

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

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CRIMINAL APPLICATION (BA) NO. 327/2023

Danishkha Firozkhan Pathan

.. Applicant

versus

The State of Maharashtra

Th: Its PSO Sakharkheda Tq.Sindkhedraja

Dist. Buldana

.. Respondent

.....
Mr.Vinay Rathi,Adv. h/for Mr P.B. Patil, Advocate for the applicant

Mr. S.M.Ghodeswar, APP for Respondent

.....

CORAM: ANIL L. PANSARE, J.

DATED : 24th April, 2023.

PC:

Heard.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973. The applicant has been arrested on 9th March, 2023 in Crime No.89/2023 registered with Police Station, Sakharkheda, Dist. Buldana, for the offences punishable under Sections 5 and 6 of the Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 (in short “the Act of 1982”) and Sections 120B, 201, 409 and 420 of the Indian Penal Code.

3. Briefly stated, the case of the prosecution is that on 3rd March 2023, the mathematics paper of Class XII Board examination was allegedly leaked by the applicant and co-accused and circulated the same on WhatsApp groups, namely, “*Khufiya*” and “*Bindast Girl*”. The students and parents of Dr.Zakir Hussain Jr.College, Lonar District Buldana were

part of the group. According to the prosecution, one Abdul Aqil, the Principal of Dr. Zakir Hussain Jr.College, was the Conductor of the Examination whereas Ankush Chavan was the Deputy Conductor. Wife of Gopal Shinde is a mathematics teacher in the College. The Principal- Abdul Aqil is said to have taken photographs of the paper in his mobile and circulated the same to Gajanan Aade who, in turn , circulated it to Gopal, who is also a teacher, but of different school. Gopal then circulated the paper in WhatsApp group, namely, 'Khufiya' and 'Bindast Girl'. The applicant is the friend of Gopal. The applicant went to the house of Gopal, met his wife who solved the paper. The solved paper was thereafter circulated in the same WhatsApp groups.

4. The only allegation against the applicant is that he has received the leaked question paper from Gopal, took it to Gopal's wife. She solved the paper. The solved paper was then circulated in the WhatsApp groups.

5. Having gone through the material placed before me, it appears that the paper has allegedly been leaked at about 10.15am; the examination was to commence at 11.00am; almost all the students entered the examination hall at about 10.30am. They had deposited their mobiles with the Invigilator. The solved paper has allegedly been circulated after 10.30am, but prior to 11.00am. In that sense, *prima facie*, it appears that none of the students have really been benefited because of the so called leak of the paper.

6. Be that as it may, even if the case of the prosecution is to be accepted at its face value, the accusation, at the most, would fall

under sections 5 and 6 of the Act of 1982, for which the maximum punishment is of one year. The accusation against the applicant is also under sections 120B, 201, 409 & 420 of the IPC. However, when enquired, with the learned as to who has been deceived, he could not give any convincing answer. Thus, *prima facie*, except for the case of leaking paper, there appears nothing against the applicant. As stated above, the maximum punishment for the aforesaid offence is one year.

7. The learned counsel for the applicant further submits that nothing is to be recovered from the applicant or at his instance. Furthermore, he submits that the Maharashtra Board of Examinations has clarified that the question paper was not leaked and that there will not be re-examination of the said paper.

8. When inquired of antecedents, learned counsel for the applicant submits that there are no criminal antecedents. The applicant is residing at the given addresses since long.

9. Considering the peculiar facts of the case and the nature of evidence against the applicant so also the presumption that the person accused of a crime is considered to be innocent until proven guilty, I am of the considered view that no fruitful purpose will be served by keeping the applicant in jail. The interest of the prosecution can be protected by putting the applicant to appropriate terms.

10. The observations made in this order are *prima facie* in nature and are made for deciding the present application only. The trial Court shall not get influenced by the observations made in this order.

11. Resultantly, following order is passed :-

ORDER

- (i) The application is allowed.
- (ii) Applicant – Danishkha Firozkhan Pathan, be released on bail in Crime No. 89/2023 registered with Police Station, Sakharkheda Dist. Buldana, for the offences punishable under Sections 5 and 6 of the Maharashtra Prevention of Malpractices at University, Board and other Specified Examinations Act, 1982 and Sections 120B, 201, 409 and 420 of the Indian Penal Code, on he executing P.R. Bond in the sum of Rs.25,000/-, with one surety in the like amount.
- (iii) The applicant shall, at the time of execution of bond, furnish his address and telephone/mobile number(s) to the Investigating Officer and the Court concerned and shall not change the same till the final disposal of the case.
- (iv) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or any Police Officer.
- (v) The applicant shall not obstruct or hamper the police investigation and shall not play mischief with the evidence collected or yet to be collected by the Police.
- (vi) The applicant shall maintain law and order.
- (vii) In case of breach of any conditions, the learned trial court is at liberty to cancel the bail after giving opportunity of hearing to both the sides.

The application is disposed of in the above terms.

[ANIL L. PANSARE, J.]

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