

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.5509 OF 2015

Nivrutti s/o Shripatrao Raut,
Age: 50 years, Occ: Service,
R/o. Forest Office, Bhokar,
Dist. Nanded. ...Applicant

versus

The State of Maharashtra,
Through Police Station Officer,
Bhokar Police Station,
Dist. Nanded. ...Respondents

.....
Mr. S.B. Talekar, Advocate for applicant
Mr. A.V. Deshmukh, A.P.P. for respondent
.....

CORAM : N.W. SAMBRE, J.

DATE : 17th DECEMBER, 2015

ORAL ORDER :

The applicant, a public servant, Plantation Officer, seeking pre-arrest bail in connection with Crime No. 125 of 2015 registered at Bhokar Police Station, District Nanded, for the offence punishable under Section 409 read with Section 34 of the Indian Penal Code, in the matter of bogus plantation.

2. While trying to make out the case for grant of pre-arrest bail, Mr. Talekar, learned Counsel for the applicant would strenuously urge that plantation in question took place in June, 2013 and joint

measurement took place on 24/06/2014 which was carried out of by Plantation Officer, Social Forest Department, Mukhed. Survival rate of plants was shown to be almost 60%. He would then urge that location of the planting site is required to be appreciated in the background of the drought situation and in absence of watering facility in the plantation, which is overlooked, which according to applicant is one of the mitigating circumstances. He would then urge that F.I.R. is based on 2nd inspection report which was carried on 15/12/2014 to 05/02/2015 i.e. almost 1-1/2 year of plantation. He would then urge that there are complaints against E.G.S. Officer, who has demanded bribe from the applicant and conversation of demand of money by one E.G.S. Officer, Mr. Deshmukh is already recorded, as such, he is falsely implicated in the crime.

3. He would then rely upon the judgment of the Apex Court in the matter of ***Bhadresh Bipinbhai Sheth vs. State of Gujrat and another*** reported in ***2015 ALL MR (Cri) 4116 (SC)*** and has also invited attention of this Court to the principles laid down by the Apex Court in the matter of ***Gurbaksh Singh Sibbia & ors. vs. State of Punjab*** reported in ***1980 (2) SCC 565***. According to him, as the applicant is a public servant, there are hardly of any chance of fleeing from the prosecution and as such, is entitled for pre-arrest bail.

4. Mr. Talekar, learned Counsel for the applicant would submit that the complaint was made by the applicant as regards inaction on the part of other officers and also that of illegal demand of one Mr. Deshmukh. According to him, on the said complaint, inquiry was ordered, however, he has not heard anything further about the same.

5. Learned A.P.P., while opposing the bail application, would urge that the second inspection committee was headed by experts from the forest department. According to him, the circumstances, as were prevailing and were adverse to the survival of the plantation were also taken into account by the said authorities. What is noticed by authorities, according to learned A.P.P., the applicant has not carried out plantation activities in toto. According to him, very few plants were planted. So as to substantiate his contention, he has invited attention of this Court to the report to that effect prepared by Assistant Director of Forestry. The perusal of report prepared by Assistant Director of Social Forestry, Nanded which was formed to be a basis for lodging of F.I.R. against the applicant depicts that, as per measurement books, which was formed to be a basis for disbursement of the amount from the Government account towards expenses incurred in plantation, applicant has claimed to have dug 10,000 pits and has planted 20,000 siblings in

10 Hector area of village Laglud and 12,500 pits and planted 25,000 siblings in Halda village in 10 Hector area, for which total expenses incurred was Rs. 11,83,812/-. Against the above referred amount, as was incurred in the plantation, upon physical verification it was noticed that, in village Laglud as against payment of 10,000 pits, only 600 were noticed and in village Halda, as against payment of 12500 pits, only 2647 pits were dug. Against the claim of plantation of 20,000 and 25,000 of siblings in above named village, only 1680 and 1267 were noticed, for which the amount of Rs. 1,69,098/- was incurred towards expenses. The report then depicts that total defalcation caused was Rs. 10,14,714/- and the applicant is responsible for defalcation of Rs. 6,03,593/-.

6. The report is based on the physical inspection.

7. It is no doubt true that Mr. Talekar, learned Counsel for the applicant was right in pointing out that the applicant cannot be held to be only responsible, however, the applicant was incharge of post of Plantation Officer and was required to physically supervise and execute the work in question honestly in performance of his public duty.

8. Upon perusal of the investigation papers, it is noted that

apart from monetary loss caused to the public exchequer, environmental loss at the behest of non performance of public duty of applicant is also required to be taken note of seriously.

9. So far as the contention of applicant as regards the inquiry in the matter of complaint made by him is concerned, same would not absolve him of his criminal liability, as we are concerned here with *mens rea* of the applicant, as such, said submissions are of hardly any assistance in the matter.

10. Mr. Talekar, learned Counsel for the applicant submits that the applicant is not responsible for disbursement as the amount was disbursed by Tahsildar, when confronted he was unable to substantiate the said contention by any documentary evidence.

11. In view of above and having regard to the prima facie evidence available against the applicant in the commission of crime, in my opinion, no case for grant of pre-arrest bail is made out. Reliance placed on the judgment of the Apex Court in the matter of Bhadresh Bipinbhai Sheth (*supra*) will be of hardly any assistance, particularly when there is sufficient evidence available against the applicant, as such, the application fails, stands dismissed.

12. Before parting, it will be appropriate to forward the C.D. of conversation demanding bribe from applicant by one of the officers to the Investigating Officer. Learned A.P.P. is directed to hand over the C.D. to I.O. which is placed on record of this case and submit compliance thereof to this Court.

[N.W. SAMBRE, J.]