

(2016) 03 BOM CK 0090

In the Bombay High Court

Case No : Anticipatory Bail Application Nos. 1851 and 1852 of 2015

Gajanan Ramrao Lande and Others

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 21-03-2016

Acts Referred:

Maharashtra Prevention of Malpractices in Examination Act, 1982 — Section 2(b),
Section 7, Section 9
Penal Code, 1860 (IPC) — Section 120B, Section 188, Section 420, Section 464,
Section 468, Section 471

Citation : (2016) 2 AIRBomRCri 186 : (2016) ALLMRCri 2168 : (2016) 2
BomCR(Cri) 433 : (2016) 5 MhLJCrI 393

Hon'ble Judges : Mridula Bhatkar, J.

Bench : Single Bench

Advocate : M.K. Kocharekar i/b Pawan Mali, for the Appellant; S.K. Shinde, Spl.
P.P. and Rutuja Ambekar, APP, for the Respondent

Final Decision : Dismissed

Judgement

Mridula Bhatkar, J.—1. The anticipatory bail application No. 1851 of 2015 is moved by the applicants-accused Gajanan Lande and Rajiv Lande for pre-arrest bail as the offence is registered at C.R. No. II-2 of 2015 with the Tarapur police station, Palghar, at the instance of one Suresh Govindrao Bhamre on 18.10.2015. The anticipatory bail application No. 1852 of 2015 is moved by the applicant-accused Gajanan Lande for pre-arrest bail as the offence is registered at C.R. No. II-21 of 2015 with the Manikpur police station, Palghar, at the instance of one Dinesh Narayan Pashte on 18.10.2015. Initially the complaints were registered under sections 188 and 120B of the Indian Penal Code as also under section 7 of the Maharashtra Prevention of Mal Practices At University, Board and other Specified Examinations Act, 1982. However, later on, charges under sections 420, 464, 468, 471 of the Indian Penal Code were added.

2. It is the case of the prosecution that both the informants are public servants. The office of the revenue department wanted to appoint clerks cum typists in the

said department in District Palghar. So, the examination was conducted on 18.10.2015 afternoon. The candidates who were appearing for the examination were issued admit cards and they were instructed not to carry cell phone and other electronic articles with them.

In Anticipatory Bail Application No. 1851 of 2015, 216 candidates appeared for the examination. The invigilator found that one candidate Sangita Narayan Suradkar had kept cellphone on her lap and it was seized. There was no message in the phone and therefore she was allowed to write the paper. The said cellphone was handed over to a police officer. The examination started at around 11 am. At around 12.45pm, the police constable informed that on her cellphone, answers of question paper for which she was appearing were received from one number 7219038682. Sangita was therefore arrested on the spot and the cellphone alongwith the SIM card was seized.

In Anticipatory Bail Application No. 1852 of 2015, 17 candidates appeared for the examination at Vartak high school. One candidate by name Arun Shamrao Gavli entered the examination hall at 10.55 hours. He was checked by the complainant who was in charge. All the candidates were informed that they should not keep any cellphone or any other articles with them. At around 11.30 am, the movements of the said Arun Gavli were found suspicious and on his examination, it was found that he had tied a cellphone with a rubber band below his knee joint. The video recording of the incident was done and on examination, it was found that on his cellphone, messages about answers were received from other cellphone number 9168999354. The candidate Arun Gavli was arrested. After the arrest, the police investigated the offence and they found that there was a racket about copying in that examination. The students who were appearing for the examination were promised that the answers of questions would be supplied to them by SMS on their respective cellphones at the time of examination, so that they could clear the examination and get the job. For that purpose, the applicants/accused and the co-accused charged Rs. 2 lakhs from each candidate.

3. The learned Counsel for the applicants/accused submitted that the applicants are innocent. They have not committed any offence. The allegations against them are false. The names of the applicants is not mentioned in the FIR. They are not connected in any manner with the commission of offence. The learned Counsel further submitted that section 7 of the Maharashtra Prevention of Mal Practices At University, Board and other Specified Examinations Act, 1982 (for short, "the said Act") is not applicable in the present cases because the said examination cannot be said as an "examination" under the term defined under section 2(b) of the said Act. He submitted that it is necessary in order to attract the said offence for the Government to issue a notification in the official gazette under section 2(b) of the said Act. In the absence of such notification, section 7 of the said Act, the offence under which is made non-bailable, cannot be invoked. The learned Counsel has submitted that the applicants-accused are on interim bail and have attended the concerned police station and their custody is not

required.

4. In support of his arguments, the learned Counsel relied on the judgment of the Bombay High Court (Nagpur Bench) in the case of *Rajiv @ Raju s/o. Ramrao Lande & anr. vs. The State of Maharashtra through P.S.O., Buldhana (City), District Buldhana Criminal Application (ABA) No. 21 of 2015* decided on 3.3.2015.

5. Mr. Shinde, learned Public Prosecutor appearing for the State, argued that section 7 of the said Act is attracted because it says about the use of any other unfair means at the time of examination is an offence and the punishment is only upto 6 months and / or fine u/s 9 of the Act is made non-bailable. He submitted that issuance of notification in the Government gazette is not obligatory if the examination is conducted by the authority which is Collector. He relied on a circular of 2007 issued by the Divisional Commissioner of Konkan Division, whereby directions are given to the Collector to conduct the examination. He submitted that the word "may" is used in respect of issuance of notification by the Government. Thus, to issue such notification or not is optional for the government. He submitted that the examination was declared for the revenue department and, therefore, it is to be considered that if it is conducted by the Collector, it is covered under the authority and notification is not required.

6. In support of his submissions, he relied on the judgment in the case of *Chief Settlement commissioner (Rural) Punjab & anr. vs. Ram Singh & Ors. , AIR 1987 SC 1834*.

7. The learned Public Prosecutor, on merit, has submitted that the applicants-accused and the co-accused have used a very peculiar modus operandi of commission of this offence. He submitted that in the course of investigation, the police found that separate SIM cards were provided by the accused to the candidates, who agreed to pay money to the applicants-accused for the copy. These accused alongwith the other co-accused had visited different villages and promised those villagers that they would be giving them some government services for which their PAN card, documents for identity proof were required. The villagers, who trusted them, handed over their identification documents and thereafter, on the basis of those original documents of various villagers, the applicants-accused and the co-accused obtained SIM cards of various cellphone service providers and then the documents were returned to the villagers. Thereafter, the students were contacted with a promise that if they paid Rs. 2 lakhs each, they would be supplied answers of the question papers at the time of the examination, who agreed to pay and wanted to be beneficiaries of this copy, they were provided separate SIM cards. Thus, nearly 45 SIM cards were collected and they were provided both the SIM cards as well as cellphones. After having such kind of networking at the time of examination hall, through SMS, the answers were provided to the candidates. He further submitted that Arun Gavali, who appeared in the examination, was caught red handed as personifying one Mr. Taral, who was the real candidate supposed to appear for the examination, however, that person is absconding. He submitted that till today, the police have

registered the offences against 8 accused.

8. Perused the FIR. After going through the statements of the witnesses, it is found that the applicants/accused have approached the villagers. The applicants have handed over the documents to get the SIM cards. The manner in which the applicants/accused have committed the offence, prima facie, shows that it was an intelligent plot to provide different mechanism for copy and earn money. I am of the view that the applicants/accused are undoubtedly involved in this case and the police have clues against these applicants. Unless and until their custody is obtained, the investigation cannot progress. The offence is grave as it is an examination for the government jobs and recruitment of government employees.

9. In the case of Chief Settlement Commissioner (supra), the allotment of land in excess of the lawful entitlement was given and the Court held that the Rule does not confer a right on the displaced person to insist that excess land be sold to him. Thus, the choice was given to the Chief Settlement Commissioner as the word used is "may" to use various options towards adjustment and the Supreme Court held that the expression "may" in the rule cannot be read as "shall". The rule merely confers a discretion to the Settlement Commissioner (Rural). The Court held "In our opinion, the interpretation canvassed by the allottees would defeat the very purpose of Rules".

10. In the case of Rajiv @ Raju s/o. Ramrao Lande & anr. (supra), the learned Single Judge of this Court has taken a view that examination is proposed to be held by the authority specified and notified in the official gazette by the State and no material was placed on record that such notification was issued by the State Government in the official gazette and, therefore, how the section can be attracted is a matter of dispute.

11. Challenge is given under section 7 and it was argued vehemently that section 7, which is non-bailable, cannot be invoked. Under section 7, the phrase "use of any other unfair means" takes care of all mal-practices or the misdeeds done when the examination is conducted. Though the punishment is upto 6 months, the offence is made non-bailable because of the nature and gravity of the offence. At the time of conducting examination, the degree of sanctity required is very high and, therefore, it is made non-bailable. The word "examination" is defined under section 2(b) of the Act. It is as under:

"2(b). "Examination" means any examination held or proposed to be held by any University or the Board and includes such other examination held or proposed to be held by such other authority as may be specified in this behalf, from time to time, by the State Government by notification in the Official Gazette."

12. The section is clear that if at all the examination is conducted by the University or Board, then, it is covered under the examination as defined under the Act. Besides this, when an examination is conducted by any other authority than the university and the Board, then, the State Government may issue notification in the official gazette specifying the authority and the examination. I

cannot accept the submission of the learned Public Prosecutor that the "Collector" himself is to be considered as a authority. On plain reading of the section, the legislature did not intend to give standing authority to the Collector in respect of conducting examination. "The other authority as may be specified" means that the State Government has option to issue notification in the official gazette about the said authority and once such authority is specified in the official gazette, then, the examination conducted by the said authority, comes within the sweep of the word "examination" as defined under section 2(b) of the Act and then only section 7 of the Act can be attracted. In the absence of such notification, if the examination is conducted by any authority, then that examination is valid and legal, however, the said Act cannot be made applicable to that examination. However, to bring that examination within the ambit of section 2(b) of the Act, the State Government needs to issue notification in the official gazette specifying the authority. In the absence of such notification, the examination cannot be an examination under 2(b) of the Act and, therefore, if the mal practices have taken place during such examination, cannot be said as offence as under section 7 of the Act. Thus, notification issued by the State Government enables to bring the acts, misdeeds, malpractices committed within the ambit of section 7 of the Act. I am in agreement with the learned Prosecutor that the word "may" is not to be read as the word "shall". The choice is given to the State Government to issue notification, specifying the authority. If the State Government does not want to specify the authority, then, if any malpractice takes place, at the time of conducting of any examination, in the absence of such notification, those malpractices cannot be said as offences under section 7 of the Act. Therefore, to that extent, for the interpretation of section 7, I am with the learned Counsel for the applicants-accused. However, the prosecution has not restricted the charges only to section 7 of the said Act but has also charged the applicants/accused under sections 420, 464, 468, 471 of the Indian Penal Code which are non-bailable. The manner in which the offence is committed, the custodial interrogation of the applicants-accused is necessary. The absconding real candidate is also to be traced. As it is a case of cheating, fraud and forgery, I am not inclined to grant pre-arrest bail to the applicants/accused.

13. In the circumstances of the case, therefore, both the Anticipatory Bail Applications are rejected.