

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 11 OF 2015

Yasin Najib Khan	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 14 OF 2015

Sudhakar Khanderao Sonawane	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 10 OF 2015

Chandrabhan Dagu Ghuge	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 12 OF 2015

Swati Ramesh Bhabad @ Swati Nivrutti Sabale	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 13 OF 2015

Shiwaji Rangnath Somvanshi	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Tushar N. Sonawane, Advocate for the applicants.

Ms. R.V.Newton, APP, for the respondent-State (in ABA No.11/2015 & 10/2015).

Mr. J.H.Ramugade, APP, for the respondent-State (in ABA Nos. 14/2015 & 12/2015)

Ms. Vira Shinde, APP, for the respondent-State (in ABA No.13/2015)

CORAM: SMT.SADHANA S.JADHAV,J.

DATE : 14th January, 2015.

P.C.

Heard.

2. These are the applications under Section 438 of the Code of Criminal Procedure, 1973. The applicants are apprehending their arrest in Crime No.161 of 2014 registered at Wavi Police Station, Sinnar, Dist Nashik for the offences punishable under Sections 420, 465, 466, 468, 471, 472, 463, 477A, 406, 409, 166, 167, 199, 200 read with Section 34 of the Indian Penal Code.

3. It is the case of prosecution that all the present applicants are public servants. One Gangadhar Punja Bhalerao, who filed a complaint before the Ombudsman, Nashik, alleging therein that the present applicants have misappropriated huge amount by giving benefits to the persons who were not eligible for the benefits contemplated by the Scheme i.e. "Mahatma Gandhi Rashtriya Gramin Rojgar Hami Yojna 2011". According to the complainant, some villagers had obtained the benefits illegally in connivance with the present applicants and, therefore, the applicants had also committed the said offences.

The Ombudsman had taken up the complaint for enquiry and on 4.9.2014, the Ombudsman had observed that there has been a misappropriation to the tune of Rs.43,74,668/- by way of which, the people who were not eligible for the benefits, were granted the benefits by the grace of the present applicants. The Ombudsman had directed initiation of criminal prosecution against the beneficiaries and the public servants who had misappropriated the funds of the Central Government.

4. The said order passed by the Ombudsman was challenged before this Hon'ble Court. By an order dated 26.9.2014, the Hon'ble Single Bench (Coram: Ranjit More, J.) had disposed of the Writ Petition by directing the petitioners to prefer an appeal against the said order and the applicants were protected for a limited period.

4. The applicants had then preferred an appeal before the Appellate Authority. There was no progress in hearing of the said appeal and, therefore, the applicants were constrained to file Writ Petition No. 10906 of 2014 before this Court. The Hon'ble Single Bench (Ranjit More, J.) by an order dated 3.12.2014 had directed the Appellate Authority to hear the appeal expeditiously and dispose of the same preferably within a period of two weeks.

5. Pursuant to the said order, the Appellate Authority had heard the matter and after hearing both the parties, by an order dated 16.12.2014 allowed

the appeals and remanded the matters for fresh hearing on the ground that the Ombudsman had not adopted appropriate procedure and that the order was not passed in accordance with law. The Appellate Authority had then appointed a Special Committee to enquire into the allegations of the original complainant. The appellate authority had set aside the order and stayed initiation of criminal prosecution against the present applicants and the beneficiaries. The order was passed on 16.12.2014. However, the first information report was lodged on 29.11.2014 and investigation had been set in motion. The applicants are, therefore, praying for pre-arrest bail.

6. The learned counsel for the applicants has produced before this Court the Instructions given to the Ombudsman by the State Government of Maharashtra in conducting the enquiry on the basis of private complaints. The learned counsel has drawn attention of this Court to clause 13.4.8 which contemplates as follows :-

“13.4.8. Parties aggrieved by the awards of Ombudsman must make a signed written appeal to the Appellate Authority within 15 days of the submission of such finding with a copy of awards and recommendations by Ombudsman”.

It can therefore be held that the recommendations of the Ombudsman can be challenged before the Appellate Authority. In the present case, since the Appellate Authority has stayed criminal

proceedings, it would be appropriate to grant pre-arrest bail in favour of the applicants.

7. It is true that initiation of criminal prosecution as directed by the Ombudsman has been stayed by the Appellate Authority. By an inference, it can be said that in fact, till the enquiry is completed, no coercive steps could be taken against the present applicants. This, in any case, does not mean that this Court has stayed further investigation as it would be in the nature of directions which could be passed only by the Hon'ble Division Bench. However, taking into consideration the facts of the present case, and that the applicants are public servants, who are under enquiry, this Court is inclined to grant pre-arrest bail in favour of the applicants.

ORDER

(i) The applications are allowed. In the event of their arrest, the applicants be enlarged on bail on each furnishing P.R. Bond in the sum of Rs.15,000/- with one or two sureties in the like amount.

(ii) The applicants shall report to the Investigating Officer as and when called.

Applications stand disposed of.

(SMT.SADHANA S.JADHAV, J.)