

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 5796 OF 2015

Baban s/o Bhausahab GavhaneAPPLICANT

VERSUS

The State of MaharashtraRESPONDENT

Mr N. S. Ghanekar, Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 4439 OF 2015

Smt. Jija W/o Raosaheb TarteAPPLICANT

VERSUS

The State of MaharashtraRESPONDENT

Mr R.N. Dhorde, Senior Advocate, instructed by Mr V. R. Dhorde,
Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondent
Mr K. D. Jadhav, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 4437 OF 2015

Ganesh S/o Devsingh JadhavAPPLICANT

VERSUS

The State of MaharashtraRESPONDENT

Mr A. K. Bhosale, Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondent
Mr K. D. Jadhav, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 4398 OF 2015

Raju S/o Nilaman RathodAPPLICANT

VERSUS

The State of Maharashtra & anr.

....RESPONDENTS

Mr R. S. Deshmukh, Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondents
Mr K. D. Jadhav, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 4399 OF 2015

Rajendra S/o Madhukar Amritkar

....APPLICANT

VERSUS

The State of Maharashtra & anr.

....RESPONDENTS

Mr R.S. Deshmukh, Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondents
Mr K. D. Jadhav, Advocate to assist Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO. 4400 OF 2015

Tilakchand S/o Gulabchand Methi

....APPLICANT

VERSUS

The State of Maharashtra & anr.

....RESPONDENTS

Mr R.S. Deshmukh, Advocate for applicant;
Mr U. S. Mote, Addl. Public Prosecutor for respondents

CORAM : N.W. SAMBRE, J.

DATE : 22nd January, 2016

ORAL ORDER :

By these applications under section 438 of the Code of Criminal Procedure, the applicants seek release on bail, in the event of their arrest

in connection with C.R. No.137 of 2015, registered with Khultabad Police Station, District Aurangabad, for offences punishable under sections 420, 406, 467, 471, 409, 120-B read with section 34 of the Indian Penal Code.

2. At the outset, it would be useful to refer to the status of applicants in each of the applications, which is as under :-

Criminal Application No.	Name of the Applicant	Status of the Applicant
5796/2015	Baban s/o Bhausaheb Gavhane	Gram Sevak
4439/2015	Smt. Jija w/o Raosaheb Tarte	In-charge Forest Guard
4437/2015	Ganesh s/o Devsingh Jadhav	Agri. Assistant
4398/2015	Raju Nilaman Rathod	Former Village Panchayat Member
4399/2015	Rajendra s/o Madhukar Amrutkar (Amritkar)	Sectional Engineer (Minor Irrigation Department, Kannad) with Zilla Parishad, Aurangabad
4400/2015	Tilakchand s/o Gulabchand Methi	Sarpanch, Village Panchayat, Takali Rajeray

3. The case of the prosecution, in a nutshell, is as under :-

The applicants herein, who were officials employed by the State Government with their respective Departments, pursuant to the provisions of Mahatma Gandhi National Rural Employment Guarantee Act, were required to execute the work by providing assured employment to skilled and unskilled workers identified under the said statute, by and after following the procedure established by the State Government under

various Resolutions. The procedure concerning unskilled workers appears to be, upon identifying such persons to issue them job card at the level of Grampanchayat, maintain a separate register and 'E' data for the same and report the same to the final authority, i.e. Tahsildar.

4. The scheme then contemplates identification/planning of the work that could be executed within the jurisdiction of the Village Panchayat and upon approval of the competent authority for execution of the same with the technical and administrative assistance of the respective Departments, for which manpower/unskilled labourers would be made available through Grampanchayat, in view of above referred 'E' data maintained by them.

5. The complainant had approached the Investigating Officer, alleging that the works as were claimed to have been executed by the Grampanchayat in question, were, in fact, not at all executed or were executed by taking recourse to a mechanized assistance by flouting the very object of the statute. The said complaint initially upon being looked into, resulted into registration of offences punishable under sections 420, 406, 467, 471, 409, 120-B read with section 34 of the Indian Penal Code vide C.R. No.137 of 2015 against the applicants.

6. While trying to make out a case for grant of pre-arrest bail, applicants have raised some common grounds, which are as under :-

(a) That the applicants are officials of the State Government and as such are public servants. They have respect for law and there is hardly any likelihood of their fleeing away from the investigation and as such, their custodial interrogation is not necessary.

(b) That the applicants have submitted their documents to the Investigating Officer, while enjoying interim protection ordered by this Court and hardly any further documents remained to be seized or recovered from them, so as to call for their custodial interrogation.

(c) The applicants cannot be held responsible for the crime in question, particularly when the entire responsibility of providing unskilled workers, maintaining their record and disbursement of wages, are the powers vested in the Gram Rojgar Sevak and his work is required to be supervised by the Gramsevak and he has already been released on pre-arrest bail by the learned Sessions Court

7. Apart from above, while inviting attention of this Court to the various Government Resolutions issued from time to time, learned Counsel appearing on behalf of respective applicants submits that the procedure or

manner which was required to be adopted for the purpose of execution of the work was that the Tahsildar - the Project Officer, was to act as a nodal agency between the administrative and technical departments under whose supervision the work was to be executed and the Grampanchayat is a responsible authority for providing unskilled labourers. To ascertain whether the labourers were rightly employed, is not a duty to be performed by the applicants, once unskilled labourers were provided by the Grampanchayat, through its Gram Rojgar Sevak and Gram Sevak.

8. Apart from above, it is claimed that the amounts of wages have already been deposited in the respective accounts of the concerned unskilled labourers, who were holding job cards and were enrolled with the Grampanchayat and as such, in view of the transparency and full-proof system established by the State Government by evolving procedure under the various Government Resolutions, custodial interrogation of the applicants is not at all necessary and as such, sought their release on pre-arrest bail.

9. Learned Addl. Public Prosecutor, while trying to oppose the prayer for grant of pre-arrest bail, was assisted by Mr Jadhav, learned Counsel appearing on behalf of the complainant. Learned Addl. Public Prosecutor would urge that the *modus operandi* adopted by the applicants herein while committing crime in question do call for their custodial interrogation,

as there is prima facie evidence available in relation to their involvement in the crime in question. He has invited attention of this Court to the duties of the officials, viz. Gram Rojgar Sevak, Gramsevak and technical/administrative officers like the applicants, in the matter of identifying unskilled labourers, issuance of job cards to them and opening of their accounts with post office. He would then submit that though the amounts are deposited in the respective accounts of the labourers about which the record is maintained by the Grampanchayat, the fact remains that the labourers who were employed either were minors or, in fact, were not at all in existence, as is apparent from their statements to that effect recorded during the investigation. Learned Addl. Public Prosecutor then would urge that the applicants, who are officers of the respective Departments, were duty bound to supervise the work in question, including that of ascertaining as to whether employed unskilled labourers were the same persons and as to whether the amount has really gone to the right persons towards their wages. He would then invite my attention to the terms of the Government Resolutions, and in particular the Govt. Resolution dated 2nd May, 2011, laying down duties of the Gram Sevak, Gram Rojgar Sevak and Sarpanch of the Village. He has also invited my attention to the contents of the Government Resolutions dated 28th January, 2014, 29th March, 2012, 27th May, 2011 and 2nd September, 2015, so as to submit that the applicants, who are public officials, cannot escape their statutory responsibility/duty, by submitting that they were not liable or

could be held responsible for the alleged fraud. Thus, he prayed for rejection of the applications.

10. Having considered rival submissions of the respective Counsel, I have scanned the record produced before this Court, including investigation papers.

11. The scheme framed by the Government under Mahatma Gandhi National Rural Employment Guarantee Act, which is developed in pyramid manner, speaks that over all administration and control, and drawing and disbursing authority is with the Collector and in the present case, the Tahsildar. Apart therefrom, the Government Resolutions speak of the responsibility of each of the applicants, in the matter of execution of the work. Though primarily the Sarpanch, Gramsevak and Gram Rojgar Sevak are responsible for identification and execution of the work by providing assured employment to unskilled workers with a view to achieve the object of the statute, it appears from the investigation papers that the labourers who were shown to have been employed and a few of them have received the amount of wages through their respective accounts, were in fact, not instrumental in opening of their accounts/withdrawing the amount of wages from the same and in some cases, students were shown to have been employed as unskilled labourers, by issuing job cards in their favour and amount of wages was deposited in their respective accounts.

Such labourers, in categorical terms, have made statements during investigation that they were neither provided with the employment nor have they taken steps for opening of the respective accounts. Apart therefrom, the Investigating Officer has brought on record that the minors were shown to have been engaged as labourers for execution of the work, who, in fact, were attending the schools at the relevant time and yet, their attendance was certified by the applicants as being hired for the purpose of execution of the work.

12. Apart from above, there is hardly any record which depicts that the labourers in question were hired for execution of the work in question, particularly with an intention to achieve the object of the scheme, however, it appears that Raju Nilaman Rathod (applicant in Cri. Application No.4398 of 2015), the then member of the Grampanchayat, was instrumental in acting as a nodal man between the agencies for the purpose of execution of work with mechanized assistance or by employing some other labourers. In the circumstance, the submission advanced on behalf of the prosecution that the said Grampanchayat member Raju had acted as a contractor, appears to hold some substance.

13. Apart from above, when the applicants were called upon to show as to how they are not responsible for certifying the wages by relying upon Appendix "A" to Government Resolution dated 2nd May, 2011, the entire

responsibility was sought to be shifted on the Gramsevak and Gram Rojgar Sevak. Reliance is placed on the Govt. Resolution dated 2nd September, 2015 to demonstrate the same. If the contents of the Government Resolution dated 27th May, 2011 and also that of 2nd September, 2015 (referred supra) are considered, it cannot be said that the applicants are absolved of their responsibility to verify as to whether unskilled labourers were issued with job cards were employed or not. There is hardly any record so as to infer that the applicants, while executing the work in question have summoned/demanded the services of unskilled labourers registered with Gram Panchayat.

14. Mr Deshmukh, learned Counsel appearing on behalf of some of the applicants has invited attention of this Court to the order passed in one of the similar matters, namely, Criminal Application No.4363 of 2015, decided on 18th January, 2016, granting pre-arrest bail to the applicants-accused, who according to him are similarly situated. In my opinion, Mr Deshmukh was right in bringing the said order to the notice of this Court, however, it is required to be noted that the said order came to be passed pursuant to the investigation as was noticed in that matter. Apart therefrom, in the case at hand, the applicants' individual responsibility to execute the work in question and failure to execute the work in the manner or the mode as is prescribed by playing fraud on the system is completely established by the investigating agency by carrying out proper investigation.

15. Mr R.N. Dhorde, learned Senior Counsel and Mr Deshmukh, learned Counsel appearing on behalf of the applicants would urge that pursuant to the complaints made time and again in the present case, there were several inquiries in the matter and none of the inquiries has implicated the applicants as persons responsible for playing any fraud or causing any loss to the public exchequer with an intention to commit the offences as alleged. The last of such reports sought to be relied upon on behalf of applicants is the one which is submitted to the Tahsildar on 9th December, 2015 by an enquiry committee.

16. It is required to be noted here that the observations as are made above for the purpose of rejection of the applications by this Court, are based on perusal of the papers of the investigation carried out so far, by the investigating agency.

17. It is worth to mention here, that there is also a report before this Court in one of the matters, which speaks of initiation of disciplinary action against the concerned employees, which is lost sight of by both the learned Counsel. In that view of the matter, the said contention is stated merely for being rejected.

18. It is also required to be noted that Gram Rojgar Sevak, who has already resigned from his job and who was granted protection by the

Sessions Court under section 438 of Criminal Procedure Code based on interim protection granted herein, is already before this Court in cancellation of his bail matter.

19. Having regard to prima facie material as aforesaid and more particularly in the light of the nature of the offence being economic as is brought to the notice of this Court, in my opinion, custodial interrogation of the applicants is necessary and as such, calls for rejection of their prayer for pre-arrest bail.

20. In the light of foregoing discussion, Criminal Applications fail and accordingly stand rejected.

21. Learned Counsel appearing on behalf of the applicants, at this stage, submit that as the *ad interim* protection granted in favour of the applicants is operating for a period of last five months, the same be continued for a further period of six weeks. Since the applicants are public servants, in my opinion, the prayer for continuation of protection needs consideration. As such, the *ad interim* protection granted in favour of the applicants stands continued for a period of six weeks from today.

(N.W. SAMBRE, J.)

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