

(2011) 09 KAR CK 0183
In the Karnataka High Court
Case No : Criminal Petitions No. 4798 of 2011

Dr. H.N. Krishna

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 417, 418, 465, 466, 471

Citation : (2011) 09 KAR CK 0183

Hon'ble Judges : H. Billappa, J

Bench : Single Bench

Advocate : S.K. Venkata Reddy, in Criminal Petitions No. 4798/2011 and R. Kothwal, in Criminal Petitions Nos. 4926, 4927 and 4928/2011, for the Appellant; H.S. Chandramouli, SPP, for the Respondent

Final Decision : Dismissed

Judgement

H. Billappa, J.—The Petitioners have filed these petitions u/s 438 of Code of Criminal Procedure, praying for grant of anticipatory bail.

2.(i) In Crl.P. No. 4798/2011, the Petitioner has stated that the Petitioner is innocent of the offences alleged against him curd he has not committed any offence. The Petitioner has not committed any racial discrimination in the selection process of Gazetted Probationers of 1998, 1999 and 2004 batches. The committee consisting of Chairman and four other members do the selection. The selection process of Gazetted Probationers of 1998, 1999 and 2004 batches has been questioned in Application No.5290/2008 and other connected cases and they are pending before the RAT. Bangalore. The complaint FIR and report of DIG (CID) dated 23.05.2011 make it very clear that the Petitioner is not responsible for the alleged offence by the candidates or offences alleged against the staff of KPSC.

(ii) Check list, attendance sheet and statement showing particulars of candidates, who are eligible/non-eligible for viva-voce will be maintained and

entry will be made by the staff of KPSC.

(iii) KPSC is not the authority to detect or decide genuineness or validity of certificates produced by the candidates who appeared for viva-voce.

(iv) Report dated 23.05.2011, complaint, and FIR point towards the Petitioner only in respect of allegations by M.S. Alla Bakash which may at best amount to offence punishable under Sections 465, 471 and 506 of IPC. The Petitioner has not committed any offence. Alla Bakash has not lodged any complaint as on 26.12.2005. He was questioned by the Investigating Agency after five years.

(v) The offences alleged are punishable with imprisonment which may extend upto 2 years or with fine or with both. There is a statutory bar for taking cognizance of such offences after the lapse of 3 years.

(vi) The Petitioner has demitted the office of Chairman of KPSC in January 2007 and therefore, he has no access to documents of KPSC. There is no chance of Petitioner tampering with the documents.

(vii) The Petitioner apprehends his arrest. The Petitioner is a law-abiding citizen, owns movable and immovable properties and hails from a respectable family. The Petitioner will not jump bail or tamper with the witnesses. The Petitioner is ready to abide by all conditions that may be imposed. Therefore, the Petitioner has prayed for grant of anticipatory bail.

3.(i) In Crl.P.4926/2011 the Petitioner has stated that the Petitioner is innocent of the offences alleged against her and she has been falsely implicated in the case. The Petitioner belongs to Vokkaliga caste which, is classified as Category-III(A). The Petitioner appeared and got through the KPSC examination at various levels. By virtue of her merit, the Petitioner has been elevated to General Merit Category. Accordingly, the Petitioner has been selected and appointed as District Officer, SC and ST Welfare. The Petitioner is on deputation as General Manager for D. Devaraj Urs Backward Class Development Corporation, Bangalore and discharging her duties. The caste certificate relied upon by the CID refers to City Hobli. Whereas the Petitioner belongs to Yeshwanthapura Hobli. The caste certificate issued by the Special Tahsildar, Bangalore North Taluk, reveals that the Petitioner belongs to Vokkaliga-III(A).

(ii) The Petitioner will not flee away from justice. The Petitioner is available for investigation and ready to abide by all conditions that may be imposed. Therefore, the Petitioner has prayed for grant of anticipatory bail.

4.(i) In Crl.P. No. 4927/2011, the Petitioner has stated that the Petitioner is innocent of the offences alleged against her and she has been falsely implicated in the case. The Petitioner belongs to Muslim by caste which comes under Category 11(B). The Petitioner was appointed as Police Sub-inspector based on the caste certificate that she belongs to Muslim 11(B).

(ii) The Petitioner applied for caste certificate and obtained caste certificate as

per annexure "F" certifying that she belongs to Muslim 11(B). The Petitioner has been selected and appointed as Tahsildar in 2006 based on the caste certificate. The Petitioner has been discharging her duties. The CID appears to have enquired with the present Tahsildar and submitted its report stating that the number mentioned in the caste certificate as BCM:City/3262/1998-99 dated 09.03.1998 was not in order.

(iii) The Petitioner has obtained Caste Certificate Issue Register extract and there is an entry at Serial Number 3262 for having issued Caste Certificate to the Petitioner. The Caste Certificate produced by the Petitioner has been verified by the District Level Caste Verification Committee and Validity Certificate has been issued.

(iv) The Petitioner is serving as Tahsildar and she will not flee away from justice. The Petitioner belongs to Muslim by caste and there was no need to obtain false certificate. The Petitioner is ready to abide by all conditions that, may be imposed. Therefore, the Petitioner has prayed for grant of anticipatory bail

5.(i) In CrI.P. No. 4928/2011 the Petitioner has stated that is innocent of the offences alleged against her and she has been falsely implicated in the case. The Petitioner belongs to Muslim by caste which comes under Category 11(B). The Petitioner was appointed as Teacher based on the caste certificate that she belongs to Muslim 11(B).

(ii) The Petitioner applied for caste certificate and obtained the caste certificate certifying that she belongs to Muslim 11(B) as per Annexure-"E". The Petitioner has been selected and appointed as Assistant Registrar of Co-operative Societies in the year 2006. The Petitioner has been discharging her duties. The CID has enquired with the present Tahsildar and not with the Tahsildar who issued the certificate.

(iii) The Petitioner will not flee away from justice. The Petitioner is ready to abide by all conditions that may be imposed. Therefore, the Petitioner has prayed for grant, of anticipatory bail.

6. Sri V.P.M. Swamy, the Police Inspector, CID. Bangalore, has lodged the complaint dated 11.8.2011. A case in Cr.No.46/2011 of Vidhana Soudha Police Station has been registered for the offences punishable under Sections 417, 418, 465, 466, 468, 471. 506 and 120(b) of IPC. in the complaint it is alleged that vide order dated 16.12.2010 in W.P. No.9098/2009 c/w. W.P. No. 1 1550/2008 and order dated 3.3.2011 in R.P.No.39/2011 this Court had directed an enquiry to be conducted into irregularities committed by the KPSC in the recruitment of Gazetted Probationers notified in 1998, 1999 and 2004. An enquiry was conducted. The enquiry" revealed irregularities and malpractices in the recruitment of the Gazetted Probationers in the years 1998, 1999 and 2004.

(a) Ms. Asha Parveen produced 11(B) certificate bearing No. BCM:City/3262/1998-99 dated 9.3.1998 at the time of personality test in

December 2006. The enquiry revealed that no certificate bearing No.BCM:City/3262/1998-99 was issued to Ms. Asha Parveen on 9.3.1998 from the Office of the Tahsildar, Bangalore North Taluk. However, there is an entry in the concerned register of the Bangalore North Taluk Tahsildar's Office with the same office number purported to be issued on 26.6.1998. The candidate did not possess 11-B certificate on the relevant date. The certificate appears to be fabricated and used knowingly.

(b) Ms. Y.B. Archana had submitted a certificate bearing No. BCM:City/I/1603/97-98 dated 23.3.1998. The enquiry revealed that the above mentioned serial number certificate was issued to one Narayanappa H. Manjula on 3.12.1998. On 23.3.1998, in the said register, the serial number starts from 6355 to 6379. There is no entry in respect of Ms. Y.B. Archana for having issued caste certificate to her. Therefore, the certificate is fabricated.

(e) In case of Ms. Salma Firdose, the enquiry has revealed that no II-B certificate was issued to her by the Tahsildar, Bangalore North Taluk. The certificate enclosed by her to the application was a forged certificate.

(d) Mr. Alia Bakash M.S., who appeared for the personality test for 1998 examination on 26.10.2005 (correct date appears to be 26.12.2005) was threatened and an attempt was made to prevent him from attending the personality test. However, after attending the personality test his signatures were obtained forcibly by Dr. H.N. Krishna, the then Chairman of KPSC on the attendance sheet and another document. The candidate had scored very high marks and had a chance of selection for a higher post. His signatures have been used for fabricating the records to disqualify him for the test.

7. It is stated, the enquiry revealed that the officials and non-officials of KPSC at that time had bias, prejudice and inclination towards certain categories during various stages of selection process especially personality test. Further investigation is needed to unearth irregularities committed either by the candidates or officials or non-officials of the

8. The State has filed objections contending as follows:

(i) That the enquiry discloses irregularities and malpractices in the recruitment of Gazetted Probationers for the years 1998, 1999 and 2004 by the KPSC. The enquiry revealed that Ms. Asha Parveen produced II-B certificate bearing No. BCM:City/3262/98-99 dated 9.3.1998 at the time of personality test in December 2005 and no certificate bearing No.BCM:City/3262/98-99 was issued to Ms. Asha Parveen on 9.3.1998 from the office of the Tahsildar, North Taluk. However, there is an entry in the concerned register of the Bangalore Tahsildar Office with the same number purported to be issued on 26.6.1998. The candidate did not possess If B certificate on the relevant date. Ms. Y.B. Archana has submitted certificate bearing No. BCM:City/I/1603/97-98 dated 23.3.1998. The enquiry revealed that the certificate bearing No. BCM:City/I/1603/97-98 dated 23.3.1998 was issued to one Narayanappa H. Manjula on 3.12.1998. On

23.3.1998, the serial number starts from 6355 to 6379. There is no entry in the register in respect of Ms. Y.B. Archana for having issued caste certificate to her. In case of Ms. Salma Firdose, the enquiry revealed that no II-B certificate was issued to her by the Tahsildar, Bangalore North Taluk and one enclosed by her to the application was a forged certificate. It is stated, one candidate Sri. Alla Bakash M.S., who appeared for the personality test, for 1998 examination on 26.10.2005, was threatened and an attempt, was made to prevent him from attending the personality test. However, after attending the personality test, his signatures were obtained forcibly by Dr. H.N. Krishna, the Petitioner in Crl.P. No. 4798/2011, on the attendance sheet and another document. The candidate had secured very high marks and had chances of selection for a higher post. Subsequently, his signatures have been used for fabricating the records to disqualify him for the test.

(iii) The malpractices and irregularities have taken place during 1988 and 2006 on various dates. The Petitioner in Crl.P. No. 4798/2011 headed the KPSC. All important decisions have been taken by him. The enquiry and the allegations in the writ petitions reveal racial discrimination, fabrication of documents, use of false documents as genuine, fraud and criminal intimidation etc. The documents of the candidates were under the managerial control of the Petitioner. The check list, attendance sheet and statements of the candidates are under the direct control of the Petitioner. Many fake endorsements have been made on the documents after obtaining the signatures of the candidates with ulterior motive to fabricate them. Many fabricated documents have been used by the Petitioner to defraud the candidates. It is a case of conspiracy. It is difficult to secure direct evidence. Therefore, the custodial interrogation of the Petitioner is required.

(iv) Though the Petitioner has demitted the office of the Chairman, KPSC, during January 2007, the entire process of selection of 1998, 1999 and 2004 has taken place during his period. The Petitioners in Crl.P. Nos.4926/2011, 4927/2011 and 4928/2011 have produced fabricated certificates.

(v) The offences alleged against the Petitioners are serious in nature. The custodial interrogation is required. Therefore, the Petitioners cannot be granted anticipatory bail.

9. The learned Counsel for the Petitioner in Crl.P. No. 4798/2011 contended that the Petitioner is innocent of the offences alleged against him and he has not committed any offence. He also submitted that the committee consisting of Chairman and four other members do the selection. The selection process of the year 1998, 1999 and 2004 has been questioned before the KAT and it is pending. Further he submitted that the check list, attendance sheet and statement showing particulars of the candidates is maintained by the staff of KPSC. He also submitted that the KPSC is not the authority to decide the genuineness or validity of the certificates. Further he submitted that the report dated 23.5.2011 and the allegations made in the complaint may amount to an offence punishable under Sections 465, 471 and 506 of IPC. He also submitted that. Sri. Alia Bakash

M.S. has not lodged any complaint. The offences alleged are punishable with imprisonment for two years or with fine or with both. He also submitted that there is a statutory bar to take cognizance of the offences after the lapse of three years. Further he submitted that the Petitioner has demitted the office and he has no access to the documents. He also submitted that the Petitioner is available for investigation and will not flee away from justice. He placed reliance on the decision of the Hon"ble Supreme Court, reported in (2011)1 SCC page 694 and ILR 1988 Karnataka page 297 to contend that the Petitioner is entitled for grant of anticipatory bail.

10. The learned Counsel for the Petitioners in Crl.P. No 4926/2011, Crl.P. No. 4927/2011 and Crl.P. No. 4928/2011 contended that the Petitioners are innocent of the offences alleged against them and they have not committed any offence. He also submitted that the Petitioner in Crl.P. No. 4926/2011 had produced caste certificate issued by the Special Tahsildar, Bangalore North Taluk, bearing No. 11603. However, the Petitioner has been selected under general merit category and appointed as District Officer, SC and ST and now serving as General Manager D. Devaraj Urs Backward Class Development Corporation. The Petitioner has not fabricated any document and the Petitioner is available for investigation Further he submitted that the Petitioner in Crl.P. No. 4927/2011 is innocent of the offences alleged against her and she obtained caste certificate from the Special Tahsildar, Bangalore North Taluk, bearing No. 3262 and she has not fabricated any document. He also submitted that the Petitioner in Crl.P. No. 4928/2011 has obtained caste certificate from the Special Tahsildar, Bangalore North Taluk and based on that, she has been appointed as the Assistant Registrar of Cooperative Societies in the year 2006 and she has been discharging her duties. He also submitted that the Petitioners are in service and available for investigation therefore, the Petitioners can be granted anticipatory bail.

11. As against this, the learned SPP submitted that pursuant to the direction of this Court in W.P. No. 9098/2009 c/w. W.P. No. 11550/2008 and R.P. No. 39/2011 vide orders dated 16.12.2010 and 3.3 2011 enquiry was conducted. The enquiry revealed irregularities and mal practices in the recruitment of Gazetted Probationers for the years 1998, 1999 and 2004. The Petitioners in Crl.P. No. 4926/2011, Crl.P. No. 4927/2011 and Crl.P. No. 4928/2011 have produced fabricated caste certificates. He also submitted that the Petitioner in Crl.P. No. 4798/2011 being the Chairman of KPSC has forcibly obtained signatures of Alia Bakash on attendance sheet and another document when he appeared for the personality test on 26.12.2005 and thereafter, his signatures have been used for fabricating the record to disqualify him. He also submitted that the enquiry has revealed that the officials and non-officials of KPSC had bias, prejudice and inclinations towards certain categories during various stages of selection process. He also submitted that further investigation is required to unearth the irregularities by the candidates, officials and non-officials of the KPSC. He also submitted that the allegations are serious in nature and public interest is involved and therefore, the Petitioners cannot be granted anticipatory bail. He

also submitted that the investigation is monitored by the retired Judge of this Court. He placed reliance on the decision of the Hon''ble Supreme Court reported in State of Andhra Pradesh Vs. Bimal Krishna Kundu and another,

12. I have carefully considered the submissions made by the learned Counsel for the parties.

13. The point that arises for my consideration is. Whether the Petitioners can be granted anticipatory bail?

14. It is relevant to note, the allegations are that the enquiry revealed irregularities and malpractices in the recruitment of the Gazetted Probationers for the years 1998, 1999 and 2004. This Court in W.P. No. 9098/2009 c/w. W.P. No. 11550/2008 vide order dated 16.12.2010 and order dated 3.3.2011 passed in R.P. No. 39/2007 had directed an enquiry to be conducted into the irregularities committed by the KPSC in the recruitment of Gazetted Probationers notified in 1998, 1999 and 2004. The enquiry has been conducted. The enquiry has revealed irregularities and mal-practices in the recruitment of Gazetted Probationers in the years 1998, 1999 and 2004. The main allegations are that Ms. Asha Parveen, the Petitioner in CrI.P. No. 4927/2011 has produced II-B certificate bearing No. BCM:City/3262/1998-99 dated 9.3.1998 at the time of personality test in December 2006. The enquiry revealed that: no certificate bearing No. BCM:City/3262/1998-99 was issued to Ms. Asha Parveen on 9.3.1998 from the Office of the Tahsildar, Bangalore North Taluk. However, there is an entry in the concerned register of the Bangalore North Taluk office with the same office number purported to be issued on 26.6.1998. The candidate did not possess II-B certificate on the relevant date.

15. Ms. Y.B. Archana submitted Caste certificate bearing No. BCM:City/I/1603/1997-98 dated 23 3.1998. The enquiry revealed that the certificate bearing No. BCM:City/I/1603/97-98 dated 23.3.1998 was issued to one Narayanappa H. Manjula on 3.12.1998. On 23.3.1998, the serial number starts with 6355 to 6379. There is no entry in the register in respect of Ms. Y.B. Archana for having issued caste certificate to her. The caste certificate is fabricated.

16. In respect of Mrs. Salma Firdose, the enquiry has revealed that no II-B certificate was issued to her by the Tahsildar, Bangalore North Taluk. The certificate produced by her was a forged certificate.

17. Mr. Alla Bakash. M.S. was a candidate who appeared for the personality test for 1998 examination on 26.12,2005. He was threatened and an attempt was made to prevent him from attending the personality test. However, after attending the personality test, his signatures were obtained forcibly by Dr. H.N. Krishna, the Petitioner in CrI.P. No. 4798/2011 on the attendance sheet and another document. The candidate had scored very high marks and had chances of being selected for higher post. His signatures have been used for fabricating the records to disqualify him for the test. It is alleged, the officials and non-

officials of KPSC at that time had bias, prejudice and inclinations towards certain categories during various stages of selection process. Further investigation is required to unearth the irregularities committed by the candidates, officials and non-officials of KPSC.

18. No doubt, the allegation against, the Petitioner in Crl.P. No. 4798/2011 is that he obtained the signatures of Mr. Alia Bakash. M.S. forcibly on attendance sheet and another document and signatures have been used for fabricating the records to disqualify him for the test. The Petitioner was the Chairman of KPSC during relevant point of time. Prior to that, he was the member of the committee. The direction to enquire regarding irregularities and malpractices has been given in a public interest litigation. The present enquiry has revealed that some fabricated certificates have been produced and the Petitioner in Crl.P. No. 4798/2011 forcibly obtained signatures of Mr. Alla Bakash. M.S. on the attendant sheet and another document. The complaint reveals that officials and non-officials of the KPSC had bias, prejudice and inclination towards certain categories during various stages of selection process. These things have to be investigated. The investigation is required to unearth the irregularities committed by the candidates, officials and non-officials of KPSC. Therefore, though the allegation in the complaint against the Petitioner in Crl.P. No. 4798/2011 is that he forcibly obtained the signature of Mr. Alia Bakash and misused them, many more things have to be investigated. There are allegations of fraud, fabrication and conspiracy which require thorough investigation. The matter is of public importance and public interest involved. Therefore, the decisions relied upon by the Petitioner will not help him. The Petitioner in Crl.P. No. 4798/2011 cannot be granted anticipatory bail.

19. However, the allegations against the Petitioners in Crl.P. No. 4926/2011, Crl.P. No. 4927/2011 and Crl.P. No. 4928/2011 are that they have produced fabricated certificates. The Petitioner in Crl.P. No. 4926/2011 contends that she belongs to Vokkaliga caste which is classified as Category-111(A). She obtained caste certificate from the Special Tahsildar, Bangalore North Taluk. The caste certificate relied upon by the CID refers to City Hobli. Whereas the Petitioner belongs to Yeshwanthapura Hobli. The Petitioner has produced caste certificate which bears No. BCM:City:11603. The Petitioner has been selected under general merit category. The Petitioner is in service and available for investigation. Therefore, the Petitioner in Crl.P. No. 4926/2011 can be granted anticipatory bail subject to certain conditions.

20. The Petitioner in Crl.P. No. 4927/2011 contends that she was appointed as Police Sub-Inspector under category II-B. She obtained caste certificate from the jurisdictional Tahsildar i.e., Tahsildar, Bangalore North Taluk. The certificate is produced at Annexure-"G". It bears No. BCM:City/3262/98-99 dated 9.3.1998. The Petitioner has been appointed as Tahsildar and she is in service and available for investigation. Therefore, the Petitioner in Crl.P. No. 4927/2011 can be granted anticipatory bail subject to certain conditions.

21. In CrI.P. No. 4928/2011, the Petitioner contends that she was appointed as Teacher under category II-B. She has produced certificate at Annexure-"E". It bears No. 40/98-99 dated 4.4.1998. The Petitioner has been appointed as Assistant Registrar of Co-operative Societies and she is in service and available for instigation. Therefore, the Petitioner in CrI.P. No. 4928/2011 can be granted anticipatory bail subject to certain conditions.

22. Accordingly, the Criminal Petition Nos. 4926/2011, 4927/2011 and 4928/2011 are allowed and the Petitioners in these petitions are granted anticipatory bail subject to the following conditions:

(i) In the event of their arrest in Cr. No. 46/2011 of Vidhana Soudha Police Station, being investigated by the CID, the Petitioners in these petitions shall be released on bail on their executing a bond for a sum of Rs. 1,00 000/- each with two sureties for the likesum to the satisfaction of the Investigating Officer.

(ii) The Petitioners in Criminal Petition Nos. 4927/2011 and 4928/2011 shall appear before the IO within ten days from today and shall cooperate with the IO for investigation, as and when required for investigation.

(iii) The Petitioner in CrI.P. No. 4926/2011 shall appear before the IO within four weeks from today and shall co-operate with the IO, for investigation as and when required.

(iv) The Petitioners shall not tamper with the witnesses.

(v) The Petitioners shall not leave the country without the prior permission of the concerned Court.

(vi) If the Petitioners violate any condition, the Respondent-State can move for cancellation of the bail.

CrI.P.No.4798/2011 is hereby dismissed.

Furnish the Operative Portion of the order.