

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.889 OF 2024

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Mahendra Naryan Sakpal

...Applicant

vs.

The State of Maharashtra

...Respondent

Mr. M.B. Shirsat a/w. Ms. Fehmida Ahmad, for the Applicant.

Mr. A.A. Naik, APP for the State.

CORAM : N. J. JAMADAR, J.

DATE : AUGUST 27, 2024

P.C.:

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 Mahadeo Shirwale (A1), 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 by the unsuspecting candidates.

5. Mr. Shirsat, the learned counsel for the applicant, at the outset, submitted that the applicant had, on his own, approached the RCF police station with a complaint that representation was made by the co-accused Nitin Sathe (A/2) and the amounts collected from the candidates were in turn paid to Nitin Sathe (A/2), there was no intent to defraud and inquiry be conducted against Nitin Sathe (A/2). The learned counsel further submitted that even the son of the applicant was one of the candidates who was made to go through the process of interview and medical examination. Thus, the applicant was also one of the victims.

6. Mr. Shirsat, learned counsel would further urge that the applicant is entitled to be enlarged on bail on the count of parity as the co-accused Mahadeo Shirwale (A/1) and Satyam Gaikwad (A/5) against whom similar allegations are made have been enlarged on bail. The applicant (A/4) has been in custody since 21st December,

2022. Therefore, the applicant be released on bail.

7. Mr. Naik, learned APP resisted prayer for bail. He submitted that the applicant like Mahadeo Shirwale (A/1) had lodged an identical complaint with RCF police station even before the FIR was registered, with a view to preempt any action against him. Therefore, the applicant can not draw any mileage from the said act of filing complaint with RCF police station. The fact that the applicant and the co-accused Mahadev Shirwale (A/1) had induced unemployed youths and made them part with a huge sum of Rs. 1,23,00,000/- is borne out by material on record. An endeavour was made by Mr. Naik to urge that the role of the co-accused Ankush Babar, Satyam Gaikwad (A/5), Gokuldas Kathale (A/6) who have been released on bail is quite distinct from that of the applicant. Mr. Naik, however, fairly submitted that the role attributed to the applicant and Mahadev Shirwale (A/1) is, by and large, similar and the principle of parity may apply.

8. While releasing the co-accused Mahadev Shirwale (A/1) on bail this Court had observed, inter alia, as under:-

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.

9. The aforesaid reasons which weighed with this Court in releasing Mahadev Shirwale (A/1) on bail, govern the case of the applicant with equal force as the gravamen of indictment against the applicant and Mahadev Shirwale (A/1) appears to be similar, if not identical. As noted above, the applicant as well as Mahadev Shirwale (A/1) had approached RCF police station with an identical complaint.

10. Despite there being a *prima facie* case of defrauding unsuspecting unemployed youths by inducing them to part with amounts by making a fraudulent representation of securing employment to them, 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. The principle of parity also comes into play.

11. I am, therefore, inclined to release the applicant on bail.

Hence, the following order.

: O R D E R :

- (i) Application stands allowed.
- (ii) The applicant – Mahendra Naryan Sakpal 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.)