

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.586/2014

(Dilipkumar s/o Gokulchand Sananda..vs..The State of Maharashtra, through PSO
P.S. Khamgaon (City), Dist. Buldana)

AND

CRIMINAL APPLICATION (APL) NO.690/2014

(Anil Harikisan Navandar..vs..The State of Maharashtra, through PSO P. S.
Khamgaon (City), Dist. Buldana and anr.)

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

Court's or Judge's orders.

(Criminal Application No.586/2014)

Mr. A. S. Mardikar, Senior Advocate with Mr. R. M. Daga,
Advocate for applicant.

Ms. N. P. Mehta, A.P.P. for non applicant-State.

Mr. S. V. Sirpurkar, Advocate for intervenor.

(Criminal Application No.690/2014)

Mr. A. S. Mardikar, Senior Advocate with Mr. R. M. Daga,
Advocate for applicant.

Ms. N. P. Mehta, A.P.P. for non applicant-State.

Mr. A. M. Gordey, Senior Advocate with Mr. B. G. Kulkarni and
Mr. S. V. Sirpurkar, Advocates for non applicant no.2.

CORAM : A. B. CHAUDHARI, J.

DATE : DECEMBER 21, 2015.

Criminal Application No.586/2014 is under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail arising out of Crime No.6/2014 for an offence punishable under Sections 403, 406, 408, 409, 417, 418, 465, 466, 468 read with Section 34 of the IPC and Criminal Application No.690/2014 under Section 482 of the Code of Criminal Procedure is for setting aside order dated 28.10.2014 passed by Additional Sessions Judge, Khamgaon in Criminal Revision No.83/2014

directing the Police Station Officer, Khamgaon to register a case on the written complaint made by non applicant no.2. Applicant-Dilipkumar Sananda is an ex Member of Legislative Assembly from Khamgaon Constituency and was elected thrice. One of his brother is the present President of Khamgaon Municipal Council. Counsel for the applicants submitted that both these applicants; Dilipkumar Sananda and Anil Navandar were members of the committee that was constituted for finalizing the tender for allotting the work of architecture as well as construction of the administrative building of the Municipal Council, Khamgaon. Out of bids received, names of five Architects were short listed and though there were Architects who had quoted lower rates, the committee had deliberately selected the Kabre and Choudhary Architects from Nashik without any rhyme or reason causing the alleged loss to the Municipal Council. The learned counsel then submitted that as per the audited report, 9.90% more rate was approved by this Committee causing loss of Rs.39,42,169/- and Rs.1,57,686/- to the Municipal Council. It is on the basis of these allegations of the complainant-non applicant no.2, the aforesaid offences were registered against both the applicants.

In support of the applications, Mr. Anil Mardikar, learned Senior Counsel with Mr. R. M. Daga, counsel for the applicants submitted that non applicant

no.2 has not arrayed all the persons and the Chief Officer of the Municipal Council as accused in the complaint but has selected only these two applicants and, therefore, the complaint is malafide. He then submitted that under the Bombay Local Fund Audit Act, 1930, on the basis of the complaint that is based on the audit report of the Auditor, no offence could be directly registered under the provisions of the Indian Penal Code. According to them, the Bombay Local Fund Audit Act, 1930 provides for a procedure namely; that the report of the auditor is required to be placed before the Municipal Council and then the objections raised in the audit are discussed in the meeting and along with the explanations or as the case may be, the report is then sent to the appropriate authority and if still the objections are not explained or ruled out, the Commissioner of the division has to hear all the concerned parties and thereafter make an order and it is only after that order the liability is decided. The learned counsel for the applicants, therefore, contended that it is premature to register an offence in the manner done in the present case. Counsel for the applicants then argued that the period relates to the year 2006 to 2011 and as late as after 7 to 8 years, such an FIR came to be lodged, which was clearly out of political enmity. Counsel for the applicants in Criminal Application No.586/2014 contended that the applicant is on interim anticipatory by order of this Court and that there is no adverse report

against him. None of the applicants have any previous bad antecedents and, therefore, it is necessary to protect their liberty.

Counsel for the applicant in Criminal Application No.690/2014 then submitted that the very order of registration of the FIR in the revision made by the Sessions Court is an order, which is illegal since the Sessions Court in the revision could not have directly ordered registration of the FIR when that power was with the Magistrate alone. Counsel for the applicants then submitted relying on the judgment in the case of K. Thankamani and etc..vs..The Inspector General of Police, Kozhikode and others; 2002 CRI.L.J. 1092 and (2011) 3 SCC 496 in support of their applications.

Per contra, Mr. A. M. Gordey, learned Senior Counsel along with Mr. B. G. Kulkarni and Mr. S.V. Sirpurkar for non applicant no.2 as well as learned A.P.P. for non applicant no.1-State opposed the application and submitted that the revisional Court could not be faulted for the direct registration of the FIR in revision since it is the revisional power itself to correct errors made by the trial Judge and also to pass such other orders as deemed fit. They contended that the revisional court has exercised its powers and it is not beyond the jurisdiction of the revisional Court to order registration of the FIR since the revisional Court is higher Court in hierarchy than the J.M.F.C. which possesses all powers of the trial Judge.

They contended that both the applicants have caused serious loss to the Municipal Council and there is no explanation whatsoever as to why they accepted the highest rate of the Kabre and Chaudhary Architects from Nashik and gave the contract over and above 9.90% more. The offence is of fraud and misappropriation of the public money and the applicants cannot be given premium of grant of anticipatory bail.

I have heard learned counsel for the parties at length. I have perused the entire record so also reply filed by the prosecution as well as non applicant no.2. At the outset, I find that both these applications do not show a single averment about any political rivalry either vaguely or in specific in order to support the contention that out of the political rivalry, the FIR was registered at the behest of non applicant no.2. Therefore, the contention of the political rivalry must be rejected outright.

The next contention that the revisional Court could not have issued the order for registration of the offence and it should have been left to the Magistrate and the applicants should have been a party in the revision must also be rejected because this Court is not concerned with the said aspect of the matter in an application under Section 438 of the Cr. P. C. wherein this Court could only examine whether an order of anticipatory bail should be made or not and nothing more. Hence, the said

contentions are rejected.

Coming to the merits of the matter, it is seen that the applicant-Dilipkumar Sananda who is an ex-MLA and the Anil Navandar along with other members, formed the committee meant for finalizing the tender process for construction of the administrative building of the Municipal Council, Khamgaon. There is no explanation whatsoever from any of the applicant as to why when less rate offers were available, the committee chose to select Kabre and Chaudhary Architect from Nashik at the highest rate. There is also no explanation as to why the extra or higher rate which is 9.90% more than the estimate was awarded to the Kabre and Chaudhary Architects from Nashik. The fact remains that because of the dishonest conduct of the applicants loss of Rs.39,42,169/- and Rs.1,57,686/- has been caused to the Municipal Council. The applicants definitely had an opportunity to explain their stand to this Court about these irregularities done by them in order to make out a prima facie case but then both the applicants have chosen to remain blissfully silent and hence this Court has no other alternative but to draw an adverse inference that they had vested interests in the process and must have been benefited financially causing serious loss to the Municipal Council and ultimately the public money. This is also a reason for rejecting the contention about the procedure to be followed under the Bombay Local Fund Audit Act about which submissions

were made before me. It would be apt to quote following paragraphs from the reply filed by the prosecution:

“4. During the course of investigation, the Investigating Officer collected the necessary documents from the office of the Municipal Council, Khamgaon includes the proposal of special meeting dated 26.12.2006 regarding the publication of advertisement for calling bids of the architect for the construction of the administrative building of the Municipal Council, Khamgaon and also collected the resolution dated 20.03.2007 of the Standing Committee of the Municipal Council as well as resolution dated 30.05.2007 of Special Meeting and also collected order sheet of the Municipal Council which shows that the Chief Officer of the Municipal Council also raised objection regarding inclusion of persons in Tender Selection Committee and submitted that the said Committee includes the office-bearers of the Municipal Council, Executive Engineer of the Public works Department, Khamgaon and the Town Planning Officer, Buldana. The Chief Officer also raised objection regarding the rate quoted by the Architects Kabre and Chaudhari and therefore, it will be proper to negotiate about the said rate. Without considering the said objections, the said Committee appointed the said Architects though their rates are much higher than the other bidders. It is submitted

that the selection of the said Architects prima-facie shows that the said Architects Firm is selected only for the pecuniary gain to the accused persons including the present applicant.

5. *It is further submitted that the present applicant is not the office-bearer or the member of the Municipal Council, Khamgaon and not an expert in the field of construction and in spite of this situation, he has been taken in the Tender Selection Committee as member. The complainant submitted that the present applicant was the member of the Legislative Assembly of Khamgaon Constituency and his Ruling party is also in power in the Municipal Council and therefore, his name is included in the said Committee and the present applicant under his political power appointed the said Architects though there was an objection of the complainant and due to the said selection of the Architects M/s Kabre and Chaudhari, the applicant with other accused persons has caused to heavy loss to the Municipal Council and therefore the audit report of the Municipal Council has submitted that an amount of Rs.1,57,686/- is recoverable from the accused persons including the present applicant. The auditor report also reveals that the bid of the said administrative building has increased up to 09.90% of higher rate while publishing the same for giving the higher fees to the*

said Architects which is not permissible and therefore, the Architects not entitled to accept the 4% Architects fees worth Rs.14,00,384/- has rejected and directed to recover above amount from the accused persons. The Investigating Officer recorded statement of the complainant on 31.10.2014 and also collected his supplementary statement on 02.11.2014.”

From perusal of the reply, it is clear that there is strong evidence against the applicants and though the applicants were supposed to protect the public interest, they protected their own and vested interest. By and large, it has become the habit of those occupying such positions that they always have an eye on the public money involved in the public works. It is a sordid state of affair that it has assumed rampant proportion in last about two decades.

The contention raised by learned counsel for the applicant in Criminal Application No.586/2014 that it is not necessary to have custodial interrogation of the applicant, also will have to be rejected. In the first place, there is a strong prima facie case against him as discussed by me above and that itself is a ground not to entertain the application for grant of anticipatory bail. That apart, the applicant is required to be interrogated while in custody in order to spill the beans as to his role which is only within his knowledge in the entire fraud that was

committed by their active and overt acts. It is possible only if they are taken into custody and interrogated.

To sum up, applicant-Dilipkumar Sananda is not entitled to the grant of anticipatory bail and the interim order made by this Court ought to be vacated.

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Now coming to this application again, as stated earlier, the applicant was an elected MLA from Khamgaon Constituency thrice and must be deemed to be a public servant and not the master. It is undisputed fact that the several offences have been registered against his family members for doing money lending business and obtaining or grabbing lands of the farmers in the District of Buldana. Several criminal or other cases are pending against his family members. The *modus operandi* appears to be to take agricultural lands of the farmers in lieu of advancing the loan amounts to them with heavy interest rates. Though, the Bombay Money Lenders Act the then was in force, the Government machinery totally failed to oversee the activities of such money lenders which ultimately resulted into the large tracts of lands have being forfeited to the Sanandas. Be that as it may. The applicant-Dilipkumar Sananda who was the MLA climbed the peak when he requested for and got a favour from the then Chief Minister of the State in the matter of registration of

the criminal cognizable offence against his family members by the police machinery. The then Chief Minister also fell prey to his requests and ordered the Government machinery to favour him and his family members. Those actions were challenged before this Court and this Court had disapproved the actions being contrary to the law and unconstitutional. The said judgment was challenged before the Apex Court by State of Maharashtra. The apex Court in the said Case; **State of Maharashtra and ors...vs..Sarangdharsingh Chavan and another (2011) SCC 577**, imposed cost in the sum of Rs.10,00,000/- to be paid by the State of Maharashtra after making a detailed judgment as to the role of the present applicant-Dilipkumar Sananda in influencing the the then Chief Minister and acting unconstitutionally and getting illegal orders from the Chief Minister. Needless to repeat all the acts and unconstitutional orders which were found by the apex Court were made at the behest of the present applicant-Dilipkumar Sananda. The apex Court in its order observed thus :

“17. The Collector admitted in paragraph (3) of the affidavit that on the complaint of Sananda before the Chief Minister about cases being registered against him and his family members without investigation, the Chief Minister called the Collector at Mumbai and gave the instructions quoted above and thereupon the Collector conveyed the message of the Chief Minister

to the Superintendent of Police, Buldhana. However, the Collector took a stand that by doing so he has not committed any illegality.

18 to 31.

32. From the communication of the Collector containing the instructions of the then Chief Minister, Mr. Vilasrao Deshmukh, it is clear that the Chief Minister was aware of various complaints being filed against the said family. Even then he passed an order for a special treatment in favour of the said family which is unknown to law. This was obviously done to protect the Sananda family from the normal legal process and a special procedure was directed to be adopted in respect of criminal complaint filed against them.

33. In other words, the Chief Minister wanted to give the members of the said family a special protection which is not available to other similarly placed persons. It is clear from the Collector's order dated 5.6.2006 where the Chief Minister's instructions were quoted that the Chief Minister was acting solely on political consideration to screen the family of M.L.A from the normal process of law.”

The State Government readily deposited the amount of costs of Rs.10,00,000/- from the State coffers.

It is in the above background, this Court vide order dated 14.12.2015 asked the applicant to make statement as to within what time the amount of Rs.10,00,000/- would be paid back by the applicant to the State Government. The reason for asking him to reimburse the cost of Rs.10,00,000/- to the State Government was that the entire episode resulting into levying of the costs of Rs.10,00,000/- arose only at the instance of the applicant Dilipkumar Sananda. The applicant has filed affidavit on 15.12.2015 in response to the said order and stated that he is shocked to see the said directions to make statement and that there is no connection of deposit of Rs.10,00,000/- in the present case.

The fact that it is the applicant-Dilipkumar who was fulcrum in getting the illegal and unconstitutional orders from the then Chief Minister and it is he who was responsible for the same to order the Government machinery not to register the offence against his family members and that fact is duly adjudicated by the apex Court in the aforesaid case and, therefore, to say that the applicant is nowhere concerned with the said judgment of the apex Court or to deposit of Rs.10,00,000/- is to mislead one and all. The applicant very well knows that it is he who was responsible for the entire episode and that the cost of Rs.10,00,000/- should have been paid by him rather than from public exchequer. It is not only strange but painful that the State Government took a decision to

pay the cost of Rs.10,00,000/- from the State exchequer which is hard earned money of the tax payers without even thinking as to what was the fault of the tax payers, why the tax payers should pay such costs of Rs.10,00,000/- when the entire misuse and illegal, unconstitutional orders were passed at the behest of the present applicant. The State Government is trustee of the tax payers' money and by paying cost of Rs.10,00,000/- from the tax payers' money, the State Government did not think about the pains which would be caused to tax payers. Had it been the own money, decision to part therewith, certainly would not have been taken. At the same time, when the Supreme Court found the applicant to be the fulcrum of the entire episode, it was the duty of the State Government to recover the cost of Rs.10,00,000/- from the applicant rather than it paying from the tax payers hard earned money. The tax payer, particularly in the State of Maharashtra, is reeling under a mounting pressure of taxes and the cost of living is the highest in this State and this is the reputation gained by the State.

This Court expected that the applicant, who his very much well to do person and an elected Member of Legislative Assembly thrice, would realize his mistake himself and offer to reimburse the cost but now he is trying to get himself away even from his family members by saying that he had no concern in the matter in respect

of the offences registered against his family members.

Be that as it may, even now this Court strongly feels that the State Government should take steps to recover the said amount of cost imposed by the Supreme Court at least now to care for the tax payers' interest.

In that view of the matter, following order is passed.

ORDER

(i) Criminal Application Nos.586/2014 and 690/2014 are dismissed. Interim orders passed by this Court stand vacated.

(ii) Applicant-Dilipkumar Sananda in Criminal Application No.586/2014 shall surrender within two days.

(iii) The State Government to recover cost of Rs.10,00,000/- deposited by it from applicant-Dilipkumar s/o Gokulchand Sananda in accordance with law.

JUDGE