement of Rupali Jadhav shows that she paid Rs. 1,00,000/- to accused no. 7 and Rs. 2,00,000/- to accused No. 1 and 7 in cash. However, there is no allegation that the amount was paid to the applicant. Statement of witness Santosh Gharat shows that amount of Rs. 1,00,000/- was paid to Khedapatti Construction.

7. Learned counsel Shri Naik Thigle submits that all the witnesses of the prosecution reside at different places. Therefore, there is no possibility of tampering the evidence by the applicant. He also submitted that there is delay of two years in lodging the First Information Report for which, no explanation is forthcoming. He submitted that the only allegation against the applicant is handing over of amount of Rs. 1,90,000/- in cash by witness Ganesh Eknath Parab. His statement is recorded after two months of lodging of the First Information Report. There is no material to connect the applicant with the present offence. He submitted that the

prosecution has recorded statement of Bhushan Devlikar from whom some documents have been recovered which are of 2017 origin. Mere recovery of documents from the applicant does not indicate any involvement of the applicant in the alleged offence. Only on the basis of statement of accused Ravindra Shankhuwa, the applicant is implicated in this crime. He further submitted that the wife of Ganesh Parab does not state that she was qualified for such post. Her educational qualification and post applied for is also not mentioned by witness Ganesh Parab. He submitted that wife of Ganesh Parab wanted job by illegal means. Therefore, no offence as alleged is made out. He placed reliance on the case of Dataram Singh vs. State of Uttar Pradesh reported in **(2018)3 SCC 22**.

8. Learned APP Shri Wattamwar submitted that the Investigating Officer submitted two mobile phones and one ICICI Bank ATM Card and one Bandhan Bank ATM Card along with Rs.1,48,000/- found in the black bag from applicant Shaileshkumar Dube. He further submitted that one Rane had introduced applicant Shaileshkumar to witness Anita as a High Ranking Officer in the railway department and she was asked to deposit amount in the account of Khedapatti Construction Pvt. Company. Therefore, Anita

Sonawane and her husband transferred amount of Rs. 2,60,000/- from the account of Shilpa Shinde in the account of Khedapatti Construction. These details are furnished in supplementary charge-sheet. He further submitted that witness Rupali Jadhav has stated in her statement that the applicant and other accused persons gave fabricated/forged appointment order of Clerk/T.C. Applicant used the water mark of railway department while issuing fabricated appointment order and joining letter to the witness Rupali Jadhav. Witness Santosh Gharat also stated that he deposited Rs. 1,00,000/- in the account of Khedapatti Constructions. Applicant Shaileshkumar and Ravindra Shankhuwa met Santosh Gharat and on his Android handset forwarded a fabricated/forged ID Card and also issued letter for training. Witness Rajeshri Mhaskar has stated that applicant Shaileshkumar Dube gave forged appointment order of the post of Clerk/T.C. Applicant Shaileshkumar has taken Rs.1,00,000/- from her. She further stated that applicant said to her that her earlier order was cancelled and issued another order of appointment of the post of Clerk at Danapur in railway department. Crime No. 403/2021 under Sections 376, 506, 420, 120-B of the Indian Penal Code is registered against the applicant with Maviya Police Station, Delhi.

9. He further submitted that incriminating articles have been seized from the house of applicant Gautam Fanase. Forged selection list of Bombay Municipal Corporation is seized from the applicant. Forged and fabricated receipt of finger print is also seized. Witness Ganesh Parab has stated that applicant posed himself as officer of Bombay Municipal Corporation. He submitted that following offences are registered against the applicant :-

- i) Crime No. 149/2008, registered with Kulaba Police Station, under Section 420 of the Indian Penal Code.
- ii) Crime No. 249/2010 under Section 420 of the Indian Penal Code registered with Kulaba Police Station.
- iii) Crime No. 67/2020 under Sections 420, 465, 467 of the Indian Penal Code registered with Bhaykhala Police Station Mumbai which is pending.

10. I have given thoughtful consideration to the submissions of all the learned counsel.

11. Applicants Shaileshkumar Dube and Gautam Fanase are alleged to have cheated Ganesh Eknath Parab, Rupali Jadhav, Anita Sonawane and Bhushan Devlikar. Name of applicant Shaileshkumar Dube came to be revealed from the interrogation of Abhay Meghshyam Redkar. Applicant Shaileshkumar Dube was arrested

from Jupati Bangla, Andhra Pradesh, from construction site. Applicant Gautam Fanase was working in Bombay Municipal Corporation. However, because of his activities, it seems that he came to be dismissed from the services.

12. So far as applicant Gautam Fanase is concerned, the only statement recorded against him is of Ganesh Eknath Parab. Witness Ganesh Eknath Parab has stated that applicant Gautam Fanase was introduced to him by accused Ravindra Shankhuwa. Ravindra Shankhuwa asked him whether he was interested in Government service. Ganesh Parab stated that he was not interested in it but his wife was interested in Government service. He and his wife Supriya were introduced to Gautam Fanase by accused Ravindra Shankhuwa. He has further stated that his wife's thumb impressions were taken. An amount of Rs. 2,00,000/- was demanded but he paid Rs. 1,00,000/- to Gautam Fanase. Thereafter they paid Rs. 90,000/- to Gautam Fanase. He was assured that he would get the order in a few days. It is, thus, clear that Ganesh Parab is the only witness who is alleged to have been cheated by applicant Gautam Fanase. Another piece of evidence collected by prosecution is various duplicate orders.

13. Prosecution has seized one JIO LYF Mobile handset with SIM Card bearing No. 9307478143, three copies of order bearing No. 1224/10-11-2017 issued by Commissioner, Mumbai Municipal Corporation regarding wait list of 74 candidates, Receipt of payment of Rs.36,640/- and receipts in favour of eight candidates towards payment of Rs. 3960/-. This is the only evidence, the prosecution has collected against applicant Gautam. Mere seizure of these documents does not show the involvement of the applicant Gautam Fanase. It was argued that three crimes are pending against the applicant. However, despite clear directions from this Court, the prosecution has not placed on record anything to show that charge-sheet has been filed in those cases and the status of those cases. Therefore, merely mentioning that crimes are registered against the applicant, does not behove the prosecution to contend that applicant Gautam Fanase has so many cases registered against him.

14. Statement of Bhushan Devlankar shows that he got acquainted with Santoshkumar Banwarilal @ Pande. Said Santoshkumar Banwarilal asked him whether he wanted a job in Bombay Municipal Corporation. He consented for it. Thereafter, he was introduced to applicant Gautam Fanase, Ravindra Shankhuwa

and Narendra Prasad. Accordingly, he deposited amount of Rs. 1,50,000/- in the account of Santoshkumar Banwarilal bearing No. 001101590943 in ICICI Bank. On 29th January, 2018, he again deposited amount of Rs.20,000/-. On 4th December, 2018, he again deposited amount of Rs. 50,000/- in the account of Santoshkumar Banwarilal. On 7th January, 2019, he paid Rs. 10,000/- to accused Santoshkumar Banwarilal and Ravindra Shankhuwa. Similarly, he paid Rs. 15,000/- on 16th February, 2019, Rs.10,000/- on 6th March, 2019, Rs. 10,000/- on 7th March, 2019, Rs. 10,000/- on 8th March, 2019, Rs.10,000/- on 11th March, 2019, Rs. 15,000/- on 4th April, 2019, Rs. 5,000/- on 27th June, 2019, Rs. 1,000/- on 10th July, 2019, Rs. 800/- on 20th July, 2019, Rs. 15,000/- on 30th November, 2019 to accused Santoshkumar Banwarilal and Ravindra Shankhuwa. Later on, he was told that the job in Bombay Municipal Corporation cannot be given. Therefore, he was given the order of Railway Department. This shows that no amount was paid to applicant Gautam Fanase but it was paid to accused Santoshkumar Banwarilal and Ravindra Shankhuwa. Therefore, this evidence is of no assistance to the prosecution.

15. This takes me to the evidence against applicant

Shaileshkumar Dube. Witness Rupali Jadhav has stated that she was introduced to accused Abhay Redkar @ Rane through Social Worker Savita Bankar. The said Rane misrepresented her and Rajashri Mhaskar that he had good relations with high ranking officers in Railway Department, FCI and Agricultural Department. Accordingly, witness Rupali Jadhav showed interest in getting the job. Abhay Rane assured her that she would get a job in Railway Department as a clerk and demanded Rs.7,00,000/-. She paid Rs. 1,00,000/- to Abhay Rane in the presence of Savita Bankar. She was called to Delhi by Abhay Rane. At Delhi she met applicant Shaileshkumar Dube, Ravindra Shankhuwa and Narendra Prasad and it was represented to her that there was no vacancy at Delhi and she was taken to Kota, Rajasthan. She and Rajashri Mhaskar went to Kota along with Abhay Rane. Abhay Rane and Ravindra Shankhuwa demanded Rs. 2,00,000/- in cash and both of them paid the amount to them. Thereafter applicant Shaileshkumar Dube gave them order of Clerk/T.C. at Kota, Rajasthan. Again she was told that this order was cancelled and she was given order of Clerk at Danapur Railway, Patna. She worked at Patna for 6/7 months on temporary basis. Thereafter she realised that applicant Shaileshkumar Dube had given fake order to her.

16. Similar is the statement of witness Rajashri Mhaskar. Statement of Anita Sonawane has been recorded. She has stated in her statement that her husband got acquainted with Abhay Rane. Abhay Rane represented her husband that he had good relations with high ranking officers in Railway Department, FCI and Agricultural Department. Abhay Rane demanded Rs. 2,00,000/- for giving job and accordingly, that amount was paid to him. Said Rane called her and her husband to Delhi. They stayed in Priyanka hotel for 7/8 days. Both of them were introduced to applicant Shailesh Dube by mis-representing that applicant was a high rank officer in Railway Department. She deposited amount of Rs. 2,60,000/- in the account of Khedapatti Construction from the account of Shilpa Shinde. Said Rane again demanded Rs. 1,00,000/- to be paid to Ravindra Shankhuwa. Accordingly, that amount was paid to Ravindra Shankhuwa. Applicant Shaileshkumar Dube gave her order of TC Group-C and they were asked to go back to their village. Thereafter they called applicant Shaileshkumar Dube and Abhay Rane. But they did not pick up the calls. Then they realised that they have been cheated.

17. So far as Rupali Jadhav and Rajashri Mhaskar are

concerned, they were given a job. According to them, it was on temporary post. It is not their contention that they were not given any job at all. What was the nature of that job would be clear only during the trial. So far as amount paid to applicant Shaileshkumar Dube by Anita Sonawane is concerned, she did not directly pay the amount to applicant Shaileshkumar Dube. It was deposited by Shilpa Shinde at the instance of Anita Sonawane. However, statement of Shilpa Shinde is not recorded. Therefore, at this prima facie stage, it cannot be said that the amount was paid by Anita Sonawane.

18. Moreover, both the applicants are behind bars since 25th June, 2021 and 16th June, 2021 respectively. All the offences are triable by Magistrate. Charge-sheet is filed. It was submitted that applicant Shailesh is from Andhra Pradesh and he is not likely to be available for trial. He can be released on bail on putting stringent conditions. In this view of the matter, following order is passed :-

ORDER

- i) Both the applications are allowed.
- ii) Shaileshkumar S/o Narbada Dube, applicant in

Bail Application No. 1435/2021, be released on PR Bond of Rs.1,00,000/- with one local solvent surety in the like amount in connection with Crime No. 0153/2021 registered with Basmath City Police Station, Dist. Hingoli, for the offences punishable under Sections 420, 463, 464, 468, 471, 473, 120(B), 201 read with Section 34 of the Indian Penal Code, on the following conditions :-

- a) He shall not leave the jurisdiction of the concerned Court without the permission of the concerned Court.
- b) He shall not tamper prosecution evidence.
- c) If he commits the similar offence again, his bail shall stand cancelled.
- d) He shall deposit his passport, if any, with the concerned Police Station.
- e) He shall not travel abroad without prior permission of the concerned Court.
- f) He shall furnish his address in detail and mobile phone number with the concerned Court and the concerned Police Station and the concerned Police Inspector to verify the same.

g) He shall attend the concerned Police Station on every 2nd and 4th Sunday till the conclusion of the trial.

iii) Gautam S/o Eknath Fanase, applicant in Bail Application No. 1698/2021, be released on PR Bond of Rs. 50,000/- (Rs. Fifty Thousand) with one solvent local surety in the like amount in connection with Crime No. 0153/2021 registered with Basmath City Police Station, Dist. Hingoli, for the offences punishable under Sections 420, 463, 464, 468, 471, 473, 120(B), 201 read with Section 34 of the Indian Penal Code on following conditions :-

a) He shall not leave the jurisdiction of the concerned Court without the permission of the concerned Court.

b) He shall not tamper prosecution evidence.

c) If he commits the similar offence again, his bail shall stand cancelled.

d) He shall deposit his passport, if any, with the concerned Police Station.

e) He shall not travel abroad without prior permission of the concerned Court.

f) He shall furnish his address in detail and mobile phone number with the concerned Court and the concerned Police Station and the concerned Police Inspector to verify the same.

g) He shall attend the concerned Police Station on every 2nd and 4th Sunday till the conclusion of the trial.

iv) Both the applications stand disposed of.

v) It is clarified that the observations made in the above order are restricted to the decision of these applications only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

(M. G. SEWLIKAR)
Judge