

SA Pathan

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

ANTICIPATORY BAIL APPLICATION NO. 3453 OF 2022

Vijay Bapurao Sanatan ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Harshad Bhadbhade a/w Ms. Shagufa Patel & Ms.
Nikita Mandaniyan i/by Mr. Harshad Kandalkar, for the
Applicant.

Mrs. Veera Shinde, APP for the State-Respondent.

CORAM : AMIT BORKAR, J.

DATED : JUNE 19, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.497 of 2022 registered with Yerwada police station for the offences punishable under Sections 420, 465, 468, 471 and 120(B) of the Indian Penal Code (for short "IPC").
2. According to the prosecution, NCC office units are controlled by the Deputy Director of Sports and Youth Services, Pune Division, Pune. Complaints were received as regards recruitment conducted in the years 2015 and 2016. According to the prosecution, the Deputy Director of Sports and Youth Services Pune Division published an advertisement for recruitment on 29 December 2016 and 30 December 2016 for sixteen posts. The submission of the application was online. As per the Government Resolution, sanction of the State Government is necessary before

creating new posts. Before publishing the advertisement on 23 June 2015, the roaster was not approved by the reservation cell. On 24 June 2016, despite the availability of backwards-class candidates, a person from another category was appointed. Similar illegality was committed in the advertisement published on 8 May 2016.

3. The applicant is concerned with advertisements published on 29 December 2016 and 30 December 2016. The applicant, on the date of advertisement, was working as the Deputy Director of Sports and Youth Services Pune Division. The co-accused, Amit Khomane, was working as Junior Clerk. As per the Government Resolution dated 2 June 2015, prior permission of the State Government before the recruitment process is mandatory. Without obtaining such prior permission, an advertisement dated 29 December 2016 for eight posts and an advertisement dated 30 December 2016 for eight posts were published. However, thirty posts were filled up without following the appointment process through an agency; one Swapnil Raju Pawar was appointed under the applicant's signature.

4. According to the prosecution, in furtherance of the advertisement dated 29 December 2016, apart from calling online applications, offline applications were also received, which were not provided under the advertisement, resulting in denying the opportunity of participating in the recruitment process of needy and unemployed persons. The advertisement required a completion age of 18 years as of the date of advertisement. However, the appointed candidate was less than 18 years of age.

The post was reserved for the backward category. However, the person appointed belongs to the open category. He applied an offline process. According to the prosecution, forged signatures of one Anil Bhoir, Superintendent, were made in the proceedings. According to the prosecution, the applicant and other co-accused in connivance with each other, without following due process, exceeding the sanctioned posts and granting appointments to ineligible candidates based on forged documents, have therefore cheated the Government.

5. Apprehending arrest, the applicant applied to learned Sessions Judge, which was rejected by the order dated 28 November 2022. Aggrieved thereby, the applicant filed a present application. This Court, by order dated 13 December 2022, protected the applicant.

6. The learned Advocate for the applicant submitted that the applicant has cooperated with the investigation as per the interim order passed by this Court. Co-accused Amit Khomane, who was working as Junior Clerk, has been granted anticipatory bail by learned Sessions Judge. According to him, the co-accused inserted the hand-written portion of the Minutes of Meeting after the applicant signed the resolution. To cure this illegality, the applicant has cancelled the appointments of three candidates in 2020 and 2021. The investigating agency had not recorded statements of other signatories of the Resolution creating posts. He is ready to abide by all conditions, and therefore, interim protection granted by this Court deserves to be continued.

7. Per contra, learned APP submitted that power to create Civil posts exclusively lies with the State Government unless specifically conferred on the subordinate authority under statute, recruitment rules, or Government Resolution. The Government Resolution dated 2 June 2015, which was in force on the date of advertisement, required prior permission from the Government to create new posts. Despite being aware of this legal position, the applicants, along with other co-accused, not only created the posts, but the candidates were appointed and paid through the public exchequer, causing loss to the public exchequer. Since the offence involves loss to public exchequer, the applicant is not entitled to anticipatory bail.

8. I have perused the material on record. On prima facie perusal of the material on record, it appears that none of the committee members, except one, who decided to create fourteen new posts, stated that their signature on the Resolution is not theirs. The Resolution dated 7 January 2017, passed by the committee to fill up Class-III posts by nomination, refers to the appointment process. The typed portion of the Resolution appears to be as regards sixteen posts which were advertised and sanctioned by the State Government. However, it appears that by hand-written portion, the committee decided to create fourteen new posts. At this stage, there is no material to show that the said committee had the authority to create posts.

9. According to the applicant, the applicant signed the Resolution, which was not containing a handwritten portion, creating fourteen new posts. However, at this stage, said

submission cannot be accepted as the applicant, in his capacity of Deputy Director of Sports and Youth Services Pune Division, had signed appointments of fourteen candidates. The argument of the applicant that the signature on the said Resolution was obtained by co-accused Amit Khomane by inadvertence cannot be accepted as at this stage, it is unbelievable that the Deputy Director of Sports and Youth Services will sign the appointment of 14 employees whose posts were not sanctioned by the state government, according to the applicant. The committee headed by a directed the recruitment process of only 16 posts. The appointment of an employee creates vested rights in his favour. It also creates a relationship between employer and employee. It appears that based on such forged resolution, selected candidates were paid a salary from the State exchequer for at least three years. Therefore, a prima facie case is made out against the applicant.

10. In so far as the submission on behalf of the applicant that custodial interrogation of the applicant is not required as the applicant is ready to cooperate with investigating officer and, in fact, has cooperated with the investigation after the granting of interim relief by this Court is concerned, the Apex Court had occasion to consider such argument in the case of **State vs Anil Sharma**, reported in (1997) 7 SCC 187. The Apex Court emphasized the need for custodial interrogation, observing that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well-ensconced with a favourable order under Section 438 of the code. In such cases, effective interrogation of a suspected person is of tremendous

advantage in disinterring much useful information and also materials which would have been concealed. Success in such interrogation will elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail during the time he is interrogated. Interrogation in such a condition would often reduce it to a mere ritual. There is the possibility that much useful information and material would be concealed. In the facts of the present case, it is necessary to ascertain who was responsible for inserting a hand-written portion in the Resolution, which created rights in favour of the candidates. It is also necessary to ascertain why the applicant signed the appointment orders if the Resolution deciding to proceed with the appointment did not contain a hand-written portion creating fourteen new posts.

11. In so far as to grant of anticipatory bail to Amit Khomane is concerned, the role attributed to him is of Junior Clerk. Merely because some of the candidates happened to be relatives as per the applicant's submission, that by itself could not equate the applicant to get favourable order in an offence which has resulted in a huge loss to the State exchequer.

12. In a recent judgment in the case of **Sumitha Pradeep vs Arun Kumar**, reported in (2022) SCC OnLine SC 1529, the Apex Court was considering the validity of an order passed by the High Court releasing an accused on the ground that custodial interrogation is not necessary. The Apex Court held that custodial interrogation could be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation

of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked, and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into, along with the severity of the punishment. Custodial interrogation can be one of the grounds for declining custodial interrogation. However, even if custodial interrogation is not required or necessitated, that by itself cannot be a ground to grant anticipatory bail.

13. On overall consideration of the aforesaid reasons, in my opinion, the applicant does not deserve relief under Section 438 of Cr.P.C.

14. The application is therefore rejected.

15. Since this Court had protected the applicant from 13 December 2022, the ad-interim relief stands extended for a period of two weeks from today.

(AMIT BORKAR, J.)