

FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2423 OF 2015**[Sameerkhan s/o Umardaraj Pathan Vs The State of Maharashtra]**

Office Notes, Office
Memoranda of Coram,
appearances, Court's
orders or
directions and
Registrar's orders

Court's or Judge's orders

Shri S.G.Kawade, advocate for applicant
Shri V.H.Dighe, A.P.P. for respondent

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CORAM : V.M.DESHPANDE, J.

DATED : 16th July, 2015

PER COURT :-

1] This is an application for anticipatory bail, since the applicant is apprehending his arrest in connection with Crime No. 33 of 2015, registered with police station Kallam, District Osmanabad, for the offences punishable under Sections 420, 468, 471, 477-A, 167 r/w 34 of the Indian Penal Code.

2] I have heard Shri S.G.Kawade, learned counsel for applicant and Shri V.H.Dighe, learned Additional Public Prosecutor for the respondent/State in extenso. Learned Additional Public Prosecutor prayed that the application be dismissed.

3] The first information report is lodged by Shri Ravindra Bapurao Bhande. The first informant is discharging his duties as Awal Karkoon at Tahsil office, Kallam. The first information report discloses that the first informant is authorized to lodge report by Tahsildar in respect of preparation of false and bogus bills in respect of work of

roads at village Yearmala, Hawargaon, Shelka Dhanora during the period 2012-2013 under Mahatma Gandhi National Rural Employment and Guarantee Scheme.

According to the first information report, under the Mahatma Gandhi National Rural Employment and Guarantee Scheme, for financial year 2012-2013, works of roads at Yermala, Hawargaon, Shelka Dhanora are completed and for the said work in 2013 the bills are submitted in the Tahsil office through the Minor Irrigation Project Bhoom and Kallam. According to the first information report on 9.5.2014 it was directed to clear those bills, however, it was found that no bills were pending in the office of Tahsil.

The first information report further proceeds that no record was available in the Tahsil office in respect the technical sanction, the muster roles, even in the respective Grampanchayat also there was no record available. However, for the said works one Nishikant Gaikwad, resident of Yermala and Shrikant Bartakke of Kallam were pursuing to get the bills. According to the first information report, these two persons in connivance with the officials without there being any work done, prepared false and bogus documents and submitted the bills worth Rs.1,09,53,929/- and thereby they tried to cheat the State ex-chequer.

It is not the prosecution case that there is any factual disbursement of the afore said amount.

4] The present applicant is Inward Clerk in Tahsil officer, Kallam.

The allegation against the present applicant is that he being Inward Clerk has taken entries of the disputed bills in the Inward Register for which there was an earlier entry for some other work.

5] The prosecution has filed reply in Criminal Application No. 2676 of 2015. However, according to the learned Additional Public Prosecutor Shri V.H.Dighe the said reply has to be read in all other applications including the present application.

Shri Dighe, learned Additional Public Prosecutor has also prepared a chart in respect various applicants including the present applicant to show their criminality in the matter.

6] Learned counsel for the applicant invited my attention to Page 27 of the compilation, by which he brought to the notice of this court that the charge is given to the present applicant in respect of the Government godown on 8.8.2013 and from the said date till today the present applicant is working as a Clerk in the said Government godown.

7] The prosecution case is that on 28.8.2013 the present applicant has taken inward entry of disputed bills for which inward numbers were given to other documents. To substantiate the said claim the prosecution has relied upon the statement of one Manisha Kadam, who is the Clerk in the office. According to the statement of Manisha Kadam, she is working in the Tahsil office, Kallam from 24.5.2012. The job of Inward and Outward Department was entrusted to her by one Thakar madam. After a period of one year, she was given work in Record Section (Jamabandi). That time, she handed over the charge to applicant Sameer Pathan.

The entries of the disputed bills in the Inward Register are taken on 28.8.2013.

8] Learned Additional Public Prosecutor was unable to explain, when the present applicant started discharging his duties from 8.8.2013 in the Government godown, how he is responsible for Inward and Outward Department of Tahsil

office.

9] In this context, it would be useful to have a reference to the inquiry report submitted by the Tahsildar, Kallam to the Deputy Collector, Osmanabad on 30.10.2014, which is at Annexure R-3 in the affidavit filed by the investigating officer. In the said inquiry report, though there is mention of name of the applicant, at the same time, name of Clerk Kadam is also mentioned. Clerk Manisha Kadam is not made an accused in the present crime. In that context, according to the statement of Manisha Kadam recorded by the investigating officer, she has stated that the handwriting in the Inward Register is not of herself, however, it is similar to handwriting of the present applicant.

10] The present applicant, in view of the order passed by the learned trial court has already appeared before the investigating officer. The said fact is not disputed by the investigating officer.

11] Looking to the fact that there is nothing available contrary to the record that from 8.8.2013 till today the applicant is working in the Government godown, the applicant has made out a case in his favour for exercising the discretion under Section 438 of the Code of Criminal Procedure in favour of the applicant. That leads me to pass following order.

ORDER

- (i) Criminal Application is allowed.
- (ii) Applicant-Sameerkhan s/o Umardaraj Pathan, in the event of his arrest, in connection with Crime No. 33 of 2015, registered with police station Kallam, District Osmanabad, for the offences punishable under Sections 420, 468,

471, 477A, 167 r/w 34 of the Indian Penal Code, be released on anticipatory bail on he executing P.R. bond of Rs.5,000/- with one solvent surety in the like amount.

(iii) Applicant shall attend Kallam police station once in a week, preferably on every Wednesday in between 2.00 p.m. to 3.00 p.m. till the charge sheet is filed.

(iv) Applicant shall provide specimen of his handwriting and signature to the investigating officer.

(v) Criminal Application is disposed of.

(V.M.DESHPANDE, J.)

dbm/crap2423.15