

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

CRIMINAL APPLICATION NO. 1088 OF 2016

Jaiprakash s/o Tibha Patole,
Age: 56 years, Occ: Service,
R/o. Plot No. 58B, Pitreshwar Colony,
Shirpur, Tq. Shirpur, Dist. Dhule. ...Applicant

versus

The State of Maharashtra,
Through P.I. Dhadgaon Police Station,
Dist. Nandura & anr. ...Respondents

.....
Mr. N.L. Chaudhari, Advocate for applicant
Mr. S.P. Sonpawale, A.P.P. for respondents
.....

CORAM : N.W. SAMBRE, J.

DATE : 1st MARCH, 2016

ORAL ORDER :

This is an application by public servant seeking pre-arrest bail in Crime No. 33 of 2015 registered with Dhadgaon Police Station, District Nandurbar for the offence punishable under Sections 468, 471, 477(A), read with Section 34 of Indian Penal Code.

2. The alleged incident, based on which, crime is registered, is between 06/02/2009 to 19/11/2014 when present applicant was posted as Sectional Engineer in road project, Public Works Division, Shahada Division. It is claimed that the Collector,

Nandurbar, by an order dated 22/02/2008 has permitted execution of work under Employment Guarantee Scheme in Dhadgaon Taluka from Dedulpani to Chikhlari, length of road as 1/100 to 2/300 and 2/300 to 3/400, which was to be completed between 27/02/2009 to 26/03/2009. The amount of Rs. 44,14,426/- is claimed to have shown to be spent on the said project, however, upon inquiry, it was noted that the construction of road work was never executed under Employment Guarantee Scheme and in fact, there exist no road. The said fact was discovered when the Deputy Collector has carried out inspection on 18/11/2014 and 19/11/2014. The work of construction of work was not at all executed but was shown to have been constructed on papers and amount of Rs.44,14,426/- claimed to be withdrawn from public exchequer.

3. In this background, the above referred offence under Section 468 of Indian Penal Code came to be registered.

4. While trying to make out a case for grant of pre-arrest bail, Mr. Chaudhari, learned Counsel for the applicant would urge that there was subsequent inquiry in the matter which depicts that road in question was very much executed and it is because of rain for last six years, road might have got damaged. It is further claimed that in view of said inquiry report, the applicant as is charged with

criminal allegations in the first information report does not stand to be proved. He would then urge that the applicant is public servant, only two years are left for his retirement and is very much available for investigation, in case, if released on bail. So as to show bonafide, learned Counsel would then urge that of the total defalcation amount of Rs.44,14.426/- as has been alleged, the applicant is ready and willing to deposit 50% of the said amount.

5. Learned A.P.P. opposed the application for grant of pre-arrest bail, on the ground that there is *prima facie* involvement of the applicant in the crime in question. My attention is invited to the earlier order passed by this Court on application preferred by the applicant under Section 438 of Code of Criminal Procedure bearing Criminal Application No. 2704 of 2015 dismissed on merit on 07/07/2015. Learned A.P.P. submits that all the facets of the matter qua entitlement of applicant for pre-arrest bail were considered while rejecting the same on merit. According to me, once the application was rejected on merit, there are hardly any further change in circumstances, which permits him to move application. Learned A.P.P. would then submit that the investigation till date carried out depicts involvement of the applicant in the crime in question. The applicant is involved in commission of economic offence, which is required to be viewed independently as it affects the economy of the

institution.

6. With the assistance, I have perused the investigation papers.

7. At the outset, it is required to be noted that while rejecting the earlier application on the similar grounds, this Court has noted that the applicant has admitted that he has shown to have paid the amount to the dead persons while executing the work under Employment Guarantee Scheme. Apart from above, subsequent inquiry and proceedings of *Gramsabha* were also taken into account. Even if in the subsequent inquiry, report is in favour of the applicant, it is matter of investigation from the criminal side as to whether crime in question as is claimed to have been committed by the applicant requires his custodial interrogation or not.

8. The investigation carried out till the date, in my opinion, depicts that custodial interrogation of the applicant is very necessary, particularly in the background of admission given by him that the amount was paid to dead persons. The reason for discarding the report of Deputy Collector as is reflected in the first information report which has prompted filing of first information report, there are no convincing reasons in support thereof.

9. In the wake of above observations and particularly, having regard to the fact that the applicant's earlier application was already rejected, no case for grant of pre-arrest bail is made out. The application fails, stands rejected.

[N.W. SAMBRE, J.]