

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

CRIMINAL WRIT PETITION NO. 168 OF 2023

Devendra Ramchandra Jog,	...PETITIONER
Age-54 years, Occu-Service,	[Orig. accused No.21]
R/o. Shevgaon, Tq. Shevgaon, Dist. Ahmednagar	
At Present Vishwakamal, Opp. Balaji Temple,	
Vikas Nagar, Old Kautha,	
Tq. & Dist. Nanded	

VERSUS

The State of Maharashtra	...RESPONDENT
through Investigation Officer,	
Kotwali Police Station, Ahmednagar	
& ICB Ahmednagar, Tq. & Dist. Ahmednagar	

AND

CRIMINAL WRIT PETITION NO.1147 OF 2022

Raju Ramkrushna Wagh,	...PETITIONER
Age-51yrs, Occu-Sub-Inspector State Excise, [Orig. accu. No.15]	
R/o. Pipeline Road, Savedi, Ahmednagar	
Tq. & Dist. Ahmednagar	

VERSUS

The State of Maharashtra	...RESPONDENT
through Investigation Officer,	
Kotwali Police Station, Ahmednagar	
& ICB Ahmednagar, Tq. & Dist. Ahmednagar	

AND

CRIMINAL WRIT PETITION NO.1301 OF 2022

1. Bapusaheb Mohan Londhe,	...PETITIONER
----------------------------	----------------------

Age-50 years, Occu-Service, [Orig. accused Nos. 16 & 20]
R/o. Majleshahar, Tq. Shevgaon,
Dist. Ahmednagar

2. Balu Waman Dethe,
Age-50 years, Occu-Service,
R/o. Ghulewadi Road, Behind 132 KV
Shankar Township, Sangamner, Tq. Sangamner,
Dist. Ahmednagar

VERSUS

The State of Maharashtra
through Investigation Officer,
Kotwali Police Station, Ahmednagar
& ICB Ahmednagar, Tq. & Dist. Ahmednagar

...RESPONDENT

AND

CRIMINAL WRIT PETITION NO.1336 OF 2022

1. Pradip Mhatardeo Ghodke, **...PETITIONERS**
Age-53 years, Occu-Business, [Orig. accused Nos. 2,6,9,
R/o. Tisgaon, Tq. Pathardi, 13 & 19]
Dist. Ahmednagar
2. Dattatraya Bhaskar Sangale,
Age-50 yrs, Occu-Service,
R/o. Newasa Road, Infront of Bhenda Gate,
Shevgaon, Tq. Shevgaon, Dist. Ahmednagar
3. Ashok Keshav Gunjal,
Age-55 years, Occu-Service,
R/o. Sangamner, Tq. Sangamner,
Dist. Ahmednagar
4. Ravindar Sopan Pahilwan,
Age-55 years, Occu-Business,
R/o. Mukundnagar, Govindpura,

Ahmednagar

5. Sunil Shivaji Shinde,
Age-53 yrs, Occu-Business,
R/o. Jalgaon, Tq. Karmala,
Dist. Solapur

VERSUS

The State of Maharashtra
through Investigation Officer,
Kotwali Police Station, Ahmednagar
& ICB Ahmednagar, Tq. & Dist. Ahmednagar

...RESPONDENT

Mr. Ravindra Vitthal Gore, Advocate for the petitioner in
wp/168/2023, 1147/2023 & 1301/2022
Mr. Rajendra Sudam Kasar, Advocate for the petitioner in
wp/1336/2022
Mr. S. R. Yadav-Lonikar, APP for the respondents/State

CORAM : KISHORE C. SANT, J.

RESERVED ON : 27th APRIL, 2023

PRONOUNCED ON : 08th JUNE, 2023

P. C.

1. Rule.

2. Rule made returnable forthwith by consent of the parties.

3. Since all the petitions are arising out of the order dated 04-06-2022 passed in Criminal Revision Application No.91/2021 by the learned Sessions Judge, Ahmednagar discharging the petitioners from the offences under the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examination Act, 1982 [hereinafter referred to as 'the Malpractices Act'] thereby modifying the order dated 18-03-2021 passed on an application below Exh. 393 in RCC No. 383/1996. All these petitions are taken up together and common judgment is passed.

4. Facts in short, are giving rise to the present petitions as under:-

a] On 04-02-1996 one Sharad Ugale a Police-Sub-Inspector, LCB Ahmednagar lodged the FIR. It is alleged that on 03-02-1996 at 11.00 o'clock the Police Inspector Thorat called the informant and other police personnel. Mr. Thorat informed that he received a secrete information that in Savedi area persons

namely Arjun Aaghav, Pravin Ghodke & Ashok Kanade are coming with question paper for examination to be held on next day. Thus, it is alleged that they were having the question papers of examination of MPSC for the post of Police-Sub-Inspector and they were selling the said copies to the students. On this information all the police parties went to a building and found that two persons on the bullet motorcycle were about to leave the place. On apprehending they disclosed their identity as Arjun Aaghav and Pravin Ghodke. On further enquiry Arjun Aaghav took out four photo copies of papers stating those to be copies of question papers of the competitive exam to be held by MPSC for the post of Police-Sub-Inspector. It was informed that one Ashok Kanade has taken some students in the building of one Appasaheb Deshpande in the room of Sunil Kakade. There question papers were to be sold to the students. The police party therefore raided the said room of Sunil Kakade. In the said room thirteen students were found. It revealed that one Devanand Gaikwad from the said room informed that one Ashok Kanade has taken some students at bungalow of one Raju Wagh and

there he is selling copies of question papers. There other 8 persons who were to appear in the said examination were found. There Ashok Kanade took out eight papers and some amount telling that said are the copies of the question paper. Thus at three places the police conducted the raid and found that copies of question papers which were to be sold to students.

b] Those copies were verified with the original question papers. It was found that said question papers tallied with the question paper that was prepared for examination. On that FIR came to be lodged against twenty three persons. On investigation charge-sheet came to be filed on 04-11-1996 against thirty nine persons.

5. Present petitioners filed an application below Exh. 393 for discharge on 12-07-2018. It is stated that prosecution is going on for more than twenty two years and there is no evidence to connect these accused with the alleged offences. They are not involved in any of the offences. None of the witnesses have

stated anything against these petitioners. The provisions of the Malpractices Act are not applicable. Taking the case as it is only two persons were found in suspicious circumstances at Nagar. Further information was received by the police from those two persons. None of the police persons have stated anything against present petitioners. For want of any concrete evidence the petitioners need to be discharged.

6. The learned trial court on hearing the parties observed that at the stage of framing of the charge the court has to evaluate the material and documents on record with a view to finding out if the facts emerging there from taken at their face value disclosed the existence of all ingredients constituting the alleged offence. The court is not expected to go deep into probative value of the material of the court. By considering the case of Bhupesh P. Gupta Vs State of Maharashtra the judgment of this High Court in Criminal Revision No. 449/2017 it is considered that accused Nos. 6, 16, 19, 20, & 21 were found alongwith main accused Nos. 1 and 2 with whom xerox copies

of the question papers were seized. These accused were found solving the question papers. As per the allegations they also paid money for the said papers to the main accused. Some role is attributed to the applicants therein. Accused Nos. 1 and 2 were found in suspicion circumstances near Sandip Apartment. Thus, there is material against these applicants and rejected the applications.

7. These petitioners therefore filed criminal revision application No.91/2021. The learned Sessions Judge allowed the revision application only to the extent of discharging the applicants from the provision of the Malpractices Act and modified the order passed by the learned trial court only to that extent. While passing the order the learned Sessions Judge observed that the Malpractices Act came into force with effect from 26-02-1996 whereas offence took place prior to the commencement of the Act. In view of Article 20 he observed that the applicants cannot be tried. So far as other offences are concerned he observed that though it is the case that some of

the accused are acquitted in the cases at Sangli and Nashik and though the present case is also on same facts, however, in that cases upon trial, the court have acquitted those accused persons. It is observed that these persons had obtained the copies of question papers through accused Nos. 3 and 4. Accused No.23 has obtained from accused No. 39. Accused No. 39 had got copies of papers from accused No. 37. Accused No. 2 alleged that they have obtained the copies from accused No. 1. Accused No.1 had obtained the copies through accused Nos. 24 and 25. The learned Sessions Judge thereafter considered that from the panchanama it was found that Pradip Ghodke accused No. 1 was found possessing the copies of question papers and same were seized from his custody. From the statement of Dattatraya Gaikwad it is seen that during the course of guilt thirteen candidates i.e. Dattatraya accused No. 6, accused No. 9 Ashok Gunjal, Bapusaheb Londhe accused No. 16, Sunil Shinde Accused No. 19, Balu Dethe accused No. 20 and Devendra Jog Accused No.21 were found possessing the copies of question papers and they were found solving those question papers.

8. Panchanama is also effected in that regard. In the raid conducted in the house of Raju Wagh, accused No. 13 was found with the question paper in his pocket. It is therefore held that there is material against petitioners before that court. The learned Sessions Judge also considered that though accused No. 37 was discharged still he was discharged on the ground that he was already prosecuted and acquitted for the same act by the court and therefore his case would not be applicable to the present case.

9. Before this court it is tried to be canvassed that there is similarity in the allegations against the present petitioners and accused Nos.7, 8, 10, 12, 14, 17, 22, 11 & 5 which are discharged. It is submitted that role of accused Nos. 5 to 22 are shown to be students and out of them accused Nos. 7, 8, 10, 12, 14, 17, 22, 11 & 5 are discharged. Accused Nos.34 was discharged as there was no prima-facie evidence against him. Accused Nos. 37 & 38 were discharged as they were acquitted

on the ground of Double Jeopardy. Accused No. 29 was discharged as he was not part of conspiracy. Accused No. 24 as he was acquitted by the competent court. 31 and 39 as disputed the question papers were not recovered from them. It is submitted that role of those persons is almost similar. No any case is made out except showing presence of the present petitioners when raid was conducted. It is argued that when the petitioners are facing prosecution since last 22 years there is no much progress in the trial. Presence of petitioners would only show that there is suspicion against them however, mere suspicion cannot be said to be sufficient to make persons to face the trial. Similarly situated persons are already discharged. Accused Nos. 24,11 & 5 are discharged by the trial court and accused Nos.34, 37,38,8,10,12,14,17,22 & 29 are discharged by the Sessions Court in the revision. Whereas accused No.7 is discharged by this court and they prayed for allowing the writ petition.

10. It is submitted that in similar circumstance accused

persons have been discharged. Accused No. 7 was discharged by this court in criminal writ petition No. 1632/2019. Accused Nos. 8, 10, 12, 14, 17, 22 & 29 were discharged by the trial court vide order dated 27-04-2022. Accused No.11 was discharged by order dated 06-08-2022 by the trial court. Accused No. 5 was discharged by order dated 03-09-2022. It is submitted that all these petitioners-accused are also being students and they were found in Deshpande Wada alongwith other accused persons. Role of the petitioners is similar and therefore, they also deserves to be discharged and same aspect is ignored by the learned trial court and the revisional court. The orders discharging these accused will be considered later on.

11. As against that learned APP submits that even slightest of evidence against the petitioners would make them liable to face the prosecution. In this case when the raid was conducted these petitioners were found present at the spot alongwith copies of question papers. This material is sufficient to prosecute these petitioners. So far as the discharge is concerned in respect of

other accused persons he submits that they are discharged for the reasons stated in their applications. Their case cannot be equated with the case of the petitioners and prays for dismissal of the petitions. He submits that both the courts have rightly considered the case.

12. Learned APP also made submission that the proposal is made to file revision against the order of discharge in respect of other accused persons. Thus on this submission this court has to see the allegations against these accused persons. As per the charge-sheet name of petitioners appear in panchanama dated 03-02-1996 from whom photo copies of question papers are seized. So far as petitioner in writ petition No. 1147/2022 Raju Wagh is concerned he was found in the room of accused No.21 alongwith other students. Thus, there is some material. The petitioner Bapusaheb Londhe in writ petition No.1301/2022 is found in Deshpande Wada in the room of accused No. 10 alongwith other accused persons. All four writ petitioners appeared for MPSC examination. Their involvement is prima

facie seen in the offence. So far as petitioner in writ petition No. 1336/2022 is concerned it is seen that there is direct allegations against Pradip Ghodke as he was found in possession of question papers. So far as Dattatraya accused no. 6 is concerned his role is similar as of petitioner in writ petition No. 168/2023. So far as accused No. 9 Asok Gunjal is concerned his role is similar to other petitioners Ravindra and Sunil Shinde. All these petitioners were found solving the question papers. Thus, role of the petitioners is clearly seen.

13. On going through the order discharging accused No. 7 this court in writ petition No.1632/2019 has observed that except FIR there was no other material against the said accused and on that count accused No.7 was discharged holding that mere presence with other is not sufficient to proceed against the said accused. So far as accused Nos.8, 10, 12, 14, 17, 22 & 29 are concerned their application below Exh. 450 came to be allowed. On going through the order it is observed that none of the accused in that application had in their possession the

original question paper and were selling it to others by obtaining money. So far accused No. 11 is concerned it is seen that the learned Additional CJM has specifically observed that accused person was not involved in obtaining the question papers. So far as accused Nos. 37 and 38 are concerned they were discharged as they were acquitted after trial and after recording evidence by the court of JMFC, Sangli and Nashik and they were discharged on the principle of Double Jeopardy. Accused No. 29 was discharged as he was not found to be part of the conspiracy to commit theft of question papers. Accused No. 24 was discharged as he was acquitted by the competent court on the same facts and evidence and his role was not found to be there. So far as accused No. 31 and 39 is concerned they were discharged as disputed question papers were not recovered from them. Thus, those accused persons came to be discharged since there was no material against them.

14. Learned advocate for the petitioner relies upon the judgment in the case of P. Vijayan Vs State of Kerala and Another

reported in (2010) 2 SCC 398 the Hon'ble Apex Court considered the provision of section 227 of the Code of Criminal Procedure. It is held that when if two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion as to the guilt of the accused the trial judge will discharge the accused and at this stage the trial judge is not to see whether trial will end in conviction or acquittal. The court only has to see whether there is sufficient material. In that case the Hon'ble Apex Court observed that the trial judge had not assigned the detail reasons for dismissing discharge petition filed under Section 227.

15. The next judgment is the judgment in the case of Yogesh @ Sachin Jagdish Joshi Vs State of Maharashtra reported in 2008 AIR SCC 2991 it was the case wherein the petitioners therein and his family members were accused of offence under Sections 302 and 120-B of the IPC. The Hon'ble Apex Court found that there was no actual material to proceed against the applicants. In that case it was only a case that the accused

persons hatched a conspiracy to finish the deceased. However, no material was found on record to show that actual conspiracy and in that view of the matter the petition was allowed and accused were discharged from the charges leveled against them. In the case of Gangaram Kondiba Ingle & etc Vs State of Maharashtra reported in 1999 BCI page 113 this court held that there was no material on record. The accused persons were booked only on mere suspicion of motive. It was held that mere suspicion of motive is not sufficient to frame charges against the accused persons. There has to be some reasonable ground to believe that the person has taken some part in the conspiracy i.e. there must be reasonable likelihood of participation and there also should be some material to connect the accused with crime. In that view of the matter the discharge applications of some of the accused were dismissed.

16. This court finds that in view of the fact that their names appeared in the panchanama showing that they were found solving the question papers, the cases wherein the other

accused are discharged are distinguishable on facts. Though the submission is made that the present petitioners have been made accused only on suspicion however this court finds that there is some material on record which goes beyond mere suspicion. Filing of the petitions alongwith other students solving the question papers certainly cannot be said to be only suspicion. In writ petition No. 1336/2022 this court had found that there was no material against the persons in that case. He was only present when the raid was conducted except that there is no allegations against him and under such circumstances the petition was allowed. Same analogy cannot be applied to the present case as in this case the petitioners were actually found solving the question papers. This cannot be said to be mere presence. The learned trial court as well as learned sessions court have rightly considered all the aspects in the matter. This court finds that there is no illegality committed by the courts while passing the impugned order. When material is produced on record whether it is sufficient to prove guilt or not is not to be seen at this stage.

17. Looking to the papers especially panchanama dated 03-01-2016 this court finds that certainly there is material to proceed against the petitioners. This court finds the criminal writ petitions deserves to be dismissed and same are dismissed.

[KISHORE C. SANT, J.]

VishalK/criwp168