

Regular Criminal Case No. 28/2014.
(C.R. No. 215/2013 of Tasgaon police station)
(Order Below Bail application vide Exh. 266)

1. This application is filed by accused No. 5 Raju Natha Kapase, under Section 437 of the Code of Criminal Procedure for releasing him on bail.

2. Read the application, say filed by the learned APP for the State at Exh. 267-A. Perused record and proceeding of the case. Heard the learned advocate Shri. V. S. Jadhav for the accused No.5 and learned A.P.P. Shri. V. A. Patil for the State.

3. Applicant-accused No. 5 Raju Natha filed this application for releasing him on bail on the grounds that (i) he has not committed any offence as alleged, (ii) alleged offence are not punishable with death or life imprisonment, (iii) parity, (iv) he was not absconded, but he was approached to Hon'ble High Court and Hon'ble Supreme Court for anticipatory bail, (v) his illness and injury and (vi) he is ready to abide Court conditions.

4. The application is opposed by the learned APP for the State on the grounds that the offences levelled against the accused are serious in nature, trial is in progress and there is strong prima-facie evidence against the accused. Accused was absconded and if he released on bail, there is possibility of his absconding and he will tamper evidence of the prosecution. Hence, he prayed for rejection of bail application.

5. Learned advocate Shri. V. S. Jadhav for accused submitted that accused himself surrendered before police. Charge-sheet has been filed against the accused. Bail is rule and jail is an exception. Mere abscondence is not ground to reject the bail application. Gravity and seriousness of the offence is depend upon the punishment and not upon the alleged amount of cheating. In support of his submission, he relied upon following citations -

- (i) Kajod V/s. State of Rajasthan, 2001 (5) Supreme 428.
- (ii) Sanjay Chandra V/s. C.B.I., 2011 ALL SCR 2930 wherein Hon'ble Apex Court held that bail is the rule and committal to jail an exception. Bail cannot be denied merely because of sentiments of community against the accused.
- (iii) Sk. Yusuf V/s. State of West Bengal, 2011 ALL MR (Cri) 2365 (S.C.) wherein Hon'ble Apex Court held that a person absconding after the commission of offence of which he may not even be the author, such circumstances alone may not be enough to draw an adverse inference against him as it would go against the doctrine of innocence. It is quite possible that he may be running away merely being suspected, out of fear of police arrest and harassment.

6. It is true that supplementary charge-sheet has been filed against applicant-accused. However, he was absconded since crime is registered against him. Charge-sheet is filed against him and other accused persons for the offences punishable under Sections 420, 467,

468 and 471 r.w. 34 of the Indian Penal Code. As per prosecution case, applicant-accused and other accused persons have cheated informant Uday Mohan Deshmukh and prosecution witnesses i.e. other 25 unemployed youths by preparing false and forged document in respect of recruitment in Railway Department. Applicant-accused and other accused persons have cheated unemployed youths by extracting money for giving job in Railway Department. Charge is framed against applicant accused and other accused persons and there is progress in trial and prosecution has examined nineteen witnesses as of now.

7. The Hon'ble Bombay High Court and Hon'ble Supreme Court have rejected the anticipatory bail application of applicant-accused. As per direction given by the Hon'ble Bombay High Court in Criminal Writ Petition 3928 of 2014 dated 02-12-2014 the applicant-accused did not appear before this Court on 17-12-2014. Further in order dated 17th March 2015 passed in ABA No.1306 of 2014 the Hon'ble Bombay High Court observed that the applicant-accused has shown total disrespect towards this institution i.e. Court.

8. No doubt, in the present case other accused have been released on bail. However, it is pertinent to note that they were arrested in initial stage of the investigation of crime and they have been released after considerable long time. The general law is that when co-accused is released on bail and if there is no severity in the offence and no evidence about role played by the accused in jail, he can be enlarged on bail. More than 26 unemployed youths are

victims of the crime. On perusal of proceeding, prosecution has prima-facie case against the applicant-accused and other accused persons.

9. The facts came on record the accused persons were running false training center at Paraspada, Dahanu, Dist. Thane to cheat the victims. Applicant-accused tried to point out his finger towards accused Kailas Awaghade. However, in evidence of PW 7 to 10 the facts came on record that applicant-accused No.5 Raju Natha and his son accused No. 6 Viky Raju were used to come at said false training center and accused no. 4 Kailas Awaghade introduced them to victims as high officials of Railway Department. Further the facts came in the evidence of Mohan Deshmukh (PW 1) on record that an amount of Rs.5,00,000/- has been deposited in the bank account of applicant-accused in Axis Bank, Tasgaon. Applicant-accused and other accused persons are involved in the offence of making false documents about recruitment orders for cheating to near about 26 unemployed youths for the amount near about Rs.1.50 Crores, then it is not just to release applicant-accused on the grounds submitted by him. Otherwise granting of bail to the applicant-accused would defeat the end of justice and failure of justice.

10. I have carefully gone through the discharge summary of applicant-accused issued by Aditya Birla Memorial Hospital dated 25-06-2012, wherein Doctor diagnosis that applicant-accused Raju Natha suffering from diabetics. Discharge summary issued by the

Astha Health Care, Mulund, Mumbai shows that surgery by name Sx lap sleeve gastrectomy has been done upon accused on 24-02-2014 and he was discharged on 03-03-2014. Thereafter, more than one and half year time has been lapsed. It seems from discharge summary of Astha Health Care dated 13-04-2015 that applicant-accused met with road traffic accident on 31-03-2015 and he received head injury, however he got sufficient medical treatment in said hospital till 08-04-2015. It is pertinent to note that when he was discharged from the aforesaid hospitals, concerned doctors remark about his condition as patient is stable. It is needless to say that diabetics, hyper tension, blood pressure these are now very common illness. If really applicant-accused is suffering from such type of illness, then he can get appropriate treatment in Government hospital and for that purpose he is not entitled to release on bail.

11. In view of above discussions, I decline to exercise discretion to grant bail in favour of applicant-accused as it has effect of de-moralizing the victims by giving undue importance to ground of sympathy and parity. Thus, taking into consideration the totality of the facts, circumstances and evidence, the application of the applicant-accused No. 5 Raju Natha is liable to be rejected. Hence, the order. :

ORDER

The application is rejected.

Sd/-xxx

TASGAON.

Date: 1st October, 2015.

(A.A. Chendke)

JUDICIAL MAGISTRATE, F. C., ,

TASGAON.