

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

CRIMINAL BAIL APPLICATION NO.3305 OF 2021

Mahindra Chandrabhan Sonawane ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.Niranjan Mundargi i/b Mr.Pandir Kasar, for the Applicant.

Mr.S.R. Agarkar, APP for the Respondent –State.

CORAM : C.V. BHADANG, J.

RESERVED ON : 18 JANUARY 2022

**PRONOUNCED ON : 31 JANUARY 2022
(Through Video Conferencing)**

P.C.

. By this Application, the Applicant (Accused No.3) is seeking release on bail in Crime No.54 of 2021 of Vishrantwadi Police Station, Pune under Section 406, 420, 120B read with Section 34 of the Indian Penal Code, Section 6 and 7 of the Maharashtra Prevention of Malpractices at University Board and other Specified Examinations Act, 1982 and Section 7, 12, 13 of the Prevention of Corruption Act, 1988 and Section 66(c) of the Information Technology Act.

2. The prosecution case is that on 27 February 2021 a secret information was received by the Crime Branch Unit No.-4,

Khadki, Pune that the written examination paper of the Army Relation Recruitment to be held on 28 February 2021 has been leaked and is being circulated. On the basis of the secret information the accused Ali Akhtar Khan was contacted and was called in Room No.C-1 Sumai Palace Hotel by posing as a decoy candidate at examination. During the enquiry with Ali Akhtar Khan, it was revealed that there is a racket in operation for making paper at the said examination available for consideration, after which the police party disclosed their identity and Ali Akhtar Khan was arrested. During his interrogation the present Applicant came to be arrested at Sai Baba Temple, Dighi at about 7.00 p.m. on 27 February 2021. The co-accused Azad Khan was arrested on the same date in the night.

3. It appears that during investigation statement of one of the candidates namely Ganesh Salunkhe was recorded, which was treated as FIR in Crime No.54 of 2021 at Vishrantwadi Police Station. During the course of the investigation the original qualification certificates of the various candidates were recovered from the possession of the accused Azad Khan.

4. In short according to the prosecution, the roots of the conspiracy to leak the paper in the all India examination, went upto senior Army officers at Sikandarabad and it was revealed that the main conspirators were the co-accused Kishor Giri,

Bharat Adakmol, Vasanta Killari and Thiru Murugan Thangvelu. The present Applicant along with co-accused were co-conspirators.

5. The record discloses that apart from the present Crime No.54 of 2021 at Vishrantwadi Police Station, there was another similar offence registered in respect of the same paper leak vide Crime No.83 of 2021 with Wanwadi Police Station, Pune, except that in that crime the prosecution has invoked Section 409 of IPC instead of Section 406 in the present case.

6. Be that as it may, the investigation in this offence is complete and the charge-sheet is filed.

7. I have heard the learned counsel for the Applicant and the learned Additional Public Prosecutor. With the assistance of the learned counsel for the parties I have gone through the record.

8. The learned counsel for the Applicant has pointed out that accused No.2 Kishor Giri, accused No.3-Bharat Adakmol, accused No.4-Vasanta Killari and accused No.4-Thiru Murugan Thangvelu (referred to as main conspirators) have already been released on bail by the learned Sessions Judge.

9. It is also pointed out that the accused Kishor Giri has been released on bail by this Court vide order dated 4 January 2022 in Bail Application No.3056 of 2021 in Crime No.83 of 2021 of Wanwadi Police Station, Pune.

10. Although the learned counsel has not strictly invoked parity inasmuch as the said release of Kishor Giri is in the other connected offence, it is submitted that once the accused who are stated to be the main conspirators have been released on bail in this case, the Applicant is also entitled to release on bail.

11. The learned counsel pointed out the panchnamma dated 27 February 2022 in which apart from the ATM/Debit Card and Mobiles etc., the only recovery from the Applicant is of a xerox copy of one of the answer papers. In the submission of the learned counsel, a xerox copy of the answer paper cannot be used for any purpose. It is submitted that there is no recovery of the original qualification certificates of the candidates which were allegedly obtained as a security for the payment, from the present Applicant. He submitted that the Applicant being a private individual the provisions of Prevention of Corruption Act are not applicable and maximum sentence being 7 years, the Applicant be released on bail.

12. The learned Additional Public Prosecutor has strenuously urged that the offence is serious and of a large magnitude inasmuch as it has interfered with the conduct of the examination of the Army Relation of an All India basis. He submitted that as a result of the said leak the examination was required to be cancelled. It is submitted that the statements of the witnesses recorded both under Section 162 and 164 of Cr.P.C., specifically name the present Applicant.

13. The learned Additional Public Prosecutor pointed out that the present Applicant is named in the FIR after the vigilance report. It is also pointed out that the Applicant has criminal antecedents of a similar offence registered vide crime No.57 of 2017 of Kalba Police Station.

14. I have carefully considered the circumstances and the submissions made. As noticed earlier in respect of the same set of facts and the incident comprising the leak of the papers at the Army Relation Recruitment, the Crime Branch appears to have registered two separate offences namely Crime No.54 of 2021 at Vishrantwadi Police Station (out of which the present application arises) and Crime No.83 of 2021 at Wanwadi Police Station in which accused Kishor Giri, Vasanta Killari, Bharat Adakmol, Tiru Murugan Thangvelu have been shown to be the main conspirators. These accused are also main accused in the present

crime. The learned Sessions Judge has found that this constitutes breach of Section 300 of Cr.P.C. and has observed that in the circumstances he was “left with no option, than to release main conspirators on bail on account of strange approach of the Crime Branch, Pune”.

15. Thus, the fact remains that for technical reason or otherwise the co-accused who have been stated to be the main conspirators have been released on bail in this Crime.

16. The record also discloses that the accused Kishor Giri (one of the main conspirator) has been released on bail by this Court in Crime No.83 of 2021.

17. Indisputably, as observed by the learned Sessions Judge the examination paper material was not found with the present Applicant. However, the learned Sessions Judge has found that “timing of his act in coordination with his companion Azad Khan and examination candidates. “*Prima facie* shows the involvement of the Applicant in the conspiracy.”

18. It appears that reliance was placed on behalf of the Applicant on the decisions of the Karnataka High Court in case of *Anil Kumar V/s. State of Karnataka*¹, *Nagendra Krishnappa*

1 2017 Vol (II) KLRLJ 152 (Karnataka)

V/s. State of Karnataka² and Ganga Bairaiah V/s. State of Karnataka³.

19. The learned Sessions Judge has observed that although the cases arise out of similar incident of question paper leak, however, the learned Sessions Judge has refused to rely on the same, on the ground that the said incident is in respect of a academic examination conducted at local level unlike the present recruitment on an all India level.

20. In my considered view, once the main conspirators Kishor Giri, Vasanta Killari, Bharat Adakmol, Tiru Murugan Thangvelu have been released on bail albeit on the ground of Section 300 of Cr.P.C., the Applicant can also be released on bail particularly when the investigation is complete and the charge-sheet is filed. There is no recovery of any question papers from the Applicant. The apprehension expressed on behalf of the prosecution on the point of criminal antecedents can be taken care of by imposing appropriate conditions.

21. It is made clear that the observations are *prima facie* in nature the Trial Court shall not influenced by the same at the trial.

2 2019 Law Suit (KAR) 1169

3 2016 Law Suit (Kar) 1535

22. Hence the following order.

ORDER

(i) The Applicant Mahindra Chandrabhan Sonawane be released on bail in Crime No.54 of 2021 of Vishrantwadi Police Station, Pune on executing a PR Bond in the sum of Rs.20,000/- with one or two solvent sureties in the like amount.

(ii) The Applicant shall undertake to remain present during the course of the trial.

(iii) The Applicant shall not tamper with the prosecution evidence/witnesses.

(iv) The bail bond to be furnished before the Trial Court.

C.V. BHADANG, J.