

Anticipatory Bail Application No.2858/2022.

MHCC020174942022



IN THE COURT OF ADDITIONAL SESSIONS JUDGE MUMBAI,

AT GR. MUMBAI

ANTICIPATORY BAIL APPLICATION NO. 2858 OF 2022.

IN

C.R. NO. 1015 OF 2022.

Dnyaneshwar Subhashrao Gande

... Applicant.

Vs.

The State of Maharashtra  
(At the instance of Kherwadi police station,  
vide CR No. 1015/2022.)

...Respondent

Appearances :-

Ld. Adv. Mr. Pravind Hadole for the Applicant.

Ld. APP. Mr. Sukhdeve for the State/Respondent.

CORAM : H.H. THE ADDITIONAL SESSIONS JUDGE  
DR. A. A. JOGLEKAR (C.R.NO.37)

DATED : 02<sup>ND</sup> JANUARY, 2023.

ORAL ORDER

By this application the applicant **Dnyaneshwar Subhashrao Gande** has sought for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, (In short, "Cr.P.C"),

**Anticipatory Bail Application No.2858/2022.**

as they being accused in C.R. No. 1015/2022 registered with Kherwadi Police Station, Mumbai, for the offences under Sections 419, 420 of the Indian Penal Code, (hereinafter referred to as, "IPC"), alongwith Sections 7 and 8 of Maharashtra Prevention of Malpractices at University, Board and Other Specified Examinations Act, 1982 and has further prayed for pre-arrest bail.

**THE CASE OF PROSECUTION IN SHORT ENSUES AS UNDER;**

2. The case of the prosecution is, as on 07.12.2022 the informant lodged the complaint against the applicant and 59 individuals under the sections *ibid*. It is stated that, MHADA had conducted recruitment process for 565 vacant posts under direct recruitment for 14 categories under technical and non-technical streams. And accordingly, exam was conducted online on 7 occasions at about 106 centres. The said exams were conducted online on account of the surge of covid pandemic. It is allegedly stated that, 9 such candidates were found to have committed malpractices during such examination and the applicant is one of them. Thus, in view of the same as stated supra offence was registered.
  
3. The Ld. Advocate for Applicants state that, the applicant is falsely implicated in the present crime. It is categorically stated that, the FIR is registered after a delay of nearly 10 months. There is no prima-facie evidence against the applicant. Also, upon suspicion raised by certain officers of TCS Pvt. Ltd., the informant has lodged such complaint and that the entire prosecution's version is in the

**Anticipatory Bail Application No.2858/2022.**

form of hearsay. Hence, the Ld. Advocate for applicant/accused prayed for enlargement of the applicant/accused on pre-arrest bail.

4. Per contra the Prosecution has filed their reply vide Exh.3 and *inter alia* have resisted the application on various grounds. It is categorically stated that, applicant is allegedly found committing malpractices during the exam and has committed such serious offence. It has revealed during investigation that as per the inputs from TCS Pvt. Ltd., the applicant is put in high risk category wherein it was found that the average time for solving a question is 4 seconds in case of the applicant. It also has revealed that, during first one hour the applicant has solved zero questions while in the next one hour he has solved 145 questions. It is also stated that, the applicant had been to washroom from 11.47 until 11.50 and hence there is like possibility that he has committed such malpractice/copy. Prosecution further apprehends abscondance, tampering of evidence and threatening is to prosecution witnesses. Hence, Ld. Prosecutor prayed for rejection of application.

5. Heard Ld. Advocate for Applicant and Ld. Prosecutor for the state. Perused application and reply.

6. On meticulous examination of the case record, it evinces to myself that, the alleged incident has occurred as on dated 31.01.2022 until 09.02.2022 and that admittedly the offence is registered as on 07.12.2022. The prosecution has failed to explain the very reason for such delay, more especially when such inputs from the expert agency qua TCS Pvt. Ltd., was well available and seized with the informant

**Anticipatory Bail Application No.2858/2022.**

and inspite of this the agency took such longtime and therefore, the said delay lays the entire matter qua the prosecution version under speculation.

7. While considering prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused. Frivolity in the prosecution always be considered and it is only the element of genuineness that shall have to be considered in the matter of bail and in the event of there being some doubt as to the genuineness of the prosecution, in normal course of the event, the accused is entitled to an order of bail.

8. Thus, it is evident that, the prosecution has alleged of such malpractices to have been committed by the applicant. This Court has raised a specific query with regard to any such CCTV Footage being seized by the respondent agency and whether any such content propelling for the malpractice committed by the applicant is available with the agency. Upon this the investigating officer present states that, they have found the applicant putting his head down for several times during the paper and therefore there is a like possibility that, he might have committed such offence. Therefore, the case of the prosecution at this juncture seems to be assumptions and presumptions, more especially when the offence is registered at a delayed stage. So also the prosecution has not brought up on record any such criminal antecedents to the discredit of the applicant. Therefore, at this juncture in view of the aforesaid discussion, I do

**Anticipatory Bail Application No.2858/2022.**

not deem custodial interrogation to be necessary. Further, the apprehension of the prosecution can be taken care of by saddling stringent condition on the applicant alongwith marking of presence with the investigating agency until conclusion of trial. Hence, in the backdrop of the aforesaid facts, I hold that the application deserves consideration. Hence, order infra:-

**ORDER**

1. Anticipatory Bail Application No. 2858/2022 is allowed.
2. In the event of arrest, the applicant **Dnyaneshwar Subhashrao Gande**, as he being accused in FIR registered with Kherwadi Police Station, Mumbai, in C.R.No. 1015/2022, for the offences punishable under Sections 419, 420 of IPC, alongwith Sections 7 and 8 of Maharashtra Prevention of Malpractices at University, Board and other specified Examinations Act, 1982 be released on bail of furnishing P. R. Bond to the extent of Rs.30,000/- with one or two sureties of the like amount.
3. The applicant and his sureties shall provide their respective mobile numbers and email addresses and documents pertaining to place of residence, and shall also intimate change in address and mobile no. if any, during the pendency of the matter.
4. The applicant shall not directly or indirectly make any inducement, threat or pressurize any person acquainted with the facts of the present case so as to dissuade them from disclosing such facts to the Court.
5. The applicant shall attend the Kherwadi Police Station, Mumbai on every Tuesday and Thursday from 11.00am to 2.00 pm until further orders.
6. The applicant shall surrender his passport to the investigating officer. If he do not possess passport, he shall file affidavit in that regard.

**Anticipatory Bail Application No.2858/2022.**

7. Any breach of condition in the aforesaid order would amount to cancellation of pre-arrest bail forthwith.
8. Applicant shall not leave Mumbai without prior permission of this Court.
9. Anticipatory Bail Application No. 2858/2022 stands disposed of accordingly.



**Date : 02.01.2023.**

**(DR. A. A. JOGLEKAR)**  
**Additional Sessions Judge,**  
**City Civil & Sessions Court,**  
**Gr. Bombay (C.R.No.37)**

**Dictated on : 02.01.2023.**

**Transcribed on: 02.01.2023.**

**HHJ signed on : 03.01.2023.**

**Anticipatory Bail Application No.2858/2022.**

<b>“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”</b>		
<b>Upload Date</b>	<b>Upload Time</b>	<b>Name of Stenographer</b>
<b>03.01.2023</b>	<b>04.24 p.m.</b>	<b>Mahendrasing D. Patil Stenographer (Grade-I)</b>

<b>Name of the Judge (With Court Room No.)</b>	<b>HHJ DR. A. A. JOGLEKAR (Court Room No. 37)</b>
<b>Date of Pronouncement of JUDGEMENT /ORDER</b>	<b>02.01.2023</b>
<b>JUDGEMENT /ORDER signed by P.O. on</b>	<b>03.01.2023</b>
<b>JUDGEMENT /ORDER uploaded on</b>	<b>03.01.2023</b>