

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

BAIL APPLICATION NO. 258 OF 2024

Mahadeo Shidu Shirwale ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Surender Sharma, for the Applicant.
Smt. Mahalaxmi Ganapathy, APP for the Respondent – State.

CORAM: N. J. JAMADAR, J.
DATED: 6th AUGUST, 2024

ORDER:-

1. Heard the learned Counsel for the parties.
2. The applicant, who is arraigned in CR No.316 of 2022, registered with DCB, CID Unit-6, (Chembur Police Station CR No.666/2022) for the offences punishable under Sections 120B, 420, 465, 468, 471 and 170 of Indian Penal Code, 1860 ("the Penal Code"), has preferred this application to enlarge him on bail.
3. The applicant allegedly entered into a criminal conspiracy with co-accused Mahendra Sakpal (A4), Nitin Sathe (A2), Sachin Dolas (A3), Satyan Gaikwad (A5), Gokuldas Kathale (A6), Ankush Babar (A7) and Bapurao Jadhav (A8) to deceive the candidates, who were in search of employment by making false

representations that those candidates will be given employment in Mantralaya and thereby the applicant and co-accused induced such candidates to part with huge amount of Rs.1,23,00,000/-, in the aggregate. The applicant and co-accused had made a farce of subjecting the said candidates to interview and medical examination.

4. The prosecution alleges that the applicant was the key conspirator. The investigation has revealed the involvement of the applicant in the alleged offences at every stage, starting from making the inducement to siphoning off the amount deposited and/or paid over by the unsuspecting candidates. It is *inter alia* alleged that a sum of Rs.5,80,000/- was credited to the account of the applicant, at the instance of co-accused Bapurao Jadhav (A8), by Krishna Chitre, one of the witnesses.

5. Mr. Sharma, the learned Counsel for the applicant, submitted that the applicant had no role in the alleged transactions. The witnesses have not named the applicant as the person, who had made the false representation. In fact, the transaction was between the co-accused Nitin Sathe (A2) and Dipak Dholam. The applicant was a mere witness to the Memorandum of Understanding between Nitin Sathe (A2) and Dipak Dholam. The applicant is not the beneficiary of the

fraud, as alleged. It was further submitted that the applicant has been in custody since 19th December, 2022. Therefore, the applicant is entitled to be enlarged on bail like Ankush Babar (A7) and Satyan Gaikwad (A5), who are already released on bail.

6. Smt. Ganpathy, the learned APP, resisted the prayer for bail. It was submitted that the applicant was the principal confederate in the conspiracy to dupe the unemployed youths. In fact, the applicant and Mahendra Sakpal (A4), who were the key conspirators, had lodged identical complaint with RCF Police Station, even before the FIR was registered, with a view to preempt any action against them. The fact that the applicant and the co-accused Mahendra Sakpal (A4) had induced unemployed youths and made them part with a huge sum of Rs.1,23,00,000/- is borne out by the material on record. The learned APP placed reliance on the statements of Kiran Mestry and Krishna Chitre and supplementary statement of Divya Dholam to buttress her submission that the applicant is the key conspirator. The fact that monies were transferred to the account of the applicant was sought to be substantiated by placing reliance on the transaction slips.

7. I have perused the report under Section 173 of the Code and the documents annexed with it. *Prima facie* there is

material to indicate that unsuspecting unemployed youths were induced to part with amounts under the guise that a recruitment process was underway to employ the candidates in Mantralaya. The statements of the witnesses *prima facie* indicate that the candidates were made to undergo interview at the Mantralaya and a farce of their medical examination at J. J. Hospital was also made.

8. From the perusal of the material on record, it *prima facie* appears that allegations of fraud by inducing unemployed persons to part with money have been made against a number of persons. It is true that few of the witnesses have named the applicant as the person who was seen around, when the candidates were interviewed and their medical examinations were conducted at J. J. Hospital. However, it does not appear that abovenamed witnesses, whose statements the learned APP relied upon, named the applicant as the person who had induced the unemployed youths by making a false representation of securing employment to them.

9. Kiran Mestry has not named the applicant. Kiran Mestry has made allegations against co-accused Bapurao Jadhav (A8) only. In fact, Kiran Mestry seems to have candidly stated that he had not known the applicant and co-accused and had

transactions with Bapurao Jadhav (A8) alone. Divya Dholam, one of the victims, also stated that her father had no financial transaction with the applicant. She, however, stated that the applicant accompanied Mahendra Sakpal (A4), when her father delivered cash to Mahendra Sakpal (A4). Divya claimed to have seen the applicant at Mantralaya when she had submitted the application and was interviewed. Krishna Chitre has named co-accused Gokuldas Kathale (A6) and Satyan Gaikwad (A5), as the persons who had made the false representation and induced him to deliver the amount to secure employment for himself and other nine victims. Krishna Chitre further claimed that at the instance of Bapurao Jadhav (A8), he had transferred a sum of Rs.5,75,000/- to the account of the applicant.

10. The situation which thus obtains is that the prosecution witnesses have stated that they had seen the applicant in the Mantralaya and at J. J. Hospital. It does not appear that any of abovenamed witnesses had attributed direct role of inducement to the applicant. In these circumstances, the question as to whether there was a general conspiracy involving the applicant and all the co-accused, would be a matter for adjudication at the trial.

11. Reliance placed by the learned APP on the complaints lodged by both applicant and Mahendra Sakpal (A4), with RCF Police Station, before lodging of the FIR, at this stage, may not constitute a factor to deny bail. The statements in the said complaint can be urged to be exculpatory as well. In any event, the evidentiary value of the said complaints would be a matter for trial.

12. In the aforesaid view of the matter, the considerations of long period of incarceration, unlikelihood of the trial being completed within a reasonable period and there being no *prima facie* material to show the complicity of the applicant for the offences punishable under Sections 465, 468 and 471 of the Penal Code, weigh in the exercise of discretion.

13. The applicant has been in custody since December, 2022. Having regard to the nature of the prosecution case, number of accused and the number of witnesses the prosecution may be required to examine to bring home the charge to the applicant, it is extremely unlikely that the trial can be concluded within a reasonable period. I am, therefore, inclined to exercise discretion in favour of the applicant.

14. Hence the following order:

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant – Mahadeo Shidu Shirwale be released on bail in C.R. No.316 of 2022 registered with DCB, CID Unit No.6, Mumbai, on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.
- (iii) The applicant shall mark his presence before DCB, CID Unit No.6, Mumbai, on first Monday of every alternate month between 11 am to 1 pm for a period of three years or till conclusion of the trial, whichever is earlier.
- (iv) The applicant shall not tamper with the prosecution evidence. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing the facts to Court or any police officer.
- (v) On being released on bail, the applicant shall furnish his contact number and residential address to the

investigating officer and shall keep him updated, in case there is any change.

- (vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.
- (vii) 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 co-accused and the trial Court shall not be influenced by any of the observations made hereinabove.

Application disposed.

[N. J. JAMADAR, J.]