

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 3056 OF 2021

Kishor Mahadev Giri ...Applicant

Versus

The State of Maharashtra ...Respondent

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Mr. Sudatta J. Patil for the Applicant.

Mr. H.J. Dedhia, APP for the Respondent -State.

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CORAM : V.G.BISHT, J.

RESERVED ON : 9TH DECEMBER, 2021

PRONOUNCED ON : 4TH JANUARY, 2022

PC:-

1. The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No. 83 of 2021 registered with Wanwadi Police Station, Pune City for the offences punishable under Sections 420, 409 read with 34 of the Indian Penal Code (the IPC), Sections 7, 12 and 13 of the Prevention of Corruption Act, Sections 6 and 7 of Maharashtra Prevention of Malpractices at University Board and other Specified Examination Act, 1982 and Section 66 (c) of the Information Technology Act.

2. It is the case of the prosecution that on 27th February, 2021, the Crime Branch received an information from the Military Intelligence, Southern Command, Ghorpadi that the question paper of Relation Army Bharti, which was to be conducted on 28th February, 2021, was to be leaked by applicant. Accordingly, on 28th February, 2021, the applicant came to be arrested from his house and during the search of his house, his mobile phone was seized amongst other articles.

3. Prosecution alleges that after examining the said mobile, it was noticed that on 27th February, 2021 and 28th February, 2021, the record of his whats-app application showed that he had received several questions and answers from another number and had forwarded various questions and answers to several other persons. Prosecution further alleges that the applicant along with other accused conspired to leak the question paper of Relation Army Bharti to the students known to them and thereby committed offence of cheating. Accordingly, the First Information Report (FIR) came to be filed.

4. Mr.Patil, learned Counsel for the applicant, submits that it is not the case of prosecution that any consideration was received by applicant. All that was allegedly found was the question paper on whats-app number of the applicant. The applicant is in jail since last 6 months. Investigation is completed. There are no criminal antecedents. There is nothing to be recovered. In such circumstances, no purpose would be served by keeping the applicant behind the bars. Hence, the applicant be released on bail, urged learned Counsel.

5. Mr.Dedhia, learned APP, on the other hand, opposes the submissions by contending that applicant had played an active role in leaking the question paper and even distributed the same to the candidates. Learned APP invited my attention to the reply filed by investigating officer and would submit that if the applicant is released on bail, then possibility of pressurizing and tampering the evidence cannot be ruled out. Thus, there being no merit in the application, same is liable to be rejected.

6. Perused the investigation papers. I have also gone through the reply filed by investigating officer.

7. I may note at the outset that the necessary provisions of Prevention of Corruption Act have also been invoked. Admittedly, the applicant is not a government servant. It is also clear from the reply of investigating officer that the mobile phone of applicant is already seized on 27th February, 2021 that is the day on which the applicant came to be arrested.

8. According to prosecution, the mobile contained not only the questions but answers also and thus, all the vital informants are in possession of the investigating officer inasmuch as the mobile of applicant is in custody of investigating officer.

9. It is also not the case of prosecution that any money or consideration was received by applicant. There are no criminal antecedents. Investigation is completed and charge-sheet has been filed. The only apprehension of learned APP

appears to be that the applicant may tamper with prosecution evidence, the care of which can be taken by imposing necessary conditions.

10. In view of above, I am inclined to allow the application.

Hence, the following order :

ORDER

(i) Applicant- Kishor Mahadev Giri shall be released on bail in C.R. No. 83 of 2021 registered with Wanwadi Police Station, Pune City on his executing P.R. Bond in the sum of Rs. 20,000/- with one or two surety/ sureties in like amount.

(ii) The applicant shall not tamper with prosecution evidence.

(iii) The applicant shall attend the concerned police station as and when called by the investigating officer.

(iv) The applicant shall attend the trial Court proceedings regularly.

(v) Bail before the trial Court.

(vi) It is made clear that the observations made herein are *prima facie* and the trial Court shall decide the case on its own merit, in accordance with law, uninfluenced by the observations made in this order.

(vii) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V.G.BISHT, J.)

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