

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

BAIL APPLICATION NO. 3629 OF 2022

SANTOSH
SUBHASH
KULKARNI

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SANTOSH SUBHASH
KULKARNI
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Bhagat Preetsing Sartajsingh Bedi	Versus	...Applicant
The State of Maharashtra		...Respondent

Mr. Niranjan Mundargi, a/w Ms. Keral Mehta, for the
Applicant.

Mr. Tanveer Khan, APP for the State/Respondent No.1.
PSI Shankar Patil, Crime Branch, Pune, present.

**CORAM: N. J. JAMADAR, J.
DATED: 13th MARCH, 2024**

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.83 of 2021 registered with Wanwadi Police Station, Pune, for the offences punishable under Sections 420, 409 and 120(B) read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 6 and 7 of the Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982 and Sections 7, 12 and 13 of the Prevention of Corruption Act, 1988 and Section 66C of the Information Technology Act, 2000, has preferred this application to enlarge him on bail.

3. The indictment against the applicant and the co-accused is under:

On 28th February, 2021, the written examination for recruitment in the Army, under the recruitment drive (Relation Army), was to be held. On the previous night, an intimation was received from Military Intelligence, Southern Command, Ghorpadi, Pune, that the question paper for the said examination was leaked and Kishor Giri (A1) was supplying the question and answer key to the candidates and obtaining a wrongful gain. A raid was conducted at the house of Kishor Giri (A1). He was apprehended alongwith mobile phone handsets which contained several question papers in English and Hindi, answer keys thereto and other material. It further transpired that Kishor Giri (A1) had circulated those question papers and answer keys to the co-accused.

4. During the course of investigation, it further transpired that Kishor Giri (A1) had received those question papers and answer keys from persons, who were privy to the recruitment process. The applicant – accused No.9 was the custodian of the said question papers. He had forwarded the same on WhatsApp to Vira Prasad Kotiswami Naranpoti (A8), who, in turn, forwarded it to Gorantala Narsimha Rao (A14). Gorantala

Narsimha Rao (A14) transmitted the question paper to co-accused M. Pawankumar (A13), who, in turn, transmitted the same to Vasant Vijay Kilari (A7). Vasant (A7) transmitted the question paper to Thiru Murugan Thangvelu (A6), who transmitted it to Bharat Laxman Adakmol (A5), who, in turn, transmitted the question to Kishor Giri (A1). Kishor Giri (A1) transmitted the question papers to other co-accused and the candidates.

5. The applicant and co-accused had allegedly collected original certificates of the candidates to whom the question papers and answer keys were transmitted with a view to obtain undue advantage. The applicant – accused No.9 made a discovery leading to recovery of 11 handwritten pages containing 50 questions and cash of Rs.1,50,000/-.

6. Mr. Mundargi, the learned Counsel for the applicant, submitted that all the co-accused have been released on bail. The factors of long incarceration, completion of investigation and the flaw in the investigation, in the sense that the investigating agency has yet not received any information which establishes the necessary nexus about the transfer of data by the holders of the mobile numbers, who allegedly transmitted the question papers, equally govern the claim of the applicant for bail.

Without controverting the fact that the applicant was the custodian of the question papers and the Presiding Officer of the Board of Officers constituted to oversee the printing, packaging and transfer of the question papers, Mr. Mundargi submitted that the discovery under Section 27 of the Evidence Act is not of any incriminating tendency as there is no material to indicate that the loose handwritten question papers allegedly found in the house of the applicant formed part of the question, which was allegedly leaked. Therefore, at this length of time, the applicant deserves to be enlarged on bail.

7. In opposition to this, Mr. Khan, the learned APP, stoutly resisted the prayer for bail. It was submitted that the applicant abused his position as the Presiding Officer of the Board of Officers and the custodian of the question papers to obtain undue advantage. Therefore, the applicant cannot claim parity. The applicant, despite being a senior officer and the custodian of the question papers indulged in serious offences of cheating and accepting gratification, other than legal remuneration. The applicant has eroded the sanctity of the recruitment process. Thus, the applicant does not deserve exercise of any discretion.

8. I have perused the report under Section 173 of the Code of Criminal Procedure, 1973 ("the Code") and the documents

annexed with it. Evidently, the nature of accusation against the applicant is grave. It is incontrovertible that the applicant was the Presiding Officer of the Board constituted to oversee the examination to recruit army personnel. The applicant was the custodian of the question papers. At this stage, there is adequate material which shows that a day prior to the scheduled date of examination, the question paper was leaked and circulated amongst other army personnel and the candidates. The co-accused army personnel, it is alleged, eventually forwarded the question paper to Kishor Giri (A1). The allegations against the applicant are, therefore, required to be appraised keeping in view the fact that the applicant was the custodian of the question papers.

9. There is material to indicate that the candidates to whom the question papers and answer keys were transmitted were made to deliver original certificates so that undue advantage could be obtained from them.

10. It is true, the co-accused have been released on bail and by an order dated 25th July, 2022 I had also released three of the co-accused on bail. It was, *inter alia*, noted that the investigating agency had not yet received any information from Chief Technical Officer (WhatsApp) by the holders of the mobile

numbers to establish the necessary nexus. However, in my considered view, the said consideration would not apply to the case of the applicant. The applicant being the Presiding Officer of the Board of Officers and the custodian of the question papers, was duty bound to maintain secrecy and preserve the confidentiality of the examination. The question paper could not have been leaked without the applicant himself being privy to the alleged offences. There is material to show that the applicant had, in fact, forwarded the question paper to Veera Prasad Narnepati (A8), then working as storekeeper in Central Ordnance Department. The absence of evidence to establish the nexus between the persons and the mobile phone handsets through which the question paper was transmitted on WhatsApp, is not inexorably necessary to establish the complicity of the applicant as he was the custodian of the question paper.

11. In addition, there is evidence in the form of the statements of the other members of the Board of Officers, who claimed that they had entertained suspicion about the activities of the applicant when the process of printing, sealing and transmitting the question paper, was being conducted. To leak the question paper despite being the custodian thereof, as alleged, was an act

which can only be described as the one of the fence eating into the crop. Therefore, I am not inclined to agree with the submission of Mr. Mundargi that the applicant is entitled to parity.

12. It is true the applicant has been in custody since 17th May, 2021. In the context of the punishment which the offences entail, the period of incarceration can be said to be significant. However, having regard to the gravity of the accusation against the applicant, it may not be expedient in the interest of public justice to release the applicant on bail. If the trial is not completed within a reasonable period, the prayer for bail on account of long and unjustifiable incarceration may be entertained. Hence, I am inclined to reject the application with a request to the trial court to commence and conclude the trial as expeditiously as possible.

13. Hence the following order:

: O R D E R :

- (i) Application stands rejected.
- (ii) However, having regard to the period of incarceration of the applicant, the Court seized with the trial in SC No.325 of 2021 arising out of CR No.83 of 2021 registered with Wanwadi Police Station is requested to conclude the

trial as expeditiously as possible and, preferably, within a period of one year from the date of the communication of this order.

- (iii) In the event the trial is not concluded within the said period, the applicant shall have liberty to revive the prayer for bail.
- (iv) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

[N. J. JAMADAR, J.]