

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 693 OF 2023

Sunil Ratan Sor

...Applicant

Versus

The State of Maharashtra & Anr

...Respondents

Mr. S. J. Salunke, Advocate for the Applicant.

Mrs. R. P. Gour, APP for Respondent – State.

CORAM : R.M. JOSHI, J.

DATE : JULY 10, 2023

ORDER

1. Reservation in employment is provided with laudable object that the member of oppressed class of the society gets help in their upliftment. It would be serious crime if someone who is not entitled to get benefit of reservation on the basis of false caste claim seeks employment thus thereby he not only cheats the establishment but also caused irreparable harm to the genuine person who otherwise was entitled to get employment. Such act cannot be allowed to be tolerated.

2. Applicant apprehends arrest in connection with Crime No. 324 of 2023 registered with Tophkhana Police Station, Dist. Ahmednagar for the offences punishable

under Sections 463, 464, 465, 468, 470, 471, 420, 199, 200, 34 of Indian Penal Code.

3. Police Inspector lodged report stating that Abhishek Gupta submitted proceeding before the caste scrutiny committee for validation of his caste as OBC. The committee directed the vigilance squad to conduct an detailed enquiry and submit report to it. On enquiry, report was submitted stating that certificate issued by school is tampered with by changing date of birth and caste of the Applicant. Similarly, no entry was found in the school record in respect of Ramdhar Jawahar Gupta. It is also recorded therein that later on application was made for caste validity before caste scrutiny committee, Nashik. In the said enquiry, it was found that on the basis of false certificate validation of the caste was sought by Abhishek Gupta. During the course of investigation, it was revealed that Abhishek was helped by Sunil Patil for procuring the said bogus documents on the basis of which caste validation was sought.

4. Learned Counsel for the Applicant states that Applicant is not concerned with the co-accused and that

he has no nexus in the crime in question. It is submitted that he is working as Junior Care Taker, Women and Child Development, Nashik since 2012. It is flatly denied that the Applicant has any concern with the caste claim of the co-accused. Learned Counsel for the Applicant has also sought to challenge the validity of the FIR stating that in view of provision of Caste Certificate Act, 2000 there is bar for lodging any report and that what is contemplated in Section 12 of the said Act is that a complaint could be filed by the authorized person by Committee. To support his submissions, he placed reliance on judgment of this Court in case of Ms. Safa Khwaja Shaikh Vs. The State of Maharashtra, 2019 NearLaw (BombayHC) Online 1670.

5. Learned APP opposed the application by contending that there is overwhelming evidence collected during the investigation to show that the person named by the co-accused as Sunil Patil in fact is the present Applicant i.e., Sunil Sor. By referring to the call record between Applicant and Abhishek and his brother Abhinav and also relying on whatsapp chat between them, it is submitted that there could be no

more evidence is required to show that the present Applicant is the person who has got the bogus documents prepared against receipt of money from them. It is submitted that the offence is serious in nature and having regard to the fact that the custodial interrogation of the Applicant is necessary to ascertain as to how the documents were fabricated/created by the Applicant and co-accused, application be rejected.

6. Perusal of the Application and contention of learned Counsel for the Applicant since beginning is that he has no concern with the caste claim of the co-accused Abhishek. It is stated that Sunil Patil named by co-accused is not Applicant herein but could be different person altogether. In order to ascertain the said fact, the investigating agency has verified mobile phones of Applicant and co-accused which indicate that there was contact between them in connection with the work of caste claim and validity thereof. The record placed before this Court i.e., conversation between Applicant and Abhinav, brother of Abhishek, clearly shows that it was present Applicant who was getting the

work done for them. The conversation also shows that against the said work Applicant was to be paid. The whatsapp chats between Applicant and both co-accused person leaves no room of doubt that the present Applicant has equal participation in the crime in question.

7. As far as the objection raised by the Counsel for the Applicant with regard to the tenability of the first information report is concerned, in this proceeding the validity of FIR cannot be determined. However, as this issue might have relevance to the liberty of applicant, it is dealt with by recording *prima facie* findings therein. It would be relevant to consider provision of the Caste Certificate Act, 2000 (for short 'Act') which reads thus:

12. Offences under Act to be cognizable and non-bailable.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973—

(a) offences punishable under section 11 shall be cognizable and non-bailable;

(b) every offence punishable under this Act, shall be tried by any Magistrate of First Class in a summary way and provisions of sections 262 except sub-section (2) to 265 both inclusive of this Code, shall as far as possible may be applied to such

trial.

8. Perusal of this section clearly shows that in respect of any offence under this Act, a private complaint needs to be filed by the Scrutiny Committee or its authorized officer. This however does not bar registration of any offence punishable under Sections 420, 468, 471 etc of IPC, for cheating, forgery, etc. The judgment relied upon in case of Ms. Safa Shaikh (supra) deals with issue with regard to the complaint for the offence under the Act as contemplated by Section 11(1)(a) and 11(1)(b). Perusal of entire judgment does not show that this Court has dealt with issue as regard to the offences punishable under penal code. Incidentally the judgment is passed in Petition for quashment of proceeding. Needless to say that the said judgment has no application to the facts of the present case. This Court is of *prima facie* view that only in respect of offences punishable under the said Act private complaint is contemplated by the scrutiny committee or its authorized person. In respect of the other offence which are punishable under IPC no such embargo is created by Section 12. It is not allowed to read something which is absent in the provision. Apart

from this, there is *prima facie* overwhelming evidence on record to show that offences of cheating, forgery, etc are committed by applicant and co-accused. Effective interrogation would be essential not only for collecting evidence in this case but to prevent commission of similar crime by concerned.

9. There is also reason to accept contention of learned APP doubt about the entire episode as the co-accused Abhishek seems to have approached to two different caste validity committees i.e., one at Ahmednagar and other at Nashik. Applicant is a Government Servant and that Applicant herein by using his contacts has indulged into such illegal acts of fabricating/forging record. In order to find out the nexus between applicant and others concerned with the work of issuance of caste validity certificates, his custody is necessary. His custody would also be required to ascertain how documents are fabricated/forged.

10. In view of the above, application stands rejected.

11. At this stage, learned Counsel for the Applicant states that interim protection granted to him be extended for a period of three weeks.

12. Learned APP opposed the application by contending that no protection was granted by this Court on merit, and only with a view to facilitate the production of mobile phone before the investigating officer, the said protection was granted.

13. Having regard to the nature of offence and also in view of the fact that the liberty of the application was never protected on merit, he is not entitled for any further extension of that order. Hence, request stands rejected.

(R.M. JOSHI, J.)

Malani