IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.130 OF 2016

Sow. Sukamal w/o Dhondiram Sakhare,
Age: 40 years, Occu: Household,
R/o. Chinchpur, Tq. Dharur,
At present R/o. Kaij, Tq. Kaij,
Dist. Beed ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Superintendent of Police,
Beed, Tq. and Dist. Beed

2. The Police Inspector,
Police Station, Yusufwadgaon,
Tq. Kaij, Dist. Beed ..RESPONDENTS

Mr D. J. Choudhari, Advocate for applicant;
Mr S. P. Sonpawale, Addl. Public Prosecutor for respondents

WITH
CRIMINAL APPLICATION NO. 223 OF 2016

Shrihari s/o Venkat Lamb,
Age: 55 years, Occu: Agri.,
R/o. Chinchpur, Tq. Dharur,
Dist. Beed ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Yusuf Wadgaon,
Tq. Kaij, Dist. Beed

2. The Superintendent of Police,
Beed ..RESPONDENTS

Mr J. M. Murkute, Advocate for applicant;
Mr S. P. Sonpawale, Addl. Public Prosecutor for respondents

WITH
CRIMINAL APPLICATION NO. 211 OF 2016

1. Sudhakar s/o Tukaram Ghuge,
Age: 46 years, Occu: Agriculture,
R/o. At. Po Chinchpur, Tq. Dharur,
Dist. Beed

2. Mohan s/o Nivrutti Samudre,
Age: 48 years, Occu: Agriculture,
R/o. At. Po Chinchpur, Tq. Dharur,
Dist. Beed ..APPLICANTS

VERSUS

The State of Maharashtra,
Through Yusuf Wadgaon Police Station,
Yusuf Wadgaon ..RESPONDENT

Mr S. G. Kawade, Advocate for applicants;
Mr S. P. Sonpawale, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 96 OF 2016

Vishwajeet s/o Nanabhau Bade,
Age: 33 years, Occu: Construction Consultant,
R/o. Gavandara, Tq. Dharur,
Dist. Beed ..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Yusuf Wadgaon,
Tq. Kaij, Dist. Beed

2. The Superintendent of Police,
Beed ..RESPONDENTS

Mr J. M. Murkute, Advocate for applicant;
Mr S. P. Sonpawale, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 29th February, 2016

ORDER :

By these applications under section 438 of the Code of Criminal Procedure, the applicants are seeking pre-arrest bail, in connection with C.R. No.142 of 2015, registered with Yusufwadgaon police station, District Beed, for offences punishable under sections 409, 420 read with section 34 of the Indian Penal Code.

2. The prosecution story is the applicants are the office bearers of the Village Panchayat, Chinchpur, Taluka Dharur, District Beed and technical service provider. Pursuant to the scheme floated by the State Government for providing potable water to the villagers, the Water Supply Committee of the Village Panchayat, Chinchpur of which the applicants are office bearers, has executed the work and while doing so have parted with the public money without following the procedure prescribed for the said scheme. It is claimed that the applicants have intentionally permitted the payments by bearer cheques or in cash, even though the various Government Resolutions/Circulars contemplate payment by account payee cheque only. It is further claimed by the prosecution that the said fact could be confirmed from the audit report submitted by the audit party entrusted with the job of auditing the accounts of the entire project executed by the Village Panchayat.

It is also brought on record that upon enquiry in he implementation of project, it is noticed that applicants have played fraud and defalcated the public money.

3. In the above background, while trying to make out a case for grant of pre-arrest bail, learned Counsel appearing on behalf of the applicants, would urge that, the applicant in Criminal Application No.130 of 2016 Sukamal w/o Dhondiram Sakhare was holding the post of Secretary of the Committee till February, 2013. Applicant no.1 in Criminal Application No.211 of 2016, namely, Sudhakar Ghuge was the President of the Committee, whereas applicant no.2 Mohan Samudre was Secretary of the new committee, which was formed on 24th February, 2013. The applicant in Criminal Application No.96 of 2016, namely, Vishwajeet Nanabhau Bade is a technical service provider. The applicant in Criminal Application No.223 of 2016, namely, Shrihari Venkat Lamb was the President of the earlier committee, which was holding the field till 24th February, 2013.

4. The applicant in Criminal Application No.130 of 2016 submit that during the protection granted by this Court, she has made herself available for the investigation purpose before the Investigating Officer. According to the applicants, the entire offence, as has been alleged in the first information report is based on documentary evidence and as such, their custodial interrogation is not necessary. It is further added that the applicants, who hold immovable property in the village, have respect for law and will not avoid the court proceedings. Learned Counsel then would

urge that the applicants, who are hardly educated, were not knowing much about the procedure that was required to be followed as they were required to be guided by the Village Panchayat Secretary. The applicants, as such, pray for grant of pre-arrest bail. They would further add that the enquiry report and other record in relation to crime is very much available, hence their custodial interrogation is not warranted.

5. So far as Criminal Application No.96 of 2016 is concerned, the said application is by a technical service provider, whose services were hired by the committee for the purpose of getting technical advice and supervision over implementation of the scheme in question. Mr Murkute, learned Counsel, while trying to differentiate the case of the applicant in Criminal Application No.96 of 2016 from the other applicants, would submit that there is hardly any role attributable to the applicant, in the matter of payment drawn from the account of the Village Panchayat towards implementation of the scheme. Mr Murkute would then urge that in the midst of execution of the scheme, the agreement itself was terminated and as such, the applicant cannot be treated at par with the other applicants-accused. He is no way responsible for the alleged defalcation.

6. The applicants, in addition, have placed reliance upon the inquiry reports in the matter of implementation of the scheme, so as to persuade this Court to draw an inference, that the inquiry committee itself has recorded contradictory findings depicting their non-involvement in the crime in question.

7. While opposing the applications, learned Addl. Public Prosecutor would submit that the applicants are not entitled for protection from this Court, particularly having regard to the fact that there is sufficient material available on record depicting their *prima facie* involvement in the crime in question.

8. Apart from the investigation papers, learned Addl. Public Prosecutor has also relied upon the audit report of the entire project which depicts that the applicants have conducted themselves in a manner, which is contrary to and against the very purport of the scheme framed by the Government and also the instructions in that regard. He would invite my attention to the fact that the applicants, except the service provider, have issued bearer cheques in the names of the parties and they themselves have withdrawn the amount without deducting the tax at source. Apart therefrom, there is no confirmation of the fact as to whether the amount has in fact passed on to the respective creditors, as the vouchers are self-made by the applicants and other bills as well do not contain the entire details of the payments. He would then pin point the observations made by the inquiry committee as against the applicants, in the matter of execution of the scheme in question. It is claimed that there is defalcation of around Rs.11 Lacs, as is apparent from the contents of the inquiry report.

9. Having bestowed my thoughts to the submissions made, it is noted that the applicants herein, except the service provider, were required to

conduct themselves and adhere strictly to the various Government Resolutions as have been issued. A few of them, to which the learned Addl. Public Prosecutor has invited my attention, are dated 2nd April, 2004, 18th March, 2008, 2nd May, 2005, 27th July, 2000, etc.

10. All the above referred Resolutions/Circulars issued by the Government, act as code in themselves. All facets of the scheme required to be taken into account while implementing the scheme were duly dealt with in those Resolutions/Circulars and even the instructions are issued as regards implementation of the scheme, including the mode for payment to be made. In the said Government Resolutions/Circulars it is expressly provided that payment of amount above Rs.1,000/- is required to be made by an account payee cheque only. The investigation papers and audit report of the project depict that the applicants have made most of the payments above Rs.1,000/-, relating to expenses to the various authorities, in cash and not by account payee cheques. It is noted that the amounts are paid based on the estimates of unregistered dealers' bills and self made vouchers. The work executed was inquired into by the Experts Committee, which speaks of defalcation committed by the applicants. The total valuation of the work that was already executed and the quality of the same has already been gone into by the Experts Committee. It has noted that there was defalcation of about more than Rs.12 Lacs in implementation of the said scheme.

11. So far as the case of the service provider is concerned, it is specific allegation against him, which is also reflected and could be confirmed

from the record that he has certified the bills, which are further endorsed by various public servants, based on which the payments are drawn. The inquiry committee has also blamed him for the purpose of mentioning incorrect measurements and calculations, which were formed as the basis for drawing excess payment for the work in question.

12. In view of above, in my opinion, there is *prima facie* involvement of the applicants in the crime in question. Thus, the applications fail and stand rejected.

13. At this stage, learned Counsel appearing on behalf of the applicant in Criminal Application No.130 of 2016 prays for continuation of interim pre-arrest bail granted by this Court by an order dated 8th January, 2016. The prayer granted. The order of Interim pre-arrest bail is continued for a period of four weeks from today.

(N.W. SAMBRE, J.)

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