

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2281 OF 2021**

Dr. Swapna Patker ...Petitioner  
**Versus**  
The State of Maharashtra & ors. ...Respondents

Ms. Abha Singh, i/b Isha Singh, for the Petitioner.  
Mrs. A. S. Pai, APP for the State/Respondent.  
Mr. Roshan Tanna, for Respondent no.5.  
Mr. Prasad Rao, for Respondent no.6.

**CORAM: S. S. SHINDE &  
N. J. JAMADAR, JJ**  
**DATED: 27<sup>th</sup> JULY, 2021**  
**(Through V.C.)**

**PC:-**

1. This petition under Article 226 of the Constitution of India is filed to quash and set aside the First Information Report ("FIR") bearing CR No.336 of 2021, registered at Bandra Police Station to the extent of the offences punishable under Sections 420, 467 and 468 of the Indian Penal Code ("the Penal Code").

2. The petitioner has prayed for an interim relief in the nature of releasing her on bail till the disposal of this petition.

3. The petition arises in the backdrop of the following facts:

(a) Smt. Gurdeep Kaur Harindar Singh – respondent no.5, the first informant, claimed to have received a sealed

envelope containing certain documents including the Ph.D. Degree Certificate of the petitioner purportedly issued by Chatrapati Shahuji Maharaj University, Kanpur, on 31<sup>st</sup> December, 2009 and the profile of the petitioner which, *inter alia*, indicated that the petitioner claimed to have acquired the qualification of Ph.D. (Clinical Psychology), BHMS, Fellowship in Neurological Rehabilitation, Neurobiology and Behaviour, MBA-HRM and Services. The first informant claimed to have entertained suspicion as there were apparent grammatical and typographical errors in the Ph.D. degree certificate. Therefore, the petitioner approached the police.

(b) It is the claim of the investigating agency that after the aforesaid documents were so found, the police had communication with the competent authorities of Chatrapati Shahuji Maharaj University, Kanpur. On 25<sup>th</sup> May, 2021, a communication was received from the Controller of Examinations, Chatrapati Shahuji Maharaj University, Kanpur, to the effect that the Ph.D. certificate bearing Serial No.289929, dated 31<sup>st</sup> December, 2009, was not genuine. Thereupon, the first informant lodged FIR on 26<sup>th</sup> May, 2021. It was alleged, *inter alia*, that the petitioner practiced as a Clinical Psychologist at Lilavati Hospital on the strength of the said forged and

fabricated Ph.D. certificate. The petitioner has thus deceived the Hospital as well as the members of the public by fraudulently proclaiming herself to be a qualified Clinical Psychologist.

(c) The petitioner claims that instant prosecution was initiated against the petitioner as she made grievances against the authorities especially, the higher police officers, in connection with the investigation in the FIRs lodged by her. She was constrained to institute Writ Petition Nos.338 of 2021, 488 of 2021 and 489 of 2021, wherein she has prayed for the grant of protection. By way of a counter-blast, the instant FIR was lodged *mala fide*. Even if the allegations in the FIR are taken at their face value and in their entirety, no offence punishable under Section 467 of the Penal Code can be said to have been *prima facie* made out. The petitioner is a single mother of a minor son. Her mother, who is a senior citizen, is dependent on her. In the aforesaid circumstances, the petitioner has been allegedly deprived of her personal liberty. Hence this petition.

4. The petitioner came to be arrested on 8<sup>th</sup> June, 2021. Her prayer for bail has been rejected by the learned Sessions Judge. Ms. Abha Singh makes a statement that the petitioner has not preferred any bail application thereafter and no application for

bail is pending before any Court.

5. We have heard Ms. Abha Singh, the learned Counsel for the petitioner, Mrs. Pai, the learned PP for the State/Respondent, Mr. Tanna, the learned Counsel for respondent no.5 - the first informant and Mr. Rao, the learned Counsel for respondent no.6. We have also perused the report tendered for perusal by the investigating agency indicating the progress in the investigation.

6. At this stage, we propose to consider the prayer for release on bail during the pendency of this petition.

7. In the context of the prayer for interim relief, Ms. Abha Singh, would urge that at the highest allegations against the petitioner are that the petitioner had used a Ph.D. degree certificate which is allegedly found to be not genuine. Even if the prosecution case is taken at par, there is no material to indicate that it was the petitioner, who has forged the said degree certificate, much less, to indicate that the said Ph.D. degree certificate constitutes a valuable security or a document which falls within the ambit of Section 467 of the Penal Code, urged Mrs. Abha Sing. In this view of the matter, according to Ms. Abha Singh, the offence under Section 467 of the Penal Code is not at all attracted.

8. To lend support to this submission, Ms. Abha Singh placed a strong reliance on the judgments of the Supreme Court in the cases of *Shrinivas Pandit Dharmadhikari vs. State of Maharashtra*,<sup>1</sup> *State of U.P. vs. Ranjit Singh*,<sup>2</sup> *Md. Ibrahim and others vs. State of Bihar & others*<sup>3</sup> and the recent judgment of the Supreme Court in the case of *Sheila Sebastian vs. R. Jawaharaj & Anr. Etc.*<sup>4</sup> The purport of the aforesaid judgments, according to Mrs. Abha Singh, is that there must be evidence to indicate that it was the accused who had forged the document, and the document is of the type, described in Section 467 of the Penal Code, to make out an offence punishable thereunder.

9. In opposition to this Mrs. Pai, the learned PP, urged with a degree of vehemence that the investigating agency has collected adequate material to demonstrate, at this stage, that the Ph.D. degree certificate is forged. In addition to the said degree certificate, the investigation further revealed that the petitioner had unjustifiably claimed to have acquired many a qualifications and relied upon many untrue certificates/ testimonials, in respect of which investigation is still underway.

In the circumstances, according to Mrs. Pai, it cannot be said

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**1** (1980) 4 SCC 551.

**2** (1999) 2 SCC 617.

**3** 2009 (3) ACR 3072 (SC).

**4** Criminal Appeal No.359-260 of 2010.

that there is no material to make out a *prima facie* offence against the petitioner. As the investigation is at the nascent stage, this Court would not be justified in delving into the issue of quashment even for the limited extent of the offence punishable under Section 467 of the Penal Code, submitted Mrs. Pai.

10. Mr. Tanna, the learned Counsel for respondent no.5 – the first informant, joined issue by canvassing a submission that the judgments which have been relied upon by the petitioner are of no assistance, especially, at this stage, as those judgments were rendered post conclusion of the trial. Indisputably, the petitioner has used the Ph.D. degree certificate to practice as a Clinical Psychologist. This fact is required to be appreciated in the context of the injury which the conduct of the petitioner must have caused to the public in general, submitted Mr. Tanna.

11. We have given careful consideration to the rival submissions. To start with, it is imperative to note that the genesis of the prosecution is in a chance discovery of the copies of the documents which were allegedly delivered at the residence of respondent no.5, the first informant. The latter claimed to have entertained suspicion and approached the police. It is true

that, anybody can set the criminal law in motion. However, the element of inquisitiveness which the first informant exhibited may warrant consideration.

**12.** The thrust of the submission on behalf of the petitioner is that even if the prosecution case is considered, as it stands, the aggravated offence punishable under Section 467 of the Penal Code cannot be said to have been made out. Section 467 of the Penal Code reads as under;

**“467. Forgery of valuable security, will, etc.—**Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

**13.** The phraseology of Section 467 spells out the following ingredients of the offence:

- (i) The document in question is forged.
- (ii) It is the accused who forged it.
- (iii) The document is one of the kinds enumerated in the aforesaid Section, namely, valuable security or a will or an authority of the specified kind or any

document purporting to be acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security.

**14.** Section 30 of the Penal Code defines a valuable security as under:

**“30. “Valuable security”.**—The words “valuable security” denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability, or has not a certain legal right.”

**15.** The question which crops up for consideration is whether the Ph.D. degree certificate allegedly forged and used by the petitioner, *prima facie*, falls within the dragnet of Section 467 of the Penal Code. In this context, the reliance placed on behalf of the petitioner, on the judgment of the Supreme Court in the case of *Shrinivas Pandit Dharmadhikari* (supra) appears well founded. In the said case, the petitioners therein had forged certificates to get admission in the college affiliated to Poona University. The Supreme Court observed that the certificates testifying the educational qualification, could not be described as valuable security in terms of the definition under Section 30 of the Penal Code.



16. Though a number of judgments were cited on behalf of the petitioner, we deem it appropriate to refer two of the judgments of the Supreme Court. First, in the case of *Md. Ibrahim* (supra), wherein, after analyzing the provisions contained in Section 464 of the Penal Code, the Supreme Court enunciated that, “the condition precedent for an offence punishable under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof).”

17. Following the aforesaid pronouncement, in the recent decision in the case of *Sheila Sebastian* (supra), the Supreme Court observed as under:

“25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observed that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of false document is the part of the definition of “forgery”. Both must be read together. ‘Forgery’ and ‘Fraud’ are essentially matters of evidence which could be proved as a fact by direct evidence or by inference drawn from proved facts. ....”

18. In the light of the aforesaid exposition of the legal position reverting to the facts of the case, *prima facie*, the Ph.D.

certificate, does not fall within the ambit of the definition of the term of valuable security. The submission on behalf of the prosecution that the intrinsic evidence of the Ph.D. certificate betrays the fact that the certificate is forged, if viewed in the backdrop of the patent typographical and grammatical mistake, may carry some substance. However, at this stage, at the most the charge for the offence punishable under Section 465 can be said to have been *prima facie* made out. The further issue as to whether an offence punishable under Section 467 of the Penal Code is made out is a matter which warrants consideration. Since the investigation is in progress, we do not propose to delve deep into this aspect of the matter. It would be suffice to observe that the question of complicity of the petitioner for the offence punishable under Section 467 of the Penal Code would warrant consideration and examination.

19. At this stage, it is necessary to note that Ms. Abha Singh, the learned Counsel for the petitioner, placed reliance on the judgment of the Supreme Court in the case of *Arnab Goswami vs. State of Maharashtra*<sup>5</sup> for the release on interim bail during the pendency of the petition.

20. The petitioner was arrested on 8<sup>th</sup> June, 2021. Sufficient

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**5**2021 (2) SCC 427.

time has elapsed since the date of the arrest of the petitioner so as to facilitate effective investigation. The petitioner is a woman. In the exigency of the situation on account of Covid-19 Pandemic, the aspect of continued detention of the petitioner also merits consideration. The petitioner claimed that a minor son and an old mother are dependent on her.

**21.** Since we are of the view that the offence punishable under Section 467, which entails imprisonment for life, is not *prima facie* made out, in the peculiar facts of the case, the aforesaid factors persuade us to grant the relief of bail to the petitioner pending consideration of this petition for quashment of the charge for the offences punishable under Sections 467 and 468 of the Penal Code.

**22.** We record that Ms. Abha Singh, the learned Counsel for the petitioner, has assured the Court that the petitioner would render full cooperation in the investigation, which is underway. Ms. Abha Singh makes a further statement that till the decision of this petition, the petitioner will not use the Ph.D. degree certificate for any purpose whatsoever and shall not practice as a Clinical Psychologist or as the Counsellor. We record the aforesaid statements.

23. Hence, the following order:

**: O R D E R :**

- (i) During the pendency of this petition, the petitioner, Dr. Swapna Patker, be released on bail on furnishing a PR Bond in the sum of Rs.25,000/-, with one or two sureties in the like amount to the satisfaction of the learned Magistrate.
- (ii) The petitioner shall render necessary cooperation during the course of investigation and shall attend Bandra Police Station on every Monday from 10.00 am. to 12.00 noon, for the period of one month from the date of her release and thereafter attend on the 1<sup>st</sup> Monday of every month from 10.00 am. to 12.00 noon and as and when directed by the Investigating Officer, for the purpose of investigation, till the filing of charge-sheet.
- (iii) The petitioner shall not tamper with the prosecution evidence and/or give threats or inducement to any of the prosecution witnesses.
- (iv) The petitioner shall surrender her passport before the Investigating Officer.
- (v) The petitioner shall not leave India without prior permission of the jurisdictional Magistrate.
- (vi) In conformity with the statement of the learned Counsel for the petitioner, as recorded by this Court, the petitioner shall not use the Ph.D.

certificate and practice as a Clinical Psychologist or Counsellor till further orders.

24. Post the petition on 6<sup>th</sup> September, 2021.
25. In the meanwhile, the respondents are at liberty to file an affidavit-in-reply and serve copies thereof on the petitioner.
26. The pendency of this petition shall not be construed as an impediment for further investigation.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]