



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 535 OF 2023

Rushikesh Vinod Dudhale

Vs.

State of Maharashtra, Thru. PSO, PS Ram Nagar, Chandrapur

Office notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders.

Court's or Judge's Orders.

Mr. MD Naveed Opai, Advocate for applicant.
Ms. Trupti Udeshi, APP for non-applicant/State.

CORAM : G.A. SANAP, J.

DATE : OCTOBER 18, 2023.

Heard.

2. This is an application for pre-arrest bail in Crime No.604/2023, registered at Police Station Ram Nagar, District - Chandrapur, for the offences punishable under Sections 420, 468, 471 read with Section 34 of the Indian Penal Code.

3. Learned Advocate for the applicant submitted that the applicant has not committed any offence inasmuch as he was not involved in the act of creation of forged 'Project Affected Person' certificate. Learned Advocate submitted that the said certificate was obtained by his father when he was 12 years old from the Collector Office at District Beed. Learned Advocate submitted that

the applicant has no criminal antecedents. He is an innocent student. It is submitted that he has become pray of some racket or syndicate unknown to him. Learned Advocate submitted that if he is arrested in this crime, his future would be ruined. Learned Advocate took me through the record and submitted that for the purpose of investigation, his arrest and custodial interrogation is not necessary. He is ready to co-operate with the police. It is submitted that he is also ready to abide by the conditions that may be imposed by this Court. In order to seek support to his submissions he has relied upon the decisions of the co-ordinate Bench of this Court in the case of ***Sachin Eknath Dange Vs. State of Maharashtra*** in Anticipatory Bail Application No.171/2019 dated 12.03.2019 and ***Akash Kailash Chavan Vs. State of Maharashtra, 2021 SCC Online Bom 13595***. Relying upon these decisions he has submitted that in the similar set of facts and circumstances, the accused in those cases were granted protection from arrest.

4. Learned APP submitted that in the recruitment undertaken in the State of Maharashtra, number of candidates have obtained such fabricated certificates and participated in the recruitment process. Learned APP submitted that on the basis of false and fabricated certificates, some of the candidates were selected in the recruitment process. Learned APP submitted that

on account of such forgery and fraud, genuine candidates have been deprived of their rightful claim. Learned APP submitted that the applicant is resident of Aurangabad District. However, the certificate of 'Project Affected Person' relied upon by him was purportedly issued from the Collector Office, Beed. Learned Advocate submitted that the original certificate under Serial No.1 was issued to one agriculturist from Beed District. It is pointed out that taking advantage of that genuine certificate, this forged certificate was prepared and on the basis of same employment was obtained. Learned APP pointed that on the basis of this fabricated certificate, he participated in the recruitment process and he was at serial number No.1 in the wait listed candidates. It is pointed out that when one selected candidate did not join, he was given an appointment order in place of that candidate being at Serial No.1 of the wait list. Learned APP submitted that he has, by his fraudulent acts, denied employment to a candidate, who was otherwise eligible. Learned APP, relying upon a decision in the case of ***Pratibha Manchanda & anr. Vs. State of Haryana, (2023) 8 SCC181*** of the Hon'ble Apex Court, submitted that while deciding anticipatory bail application, the Court has to bear in mind the personal liberty as well as the gravity of the offence and impact of the said offence on the society and on weighing the same, has to decide whether bail should be granted or should not be granted.

5. At the outset, it would be necessary to mention that the applicant/accused was not 'Project Affected Person'. Whether his father held any land or not has not been stated in the application. There is no statement in the application as to whether any land belonging to his father was acquired by the Government for any purpose and as such, he was eligible to get a certificate of 'Project Affected Person'. It is common knowledge that particular number of seats are reserved in every recruitment process for the person falling in the category of 'Project Affected Person'. The object of the Government behind providing such reservation is to compensate the children of the persons, whose property is compulsorily acquired by the Government for the public purpose. Learned APP, on instructions from the Investigating Officer, has made a statement across the bar that in the last year's recruitment process for various posts, in the State of Maharashtra, near about 100 such certificates have been issued and used in different recruitment process. Learned APP submitted that if the Court takes a liberal view in such matter, in near future, this phenomena may attend its peak and then the situation would be grave and beyond control. It is to be noted that sympathy of the Court is with the students. However, while exercising discretion, the Court has to ensure that simply by taking a sympathetic view, which may be misplaced in a given case, the person not deserving

protection, should not be granted such protection. It depends upon facts and circumstances of each and every case. The applicant/accused has participated in this process on the basis of forged certificate. Participation of the applicant in this recruitment process was just beginning of his life, after completion of education. The applicant consciously made the beginning of his life in this manner with the crutches of falsehood. He is educated responsible citizen of this Country. He ought to have given a thought to his future before relying upon such a certificate, which was false to his knowledge. In my view, in such cases, in order to secure the interest of the society at large and particularly the candidates, who are otherwise eligible to get benefit of such scheme, the Court has to act very carefully.

6. In my view, anticipatory bail in such crime cannot be granted merely for asking and as a matter of right. The Court has to deal with such situation with an iron fist. Unless and until such persons and tendency is dealt with iron fist, the younger generation would not learn the lesson. Participation in selection process with such fabricated document, indicates dishonest mindset of the accused. The applicant, on the basis of such certificate, intended to become a part of the police force, which is the protector of the society.

7. The decisions relied upon by the learned Advocate for the accused cited supra, have decided those applications keeping in mind the facts of those cases. While deciding the anticipatory bail application, there cannot be a straight jacket formula or rule. The relief of protection from arrest depends upon the facts and circumstances of each and every case.

8. The Hon'ble Supreme Court, in the case of ***Pratibha Vs. State of Haryana (supra)***, has considered the issue of balancing personal liberty and gravity of the offence and its impact on the society while deciding anticipatory bail application. It has been dealt with in para Nos.18 and 19. Those paras are extracted below:

“18. In Sushila Aggarwal v. State (NCT of Delhi)3, the Constitution Bench reaffirmed that when considering applications for anticipatory bail, courts should consider factors such as the nature and gravity of the offences, the role attributed to the applicant, and the specific facts of the case.

19. The relief of Anticipatory Bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tight rope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence,

the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and circumstances of each individual case becomes crucial to ensure a just outcome."

9. It is pointed out that custodial interrogation of the applicant is necessary because the police would be required to go to the root of the matter. The preliminary investigation conducted, reveals that the certificate was issued from the Office of the Collector Beed. The record is not available with the Collector Office, Beed. It has been stated in the reply that behind such crimes, a syndicate is involved. The investigation has to be carried out to reach out to the main culprits. It is pointed out that unless and until, custodial interrogation of the accused is conducted, it would not be possible for the police to reach out to the main culprits and find out the syndicate. It is undisputed that the accused, who procured and possessed the certificate, is the best person to throw light on all these aspects.

10. It is to be noted that free and fair investigation is essential for the healthy criminal justice system. The wings of the police machinery cannot be tied at the very threshold by granting protection from arrest to the accused. In such crimes, the Court has to ensure that misplaced sympathy should not be shown in undeserving and unwarranted cases. I am conscious of the fact that at

such young age, the applicant may undergo the ordeal of interrogation. In my view, it is inevitable in view of his criminal act. He has secured employment on the basis of this fabricated certificate. It needs to be mentioned that at the same time, he has denied an opportunity to the genuine candidate who otherwise would have been appointed in his place.

11. It is not out of place to mention that in the era of cut-throat competition for getting Government employment, such malpractices are bound to occur. It need to be emphasized that as and when such malpractices and offences are brought to fore, the Court has to approach it with the iron fist. In this case, I am of the opinion that no case has been made out for anticipatory bail. The interest of the society in this case is more important than the personal liberty. The application is rejected.

(G.A. SANAP, J.)