

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

CRIMINAL WRIT PETITION NO.1632 OF 2019

Sarangdhar s/o Muralidhar Lodhe ... **PETITIONER**

VERSUS

The State of Maharashtra ... **RESPONDENT**

.....
Mr. R.V. Gore, Advocate for petitioner
Mrs. G.L. Deshpande, A.P.P. for the respondent
.....

CORAM : R. G. AVACHAT, J.

DATE : 25th FEBRUARY, 2022.

ORDER :

The challenge in this writ petition is to an order dated 15/12/2017, passed by Additional Chief Judicial Magistrate, Ahmednagar on application Exh.227 in R.C.C. No.383/1996 and the order dated 31/8/2019, passed by Sessions Judge, Ahmednagar in Criminal Revision Application No.59/2018, confirming the order passed by the Additional Chief Judicial Magistrate. Both the courts below have rejected the prayer of the petitioner for discharge from R.C.C. No.383/1996.

2. The petitioner herein is one of the accused in the said case. He is sought to be prosecuted for offences

punishable under Sections 381, 411, 406, 409, 420, 511 read with Section 34, 120(B) of the Indian Penal Code and Sections 4, 5, 6, 8 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examination Ordinance Act, 1982.

3. The learned counsel for the petitioner would submit that, there is no shred of material to indicate the petitioner's involvement in the alleged offence. Mere presence of the petitioner in a room along with other accused in the case against whom there may be sufficient material to proceed against, is not enough to frame a charge against the petitioner. The learned counsel read out the F.I.R. to ultimately urge for allowing the writ petition.

4. The learned A.P.P. would, on the other hand, submit that, it was a serious offence. A question paper of preliminary examination for the post of Police Sub-Inspector was scheduled for 4/2/1996 was leaked and was available on payment of monetary consideration. A tip off in that regard was received. A raid was, therefore, conducted at 2 – 3 places. Photo copies of the question paper were recovered from some of the co-accused. The F.I.R. undoubtedly indicates that all the accused in the case including the

petitioner herein were together where the raid/s was/were conducted. They were engaged in solving the question paper. The brother of the petitioner was to appear for the examination. According to learned A.P.P., it is for the petitioner to explain his presence and incriminating circumstances during trial. The material on record is sufficient to frame the charge against the petitioner.

5. Heard. Perused the First Information Report (F.I.R.) and the police papers relied on. Gone through the orders impugned herein.

It is a warrant case instituted on police report. Section 239 of the Code of Criminal Procedure speaks of discharge of an accused. Section 239 reads :

6. Chapter XIX of the Code of Criminal Procedure speaks of trial of warrant cases by Magistrate. Section 239 thereof reads thus :

"239. When accused shall be discharged :- If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

7. The learned Sessions Judge, in paragraphs 10 to 12 and 14 of the impugned order, has observed as under :

10. At the outset, it is pertinent to note that at the stage of framing of charge, the Court has to scrutinize, whether there exists a prima facie case. It is well settled that even grave suspicion is sufficient to frame the charge. Keeping in mind the above parameters, it is necessary to examine the case at hand.

11. As per case of prosecution, the real brother of the present applicant was one of the candidates, who was to appear in the examination for the post of P.S.I., conducted by Maharashtra Public Service Commission on 04/02/1996. In this background, on the basis of a tip off, a trap was led in front of Sandeep Apartment, wherein accused Arjun and Pradeep were caught. Arjun was found in possession of the question paper of the M.P.S.C., which was scheduled on 04.02.1996 itself. It was only on the disclosure made by said accused, the Police party visited the room of Sunil Kakade, where apart from other 12 boys, the present applicant was found. Out of them even accused Devendra Gaikwad was found in possession of copy of said question paper, which was seized.

12. Looking at the above evidence, if the case of prosecution is considered, as per prosecution, all the accused persons have conspired and illegally obtained the copy of the said question paper and the same was being sold for valuable consideration. As per prosecution, present applicant had been to the said Sunil Kakade to purchase/ procure the said question paper for his

brother who was appearing for the said examination. There is material to show that present applicant was arrested from said place along with others.

13.

14. As could be seen from the above material collected by the Police, the prosecution is relying on chain of events to connect the present applicant with the crime. The material so collected coupled with the arrest of the accused from the house of said Sunil Kakade, where the question paper was also seized, itself are sufficient incriminating circumstances to frame charge against accused.”

8. Admittedly, except the F.I.R., there is no other material against the petitioner herein. Let us, therefore, advert to the averments in the F.I.R. dated 4/2/1996. It has been lodged by a Police Sub-Inspector (P.S.I.) serving with Local Crime Branch (L.C.B.), Ahmednagar. It is his case that, P.I. Shri Thorat had received a tip off on 3/2/1996 by 10.00 in the morning that, in one of the flats in Sandeep Apartment Near Savedi, three persons by name Arjun Aghav, Pradeep Ghodke and Ashok Kanade (co-accused) were engaged in sale of a question paper of the preliminary examination to be conducted by the Maharashtra Public Service Commission (M.P.S.C.) for the post of P.S.I. on 4/2/1996. The P.I., therefore, told the informant and other police personnel that a

raid is to be conducted at the given place. The police personnel accordingly went to Krushna Dham Road, Savedi, Ahmednagar. They noticed two persons were about to leave therefrom on a motorbike (No.MH-16-V-4012). Members of the police party, therefore, intercepted them. On enquiry, they disclosed their names as Arjun Aghav and Pravin Ghodke. When they were further questioned about the information received, Arjun Aghav took out 4 page photo copy of the question paper. The copy of the question paper was seized under the panchanama. On further enquiry with both of them, it was revealed that, their associate Ashok Kanade was available in a room of one Sunil Kakade at Abasaheb Deshpande's Wadia in Kafi Ashram, Sarvodaya Colony. It was also informed by both of them that, Ashok Kanade has been accompanied by one Devanand Gaikwad (co-accused) and some of the candidates who were going to appear for the preliminary examination. The police party, therefore, effected raid on the room at the given address to find 13 persons/ boys including the petitioner herein present in the room. While they were enquired with in relation to the information received by the police officer, Devanand Gaikwad (accused No.4) took out from his trouser pocket a 4 page photo copy of the question paper. The same came to be seized under the

panchanama. On enquiry with all of them, it was learnt that, Ashok Kanade along with some candidates who were to appear for the examination, is available at a bungalow of one Raju Wagh at Kedgaon. The police party, therefore, took the accused Devanand Gaikwad with them to Raju Wagh's bungalow. Ashok Kanade and 8 others were there. On enquiry with them, Ashok Kanade took one 8 page copy of question paper and sum of Rs.8932/-. On further enquiry, he told to have had received Rs.5000/- towards sale of question papers. He also disclosed that, all of them were engaged in selling and answering the question paper. The police party seized the copy of the question paper and sum of Rs.8932/-.

9. It has also been averred in the F.I.R. that the copies of question papers seized under the panchanama were compared with the original question paper to find them to be matching with each other. The F.I.R., therefore, came to be lodged against 22 persons named therein. The petitioner is one of them.

10. It is reiterated that, except the aforesaid F.I.R., there is no material against the petitioner. Admittedly, the petitioner has passed only 10th Standard examination. He was, therefore, not eligible to appear for the post of P.S.I. As

such, he was not to be a candidate in the examination. It is the case of the prosecution that, the petitioner had been there to have a question paper for his real brother. There is, however, no material to suggest who is the petitioner's real brother. There is also no material to suggest that the petitioner's real brother, if any, was to appear for the preliminary examination for the post of P.S.I. to be held on 4/2/1996. There is on record a list containing the names of 26 persons who were to appear in the preliminary examination. A glance at all the 26 names, there is no name suggesting that anyone of them is real brother of the petitioner. Name of the person at Sr.No.13 is Bapusaheb Mohan Londhe. Except the surname of the petitioner and that of that candidate being common, there is nothing to suggest relationship between the two.

11. Nothing has been recovered from the petitioner nor did he give statement which could be admissible in evidence suggesting his involvement in the offences in question. As such, the material against him is only to the effect that while the police personnel effected raid at a room in Deshpande Wada, the petitioner herein was present along with 12 others. Only on enquiry with Devanand Gaikwad who was one of those 13, he took from his pocket a 4 page

question paper. It is reiterated that, mere presence of the petitioner along with others against whom there may be sufficient material to proceed against, is not enough to frame the charge. The petitioner does not owe any explanation about his mere presence there unless some incriminating material is there against him. As such, the material on record, namely his presence along with co-accused at a particular place is not sufficient to proceed against him. As such, the charge against him is groundless. Both the courts below have erred to appreciate the material in terms of Section 239 of the Code of Criminal Procedure. The orders impugned herein need to be set aside.

12. The writ petition, therefore, succeeds. It is allowed in terms of prayer clause (B).

**(R. G. AVACHAT)
JUDGE**

fmp/-