

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.4340 OF 2021

Thiru Murugan Thangvelu ...Applicant
vs.
The State of Maharashtra ...Respondent

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**WITH
BAIL APPLICATION NO.57 OF 2022**

Vasant Vijay Kilari ...Applicant
vs.
The State of Maharashtra ...Respondent

**WITH
BAIL APPLICATION NO.1627 OF 2022**

Veera Prasad Kotiswami Narnepati ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Vikas Shivarkar, for the Applicant in BA.No. 4340 of 2021.
Mr. Niranjan Mundargi a/w. Mr. Keral Mehta, Mr. Pavan Patil, Mr.
Nitin Jagtap, for the Applicant in BA. No. 57 of 2022.
Mr. Pavan Patil a/w. Mr. Nitin Jagtap, for the Applicant in
BA.No.1627 of 2022.
Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.
ORDER RESERVED ON : JULY 06, 2022
ORDER PRONOUNCED ON : JULY 25, 2022

P.C.:

1. These applications are preferred under section 439 of the Code of Criminal Procedure, 1973 to enlarge the applicants on bail in C.R. No. 83 of 2021 registered with Wanawadi police station, Pune for the offences punishable under sections 420 and 406 read

with 34 of Indian Penal Code, 1986; sections 7, 12 and 13 of the Prevention of Corruption Act, 1988; section 66C of Information Technology Act, 2000 and sections 6 and 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982.

2. The prosecution case can be stated as under:-

On 28th February, 2021 the written examination for recruitment in Army under the recruitment drive “Relation Army” was to be held. On the previous night an intimation was received from Military Intelligence, Southern Command, Ghorpadi, Pune that question paper for the said examination was leaked and Kishor Giri, the accused No. 1, was supplying the question papers and answer keys to the candidates by obtaining wrongful gain. A raid was conducted at the house of the accused No. 1 Kishor Giri. He was apprehended along with mobilephone handsets which contained several question papers in English and Hindi, answer keys thereto and other material. It further transpired that accused No.1 Kishor Giri had circulated those question papers and answer keys to co-accused Kumar Pardeshi, Yogesh Gosavi and Madhav Gite.

3. Eventually, during the course of investigation, it transpired

that the accused No. 1 Kishor Giri had received those question papers and answer keys from the persons who were privy to the recruitment process. Colonel Bhagatsingh Bedi was the custodian of the said question papers. He had forwarded the same on Whatsapp to Veera Narnepati, the applicant in Bail Application No. 1627 of 2022. The applicant Veera forwarded it to Narsimha Rao, from whom it was transmitted to the co-accused M. Pavan Kumar who, in turn, transmitted the same to Vasant Kilari, the applicant in Bail Application No. 57 of 2022. The applicant Vasant transmitted the same on the cell phone of Thiru Thangvelu, the applicant in Bail Application No. 4240 of 2021. The later transmitted to it Bharat Adakmol, from whom it came to be forwarded to accused No. 1 Kishor Giri, who forwarded the same to other co-accused and the candidates.

4. The applicant Veera Narnepati was working as a Store Keeper in Central Ordinance Depot. He has since retired. The applicant Thiru Thangvelu is serving as a Major in the Army. The applicant Vsaant Kilari is also a defense personnel.

5. The investigation further revealed that the applicants and the co-accused had collected the original certificates of the candidates

to whom the question paper and answer key were transmitted so as to obtain undue advantage.

6. I have heard Mr. Vikas Shivarkar, learned counsel for the applicant in Bail Application No. 4340 of 2021, Mr. Niranjana Mundargi, learned counsel for the applicant in Bail Application No. 57 of 2022 and Mr. Pavan Patil, learned counsel for the applicant in Bail Application No. 1627 of 2022 and Mr. Palkar, learned APP, for the State, at some length. With the assistance of the learned counsels for the parties, I have perused the report under section 173 of the Code and the documents annexed with it. I have also perused the report submitted by the investigating officer in opposition to the prayer for bail.

7. At the outset, the learned counsel for the applicants submitted that the co-accused Kishor Giri who allegedly forwarded the question papers and answer keys to the other co-accused and the candidates who were to appear for "Reliance Army" recruitment examination, has been released on bail by this Court by an order dated 4th January, 2022. All the incriminating material including the mobile phone handsets, which allegedly contain the incriminating data, have been seized. Investigation is practically

complete. Charge-sheet has been lodged. Hence, having regard to the period of incarceration of the applicants as under trial prisoners, further detention of the applicants is not warranted.

8. Mr. Niranjan Mundargi, learned counsel for the applicant in Bail Application No. 57 of 2022 laid emphasis on the fact that the substratum of the prosecution case rests on the trail of WhatsApp communication allegedly made by the applicants inter se which eventually found its way to accused No. 1 Kishor and the candidates. However, as of date, the prosecution has not been able to demonstrate the said fact of transmission of data by the accused. In the absence of such material, the prosecution may not succeed in establishing the link between the persons who allegedly transmitted the question papers and answer keys. This factor, according to Mr. Mundargi, ought to weigh in considering the prayer for bail.

9. The learned APP, on the other hand, would urge that the applicants who are retired and serving defense personnel, have indulged in serious offences of cheating and accepting gratification other than legal remuneration and have thereby eroded the sanctity of the recruitment process. Thus, the applicants do not deserve the exercise of discretion, on this count alone. It was

further submitted that there is voluminous material to show that the applicants were in constant touch with the co-accused and the very nature of the offence is such that without the persons associated with the recruitment process being privy to the crime, the question papers and answer keys would not have been leaked. Therefore, the applicants do not deserve to be released on bail.

10. I have given anxious consideration to the aforesaid submissions. While releasing accused No. 1 Kishor on bail, this Court had noted that the investigation is complete for all intent and purpose. All the incriminating articles were seized. In the backdrop of the nature of the accusation, the apprehension on the part of the prosecution of tampering with the evidence was such that it could be taken care of by imposing conditions. Thus, the Court was persuaded to exercise the discretion in favour of Kishor Giri, the accused No. 1.

11. Undoubtedly the applicants being the retired and serving defense personnel, stand on a different footing. It could be urged that the allegations against the applicants are of an instance of fence eating into the crop. Nonetheless, the nature of the accusation warrants consideration. The singular accusation against each of the

applicants is that each one of them obtained the incriminating data containing the question paper and answer key from another Army personnel and transmitted the same to a third Army personnel. It is alleged that the applicants transmitted the same for unlawful gain and had even collected the documents from the prospective candidates to whom the said data was made available.

12. There is substance in the submission that the prosecution is obligated to demonstrate the transmission of the data by each of the applicants. It seems that on 18th March, 2021, the investigating officer has addressed a communication to Chief Technical Officer (WhatsApp) soliciting information about the transfer of data by the holders of the mobile numbers enumerated therein. It does not appear that the investigating agency has yet received any information which establishes the necessary nexus.

13. The aforesaid factor is required to be considered in conjunction with the fact that the investigation is complete for all intent and purpose. Chargesheets have been lodged. The incriminating articles and instruments have been seized. The co-accused Kishor Giri has been released on bail. The applicants, being retired and serving defense personnel, can be said to have roots in

society. The possibility of the applicants fleeing away from justice also appears to be remote. The apprehension on the part of the prosecution of tampering with evidence can be taken care of imposing conditions.

14. The applicants Thiru Thangvelu is in custody since 7th March, 2021. The applicant Vasant Kilari is in custody since 9th March, 2021. The applicant Veera Narnepati is in custody since 14th May, 2021. Thus, the applicants have been custody for more than one year. It is unlikely that the trial can be concluded within a reasonable period. Therefore, I am persuaded to exercise the discretion in favour of the applicants.

Hence, the following order.

ORDER

- 1] The applications stand allowed.
- 2] The applicants Thiru Murugan Thangvelu, Vasant Vijay Kilari and Veera Prasad Kotiswami Narnepati be released on bail in connection with C.R. No. 83 of 2021 registered with Wanawadi police station, Pune on furnishing a P.R. Bond in the sum of Rs. 30,000/- each with one or two sureties in the like amount, to the satisfaction of the learned Sessions Judge.

- 3] The applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.
- 4] The applicants shall furnish their permanent address and contact details to the Inspector of Police, Wanawadi police station, Pune within a period of one week of their release from prison.
- 5] The applicants shall mark their presence at Wanawadi police station once in six months i.e. first Monday of January and July in between 10 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- 6] The applicants shall not leave the country without prior permission of the jurisdictional Court.
- 7] The applicants shall regularly attend the proceedings before the jurisdictional Court.
- 8] By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

All concerned to act on an authenticated copy of this order.

(N. J. JAMADAR, J.)