

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRI .APPLN/4526/2013
WITH
CRI .APPLN/4528/2013
WITH
CRI .APPLN/4529/2013
WITH
CRI .APPLN/4527/2013

RAMESH MANIK PATIL
V/S
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. Vinod P. Patil, Advocate for applicant in all applications.

Mr. A.V. Deshmukh, APP for State in all applications.

Mrs. Rashmi Gaur, Advocate for respondent No. 2 in CA Nos.
4526, 4528/2013.

Mr. S.S. Gangakhedkar, Advocate for respondent No. 2 in CA Nos.
4527, 4529/2013.

CORAM : T.V. NALAWADE, J.
DATED : 29th January, 2015.

ORDER :

1) All the applications are filed under section 439 (2) of Criminal Procedure Code ('Cr.P.C.' for short) for cancellation of anticipatory bail granted by the learned Additional Sessions Judge, Jalgaon in C.R. Nos. 71/13 and 73/13 registered in Dharangaon Police Station, Dharangaon for the offences punishable under sections 409, 420, 467, 468, 477-A, r/w. 34 etc. of Indian Penal Code ('I.P.C.' for short) and sections 13 (1) (d) r/w. 13 (2) of Prevention of Corruption Act, 1988 ('PC Act' for short).

2) Learned counsel for respondent/accused Shri. Gangakhedkar from Criminal Application Nos. 4527 and 4529 of 2013 argued the matters. The learned APP also argued and he supported the applicant by submitting that the chargesheet could not be filed due to absence of custody of the applicants and the investigation could not be completed. Learned counsel Mrs. Rashmi Gaur for respondent/accused in Criminal Application Nos. 4526 and 4528 of 2013 submitted that her client has taken away the brief from her and so, she does not want to argue. In the first session, this Court had expressed that this Court will not be granting more time and as the time was given to the same advocate in the past, due to which the matter was adjourned from time to time and it came before this Court after one year, no further time will be given and no excuse will be heard. Upon that, learned counsel Mrs. Rashmi Gaur had submitted that she would argue in the second sessions and so, the learned counsel for the applicant was heard. In the second session, learned counsel Mrs. Rashmi Gaur submitted that she has specific instructions from her client not to argue the matters and she avoided to argue the matters. This Court has expressed that this Court will not allow learned counsel to withdraw the appearance in view of the peculiar facts of the case and the fact that it is

she, who had sought time in those matters and due to her seeking of time, the matters could not be disposed of for the period of one year.

3) Present matters, atleast, the first two matters are the glaring examples as to how fraud is played on Court. These cases are also instances of the tactics played in the Court to protract the decision of the matters. These cases are also instances of the effect of the orders of anticipatory bail which virtually stopped the investigation of the matters. First time, the first two matters came before this Court on 6.9.2013. The matters again came before this Court on 10.12.2013 and 11.12.2013.

4) On 11.12.2013 this Court had expressed that in view of the peculiar facts and circumstances of the case on 13.12.2013 the matters will be heard and disposed of. In view of the peculiar facts of the case, inquiry was made with the learned counsels, who had represented the respondent of the first two proceedings (respondent Chandrakant Wagh) and they were requested to make statements with regard to the manner in which the previous proceedings were disposed of. This Court is mentioning those statements made by the counsels. It appears

that steps were then taken like filing of the proceedings like quashing of the F.I.R. itself by this respondent. In view of the procedure of this Court, the proceeding filed for quashing of the F.I.R. lies before the Division bench and the present matters were also tagged with those matters. On 13.11.2014 these matters came to be removed from the board of the Division Bench as the writ petitions filed for quashing of the F.I.R. were withdrawn on that date. Thus, for the period of around nine months, the matters were kept before Division Bench by playing tactics like filing writ petitions for quashing of the F.I.R. and after the period of nine months, those proceedings were withdrawn and thus, the matters again came before the regular Court. The aforesaid circumstances show as to how the tactics are being played in the Court, even in the High Court for protracting the decisions of the matters. Such tactics were played as the concerned apprehends that he may not get favourable orders as the facts and circumstances of these proceedings are very peculiar in nature. This Court has no hesitation to observe that only due to the conduct of the respondent from the first two proceedings and the tactics played by him, the matters could not be disposed of for the period of more than around 15 months. Even today an attempt was made to play such tactics by making aforesaid submissions. This conduct can be definitely taken in to

consideration at the time of decision of the present proceedings as the proceedings are filed due to the peculiar facts and circumstances due to which the relief was granted to this accused.

5) This Court has no hesitation to observe that fraud is played on this system by the respondent, accused Shri. Wagh. This respondent had filed applications for relief of anticipatory bail in this Court bearing Criminal Application Nos. 2908 and 2909 of 2013. After hearing both the sides, this Court (undersigned) had expressed that the Court was not inclined to grant relief of anticipatory bail. The learned counsels representing the respondents, accused had then on instruction submitted that they wanted to withdraw the applications and the applications were disposed of as withdrawn. One advocate Shri. Sakolkar was representing the present respondent, Shri. Wagh, the Executive Engineer of Zilla Parishad and one advocate Shri. Joydeep Chatterji was representing the Committee members of the scheme. In the present proceedings, the learned counsels were requested to make statement as to whether they had advanced arguments before this Court and this Court had expressed that this Court was not inclined to grant relief. Both the counsels were before this Court on 18.12.2013 in the present

proceedings and the statements came to be recorded accordingly. It is the practice atleast at this bench of making submissions of withdrawal, when the Court expresses that the Court is not inclined to grant the relief of bail or anticipatory bail. Such withdrawal submissions are made to avoid the observations of this Court with regard to the material, merits of the case. Thus, even when the matters are shown to be disposed of due to withdrawal, the matters are ordinarily treated as rejected on merits. In view of these circumstances, the accused were expected to surrender before police. Instead of surrendering before police, it appears that present respondent, the Executive Engineer, filed applications for anticipatory bail within two days i.e. on 19.7.2013 in Sessions Court. The record shows that in Sessions Court also on merits the applications filed for anticipatory bail were already rejected in the month of May 2013. It appears that the applications bearing Nos. 867 and 868 of 2013 in which relief is granted, came before the learned Additional Sessions Judge Mr. D.P. Surana of Jalgaon. The previous matters were rejected on merits by the learned Additional Sessions Judge Shri. V.S. Dixit in May 2013. Submissions were made in subsequent matters, that after the rejection of the previous anticipatory bail applications, the circumstances had changed. It was contended in the

applications filed for anticipatory bail that the matter in the High Court was withdrawn only due to circumstance that Special Judge had granted anticipatory bail to another accused. It was not informed to the Court that the application was withdrawn in High Court after advancing arguments when High Court had expressed that the Court was not inclined to grant relief. Thus, fraud was played on the Court for obtaining relief and even when the respondent, accused had failed to get relief on merits, the learned Additional Sessions Judge was virtually deceived and the order was obtained. The orders of the learned Additional Sessions Judge Mr. D.P. Surana and the reasoning show that there was total non application of mind and the material which was available was not at all considered. It can be said that even on merits, the order of the learned Additional Sessions Judge, Jalgaon cannot sustain in law. When the criminal Court like Additional Sessions Court grants relief without considering the relevant material, this Court has ample power to cancel that order by using the provisions of section 439 (2) of Cr.P.C. [Relied on **2001 SUPREME COURT 2023 (1) [Pooran Vs. Rambilas and Another]**]. This Court has no hesitation to observe that only on the ground of fraud played on the system and aforesaid circumstances also, the order made by the Additional Sessions Judge can be cancelled.

6) So far as the merits of the matters are concerned, it can be said that there are serious allegations against the present respondents/accused, Executive Engineer and Sectional Engineer. In Maharashtra, by using peculiar modus operandi, the officers and other connected with Irrigation Department, other departments implementing schemes for drinking water have misappropriated huge amount of Government money which runs into thousands of crores of rupees. Even when the work was not executed, it was shown to be executed by joining hands with the Engineers, supervising the work, by preparing false record of bills and vouchers. Another modus operandi was used like preparing false revised estimates showing revision of rates and by getting sanction to additional amount for project when the work was actually completed in period given in contract. Both the modus operandi were used in the present matters.

7) The submissions made show that present respondent, Executive Engineer had control over the schemes, which were being implemented by Zilla Parishad, Jalgaon. He was the main technical hand of the Zilla Parishad and the other technical hands like Deputy Engineer and Sectional Engineer were working under him. Sectional Engineer being the field man

is expected to do inspection of work, take measurement, look after measurement book and then to see that the bills are prepared as per the measurement. His superior officers like Deputy Engineer and Executive Engineer are expected to do the checking of this record and they are also expected to approve the revision of rates when there is delay caused in executing the work and the rates are required to be revised. Thus, the revised estimate is expected to be approved by Executive Engineer. The submissions made show that when the inquiry was made in to irregularities as per the instruction given by the Revenue Commissioner of this region, it was noticed that in the schemes of atleast 31 villages, which were under the control of present Executive Engineer, irregularities were found and by using aforesaid modus operandi, the amount was misappropriated.

8) The submissions made show that writ petitions were filed in this Court by the Committees of 28 villages and the grievance was made that no opportunity of being heard was given to them by the authority. In notices, these Committees were directed to deposit the amount which was misappropriated. This Court (Division Bench) gave directions to the authority to give opportunity to the Committee members to explain the things and then take action. The submissions made show that

the writ petitions came to be disposed of on 1.8.2013, but after that no progress was made, nobody has deposited the amount , but, the action is not taken by the authority for recovery of the misappropriated amount. These circumstances need to be considered against the present respondents, Executive Engineer and Sectional Engineer also as they were involved in those projects also. There are allegations that persons involved are influential and due to that, no action is taken against the Committee members and others. This circumstance also shows as to how the Government money is grabbed and the persons concerned escape even from criminal liability. It needs to be observed that action can be taken against present respondents also in those 28 matters, if they are found to be involved in those matters. In the present two matters and one more matter, opportunity was given to the Committee members by authority and the amount involved is huge. The directions were given by the authority to give reports to the police and accordingly, reports are given. In the present matters, this Court will be considering only the material in respect of the C.R. Nos. 71 and 73 of 2013.

9) Both the F.I.Rs. bearing C.R. Nos. 71 and 73 of 2013 are given by Assistant Executive Engineer of Water Supply

Department of Zilla Parishad, Jalgaon. The F.I.Rs. came to be given after making detailed inquiry of the irregularities and aforesaid modus operandi. Inquiry was done by Deputy Commissioner of Development, Nashik Region on the basis of directions given by Revenue Commissioner. The entire material which can be found in the F.I.R. was considered by the Inquiry Officer. On the basis of this report dated 29.12.2013, a direction was given by the Divisional Commissioner on 12.3.2013 to give reports, register crimes and also to recover the amount misappropriated. These directions were given to the Chief Officer of Zilla Parishad. As per the directions given by the Chief Officer, Zilla Parishad, F.I.Rs. came to be given.

10) For implementation of the schemes at village level, there are Committees of elected members. The technical wing of Zilla Parishad, respondents prepare estimates, supervise work and approve it.

11) In C.R. No. 71/2013, there are allegations that misappropriation of amount of Rs. 28.35 lakh has been done in respect of scheme of supply of drinking water to works of village Waghlud, Tahsil Dharangaon. In the F.I.R., it is mentioned that similar irregularities were found in 31 projects. It is contended

that following modus operandi was used for misappropriation of the Government money.

(i) When as per the Government Resolutions, the Committee was expected to make payment only by cheque and demand draft, all the payments were made by cash.

(ii) When there were directions to issue tenders for purchasing material and even for giving work to the contractors, no such tenders were floated. In this village, one Shri. Mangal Ganpat Patil was shown as contractor, but no such contractor is in existence. By preparing false vouchers, the amount of more than Rs. 14.94 lakh was shown to be given to Mangal Ganpat Patil. The work included the construction of overhead water tank. When the overhead water tank was already available in the village and it was constructed in another scheme, this water tank was shown in the present scheme and the payment was shown to be made. This payment was shown to be made by cash when even as per the directions given by the Income Tax Department, the payment of more than Rs. 20,000/- need to be made by cheque or demand draft.

(iii) Some material was shown to be purchased

from Nilkamal Traders (Pimpri Khurd) by producing the vouchers of this shop. One bill was of 24.6.2003. The Village Panchayat Pimpri had made construction of commercial complex and first time, the tender was published on 9.12.2004 for giving shops from this complex but as per the record of the present matter, Nilkamal Traders was shown to be functioning in this complex on 24.6.2003. One Shri.Subhash Champalal Patil, the Secretary of the Committee of this Village was shown as owner of the shop, when the shop was not in existence and the payment of more than Rs. 5.39 lakh was shown to be made to this shop. This shop had no record of sales tax, VAT etc. and this payment was also shown to be made by cash.

(iv) Some amount was sanctioned for construction of public toilet. The amount was disbursed by the authority in the moth of August 2010. When no construction of public toilet was done, the amount of Rs. 1.43 lakh was withdrawn and it was misappropriated. The second installment of Rs. 1.44 lakh was also taken and it was shown to be paid to one Shri. Rohidas Aawasli Koli. When the amount of more than Rs. 2.87 lakh was shown to be paid before

20.7.2012, when the visit was paid by the Inquiry Officer, there was no public toilet block in existence. Thus, by using this modus operandi, the amount of Rs. 2.87 lakh was misappropriated.

(v) It is noticed that there are two measurement books. There is inconsistency in the two books with regard to everything. The inconsistency is with regard to the measurement and also with regard to rates. One technical consultant Shri. Yogesh Sharad Kolgekar was expected to prepare the measurement book, but it can be said that the technical man of Zilla Parishad like Sectional Officer was expected to keep control over the things as he was the field man for Zilla Parishad. Even when some work was executed in the year 2003 itself, it was shown that the work was not executed and delay was caused and revised estimates were prepared. For that, second measurement book was prepared and on that basis, the revised estimate was submitted before the Executive Engineer, present respondent and he approved the revised estimate. On that basis, the sanction of the Government was obtained for additional amount and this amount was misappropriated. The work which was already executed

and the purchases which were made within prescribed period are mentioned in revised estimates and they include the purchase of pumping machine.

(vi) The work of erection of barbed wire fencing was not actually done, but the work was shown to be executed and this amount was misappropriated. This amount was more than Rs. 1.30 lakh.

(vii) When the work of underground bunding was already executed, this work was shown in the second measurement book, revised estimate was prepared and as against the amount of initial assessment of Rs. 71,000/-, the amount of Rs. 3.66 lakh was got sanctioned and the excess amount was misappropriated.

(viii) The procedure was flouted and the matters were directly taken to the Executive Engineer by giving bye-pass to other technical hands, who are between the Committee and the Executive Engineer. That was done to obtain the sanction in respect of revised estimates.

12) The aforesaid material is not at all considered by the learned Additional Sessions Judge. The peculiar modus operandi

is also not considered and without application of mind, the learned Additional Sessions Judge has granted relief of anticipatory bail to these respondents in C.R. No. 71/2013.

13) C.R. No. 73/2013 is in respect of the work which was to be executed in the village Sonwad Khurd, Tahsil Dharangaon. It was also water supply scheme. There are allegations which are of similar nature and there are further allegations that some extra expenditure was shown and the amount was misappropriated. This work included the taking of bore well, fixing of pump and machinery, construction of pump house and laying of pipeline etc. This work also included barbed wire fencing and some other ancillary work. In this work also, respondent Chandrakant Wagh, Executive Engineer was involved and one Yogesh Kolgekar was technical consultant. From the same shop viz. Nilkamal Traders, material was shown to be purchased and vouchers of this shop were collected by the Committee. Some amount was shown to be paid by cheque, but most of the amount was shown to be paid by cash. In this matter, also it was noticed that revised estimate was prepared for misappropriation of the amount by using similar modus operandi and in this crime, there is allegation that the amount of Rs. 13.75 lakh was misappropriated. This material is also not at

all considered by the learned Additional Sessions Judge while granting relief of anticipatory bail.

14) In the reply filed by the present respondent, Executive Engineer, he has contended that he approached the learned Additional Sessions Judge as the learned Additional Sessions Judge had granted relief to Sudhir Dahake, Sectional Engineer and he had withdrawn the proceeding filed in this Court. This Court has already observed that this Court was not inclined to grant relief and as per the procedure at this station, the application was disposed of as rejected and only the observations were avoided by the accused by withdrawing the proceeding. He has made allegations against his colleagues like Assistant Engineer and he has contended that the inquiry was not properly made and the report is not correct. He has contended that only departmental inquiry can be held and no action including criminal action can be taken. He has contended that the amount was properly utilized and no offence has been committed even by the Committee. He has contended that the revised estimate was approved by the Gram Sabha and so, it cannot be disputed. He has contended that it is the duty of the Deputy Engineer to visit the site and to examine the work and Executive Engineer cannot be held responsible, if there is any

irregularity. He has contended that he has no other criminal record and so, he is entitled to protection.

15) The learned counsel for other respondent Shri. Sudhir Dahake submitted that there are no specific allegations against Dahake and so, there is no reason to interfere in the orders made in favour of Dahake. On one hand, it is submitted for Executive Engineer that Dahake the man on field got relief and so, he is entitled to relief and on the other hand, Dahake is saying that he had no role to play. In F.I.R. itself name of Dahake is mentioned. He was Sectional Engineer, the field man and so, measurement books could not have been prepared without his approval. Even if the submission that revised estimates were prepared behind his back and without taking recommendation from him is considered, there are allegations of aforesaid nature. Even when the work was not executed, the work was shown to be executed and so, the Sectional Engineer cannot say that he is not responsible. He is a man on the field and only after actual measurement of the work, he is supposed to give green signal of making payment of the bills. Unless there is such technical approval, the bills are not passed. This circumstance shows that Dahake has also hand in aforesaid misappropriation.

16) Though there are two matters before this Court, the material discussed and the allegations show that in 31 villages similar irregularities were found. Unless the technical man like Sectional Officer and Executive Engineer join hands with the members of the Committee, there is no possibility of misappropriation of the amount. Whenever there is misappropriation of the amount and the Government is duped, that amount needs to be recovered. That amount needs to be treated as stolen property under section 410 of I.P.C. It cannot be said in the cases like present one that only on the basis of record, investigation can be done. The actual role played and the other persons who had joined hands in creating false record can be ascertained only after custodial interrogation. Amount of thousands of crores of this State has been misappropriated and this could not have happened if the officers like present respondents had acted honestly. They are certainly benefited and that money needs to be traced. Such persons are not at all entitled to any lenient view. All these circumstances need to be considered by the Criminal Court while using the discretionary power of granting anticipatory bail. Thus, the relevant material is not at all considered and the learned Additional Sessions Judge has committed grave error in granting relief on merits to both the respondents, Executive Engineer and Sectional Engineer.

This Court has no hesitation to hold that the orders made in their favour need to be cancelled. Unless there is custodial interrogation, the investigation will not be effective and it will not be possible for the investigating agency to complete the investigation. There is possibility of revealing more material and more instances of fraud only after the custodial interrogation.

17) Morality has gone to the lowest level. The corruption has increased to alarming extent and it is on the rise. Many officers who are supposed to protect public money are joining hands with outsiders to mint money. Due to the corruption, the welfare schemes of Government are not implemented. Even after spending thousands of crores of rupees by the Government on such schemes people in drought hit areas are not getting even drinking water. For most of the time of the year their villages have a look of desert. Due to absence of water, these areas have remained underdeveloped. Money provided for such schemes is being continuously misappropriated as they are sure that with the same money they can save themselves. Most of them do not remain behind bars even for a single day and stolen property is never traced and seized. This money is making such officers rich and many more officers are getting involved in such activities. The honest officers are finding it difficult to work.

Courts cannot ignore this condition of the society.

18) If Investigating Officer is of the opinion that there are grounds for investigation and for the same custodial interrogation is necessary, due weight to his opinion needs to be given by the Court. This is because the police have the statutory power to investigate cognizable offences. When there is such statutory power, it is generally desirable that method and manner of investigation are left entirely to the officer incharge of investigation.

19) By the amendment of 2009 to section 41 of Cr.P.C., in case of cognizable offence punishable with imprisonment of a term less than seven years and which may extend to seven years, some conditions are required to be fulfilled by the Investigating Officer, but that does not mean that the power is reduced in any way. To see that arrest is not made as a matter of course in such cases, the limitations/conditions are given in section 41 of the Code. Once the police officer is satisfied about it and puts it in writing, he can exercise the power of arrest. So, when in proceeding filed before Court for relief of anticipatory bail, when the Investigating Officer/ the prosecutor submits that custodial interrogation is necessary, the Court should give due

weight to such submission. For more serious offences, no justification in writing is required to be given by Investigating Officer at the time of arrest. The provisions of sections 57, 156 and 167, 169, 170 and 173 of Cr.P.C. are also relevant in this regard as they speak about the said statutory power.

20) In the result, the applications are allowed. The orders made by the learned Additional Sessions Judge granting relief of anticipatory bail to the respondents/accused viz. Chandrakant s/o. Parsharam Wagh and Sudhir s/o. Devidas Dahake are set aside. The relief granted in their favour is cancelled. Both these persons are to be arrested and taken in custody forthwith. Investigating agency will be at liberty to approach the concerned J.M.F.C. for obtaining remand after the arrest of these persons.

[T.V. NALAWADE, J.]

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