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

ANTICIPATORY BAIL APPLICATION NO.2121 OF 2023

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Arun Ramdas Koshti

... Applicant

V/s.

The State of Maharashtra

... Respondent

Mr. Siddhesh Bhole with Ms. Anushjree Koparkar i/by
SSB Legal & Advisory for the applicant.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 3, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.62 of 2022 registered with Deccan Police Station, Pune, for offences punishable under Sections 406, 420, 465, 467, 468, 471 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution, one Sangeeta Bhaskar Sapkale Alias Swati Dhananjay Talpe is appointed as an assistant teacher in Hindusthan Antibiotech Schook, Primary Section, Pimpri, Pune on reserved post for ST category. Therefore, she was directed to submit her caste validity certificate. On 16 March 2020, she submitted a photostat copy of the caste validity certificate. When that certificate was sent for verification to Assistant Commissioner,

he informed that said the assistant teacher did not submit any application to verify her cast certificate. The scrutiny committee did not issue the copy of the cast validity certificate submitted by her. Thus, the concerned school authorities got knowledge that said assistant teacher submitted fake and fabricated cast validity certificates to the school. Accordingly, a report came to be lodged.

3. The applicant, therefore, applied Section 438 before the learned Additional Sessions Judge, Pune, which was rejected by an order dated 21 July 2022. The applicant, therefore, filed a present anticipatory bail application.

4. Learned advocate for the applicant submitted that the limited role attributed to the applicant is forwarding a bogus caste certificate to co-accused Sawkare, who had accepted Rs.5 lakh from the beneficiary. According to him, custodial interrogation of the applicant is unnecessary as the applicant is not a person who forged the certificate. He submitted that the learned Sessions Court released him on anticipatory bail in a similar first information report lodged against him. According to him, he is not actively involved in forging the document.

5. Per contra, learned APP submitted that custodial interrogation of the applicant is necessary to unearth a larger racket of preparation of bogus validity certificates. The material available with the investigating officer indicates that the applicant forwarded the certificate on a social media application(WhatsApp) to the co-accused Sawkare. It is, therefore, necessary to investigate the larger racket.

6. With the assistance of learned Advocates, I have carefully scrutinized the case papers and material on record. It needs to be noted that Scrutiny Committees were constituted post-judgment of the Apex Court in **Kumari Madhuri Patil v. Additional Commissioner** reported in AIR 1995 SC 94, which were holding the field till the Act of 2001 came into operation. The judgment lays down a detailed procedure to be followed for issuance of caste validity certificate.

7. The alleged certificate was issued in the year 2020. By 2020, everyone interested and associated with getting such caste validity certificates will be well aware that such certificates are issued only by Scrutiny Committee established under the Act. No individual has any right to either issue or procure such a certificate. Therefore, on the date of issuance of such certificate, the beneficiary and the persons who promised issuance of such certificate are well aware that only Scrutiny Committee is empowered to issue such certificate after following the due procedure prescribed under the Act and the Rules. Therefore, judicial notice can be taken of the fact that all persons dealing with such certificates know that only Scrutiny Committee has such power.

8. In the present case, the caste certificate was issued by the Competent Authority in the year 1996. The document alleged to be forged a caste validity certificate. As noted above, as per the procedure prescribed, the caste certificate needs to be scrutinized and validated by the Caste Scrutiny Committee.

9. Before the judgment of the Apex Court in the case of **Chairman and Managing Director, Food Corporation of India v. Jagdish Balaram Bahira** reported in (2017) 8 SCC 670, benefits based on invalid caste certificates were protected in deserving cases. The persons and beneficiaries indulging in the preparation of forged caste validity certificates, despite being aware of this position of law, keeping in view that the benefits would be irreversible, particularly in election matters, continued with acts of forging certificates. Such forgery of caste validity certificate is fraud in Constitution as Articles 16(4) and 16(4)(a), which enable state to provide for citizens belonging to the class of citizens enumerated in the said Articles, a right of appointment and promotion in employment. Proceedings are initiated to take away the benefits conferred by forged certificates; however, by the time the benefits are actually taken away, the position becomes irreversible in matters, particularly in election law. It is, therefore, necessary that those which are associated with taking away rights of eligible persons need to be dealt with iron hands.

10. Such cases in the context of benefits conferred under service law take longer to detect. By the time such fraud is detected, eligible persons who are not selected become ineligible due to non-fulfilment of other eligibility conditions such as age and other conditions. Many times, such a person gets selected for another service. In the case of elections, the acts done by such elected persons are also protected by the 'De Facto Doctrine'.

11. Therefore, in my opinion, the larger racket of people associated with the forgery of caste validity certificates needs to be

unearthed at the earliest possible so that eligible and deserving candidates are not deprived of their constitutional rights. Unless such a larger racket is unearthed, mushrooming of forged caste validity certificates is bound to increase, resulting in further societal inequality.

12. In the facts of the present case, role attributed to the applicant is forwarding forged certificate to co accused. Moreover in addition to the present report, one more report of a similar offence has been filed against the applicant. According to him, the applicant disassociated himself with the alleged conspirators. However, it is for the investigating agency to investigate all such angles as they deem fit to unearth a larger racket. The Apex Court has emphasized the importance of custodial interrogation in paragraph 6 of **State represented by the CBI v. Anil Sharma** reported in (1997) 7 SCC 187 as under:

6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring

offences would not conduct themselves as offenders.”

13. Considering the facts of the case, elicitation-oriented custodial interrogation is a necessity. Therefore, no case for grant of relief under Section 438 of the Criminal Procedure Code, 1973 is made out.

14. Learned Advocate for the applicant states that he has participated in the investigation and has cooperated with the investigation. However, considering the gravity and nature of the offence alleged against the applicant, a prima facie case is made out against the applicant.

15. The anticipatory bail application, therefore, stands rejected. No costs.

16. It is made clear that the observations in the present order are made in the context of adjudication of anticipatory bail application under Section 438 of the Criminal Procedure Code, 1973 and shall not influence the Trial Court while deciding the trial.

(AMIT BORKAR, J.)