
(2014) 10 MP CK 0037
In the Madhya Pradesh High Court
Case No : MCRC No. 14857/2014

Layak Singh Kushwah

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 10-10-2014

Acts Referred:

Information Technology Act, 2000 — Section 65, 66
Madhya Pradesh Recognised Examinations Act, 1937 — Section 1, 2, 3(d), 4
Penal Code, 1860 (IPC) — Section 120B, 419, 420, 467, 468

Citation : (2014) 10 MP CK 0037

Hon'ble Judges : A.M. Khanwilkar, C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : Amitabha Gupta, Advocate for the Appellant; P.K. Kaurav, Additional Advocate General and Prakash Gupta, Panel Lawyer, Advocate for the Respondent

Judgement

1. Heard counsel for the parties.
2. This is the second application for bail filed by the applicant, who has been arrested in connection with Crime No. 19/2013 registered with the S.T.F. Police Station, Bhopal for offence punishable under Sections 419, 420, 467, 468, 471, 120-B of I.P.C., Sections 65 and 66 of the Information Technology Act, 2000 and as well as under Section 3(d), 1 and 2/ 4 of the M.P. Recognised Examination Act, 1937 - commonly known as VYAPAM Examination Scam cases.
3. The applicant after filing of the charge-sheet moved the Trial Court by way of fresh bail application in view of the liberty granted by this Court on the earlier occasion, in terms of order dated 4th September, 2014 passed in MCRC No. 11058/2014. The Trial Court by a speaking order dated 9th September, 2014 has rejected that application. Being dissatisfied, the applicant has approached this Court by way of present application. on the contents of the charge-sheet already served on the applicant, contended that as the investigation is complete against the applicant and no case has been made out from the charge-sheet except the call records, which are placed along with the charge-sheet, the applicant

deserves to be released on bail.

4. This argument was refuted by the counsel for the State on merits and in addition, he pointed out that the further investigation of the crime and including against the applicant is still in progress. The charge-sheet, which was filed against the applicant, was first charge-sheet required to be filed in view of the stipulation contained in the provisions of the Criminal Procedure Code. That, however, does not mean that the investigation against the applicant is complete.

5. This submission of the learned counsel for the State was assailed by the learned counsel for the applicant on the argument that the same was without any basis and was mere ipse dixit of the Investigating Officer presented through the counsel appearing for the State.

6. In the light of this submission, we called upon the learned counsel for the State to produce a brief note prepared by the Investigating Officer regarding the gist of the status of investigation against the applicant and why he would insist for detention of the applicant inspite of filing of the charge-sheet on 31.08.2014. Accordingly, learned counsel for the State has produced the note and the documents, which the Investigating Officer has referred to in the note.

7. There is no reason to doubt the correctness of the factual position stated in this note, which has been prepared by the Investigating Officer himself. From the contents of this note it is amply clear that further investigation of the crime and including against the applicant is in progress. It is, therefore, incorrect to suggest that the investigation against the applicant is complete.

8. To get over this position, counsel for the applicant would contend that charge-sheet merely refers to the call record and on that basis, involvement of the applicant in the commission of the crime has been attributed.

9. We are not impressed by this argument. Call record is not the only basis but there is other material referred to in the charge-sheet. The trial Court has had occasion to analyze the material. In any case, from the note which is handed over to the Court in sealed-cover, we find that the involvement of the applicant in the commission of the offence has been disclosed by the co-accused Pankaj Trivedi in his memorandum. He has mentioned about the names of candidates provided by the applicant to him and, who in turn, forwarded the same to another co-accused - Nitin Mohindra. Needless to observe that both - Pankaj Trivedi and Nitin Mohindra - are the principal accused and the racketeer. The applicant, therefore, acted as middleman of these persons and participated in the conspiracy and commission of the crime.

10. As the further investigation of the case is still in progress and the Investigating Officer is still collating the links between the applicant and the principal accused and including the beneficiaries whose names were furnished by him to said Pankaj Trivedi and Nitin Mohindra, the question of granting bail to the applicant does not arise. From the information furnished to the Court in sealed-

cover it is noticed that out of ten suspected candidates, who were involved in commission of unfair means during examination, only one candidate has been arrested. Indeed, the note indicates that one candidate amongst ten candidates whose statement was also recorded, as it was noticed that there was no change in his result, no immediate action against him was required until the completion of further investigation.

11. Taking overall view of the matter, we are not inclined to grant bail to this applicant, who has acted as middleman and directly interacted with Pankaj Trivedi - another co-accused and the racketeer - Nitin Mohindra. Hence, this application deserves to be dismissed. Ordered accordingly.

12. The note handed over to the Court in sealed-cover is returned back to the learned counsel for the State after the order was dictated.

13. At this stage, counsel for the applicant submits that the prosecution ought to have produced the police diary and not merely relied on the material pointed out by way of note. We reject this argument. As already noted earlier, we have no reason to doubt the correctness of the note given by the Investigating Officer. Moreover, the fact that the investigation is still in progress and final police report has not been filed in Crime No. 19/2013 is indisputable. For that reason, the question of granting bail to this applicant does not arise. Accordingly, the application is rejected.