

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

6 CRIMINAL APPLICATION NO. 4516 OF 2016

MOTILAL S/O BHOJU RATHOD

VERSUS

THE STATE OF MAHARASHTRA

.....

Mr. S.D.Hivrekar, Advocate for Applicant.

Mr. S.D.Ghayal, A.P.P. for Resp. – State.

.....

CORAM : A.M.BADAR, J.

DATE : 24th AUGUST, 2016

.....

PER COURT :

1. Applicant, who was Sarpanch of Gram Panchayat, Pomnala Tq. Bhokar, District Nanded is accused in Crime No. 151/2016 registered at Bhokar police station, Dist. Nanded for the offences punishable u/ss 13 (1) (c) read with 13 (2) of Prevention of Corruption Act, by this application is seeking pre-arrest bail.

2. Heard learned counsel for the applicant. He argued that the learned Additional Sessions Judge has himself recorded the finding that the offences u/ss 13 (1) (c) read

with 13 (2) of Prevention of Corruption Act are not made out from the prosecution case. By drawing my attention to the annexures filed with the application, learned counsel argued that main accused Ananda Manohar Shelke, who was Village Development Officer, has not produced record for verification and, therefore, exaggerated amount is shown in various reports. Learned counsel argued that measurement report and other documents were not before the officials while examining the matter. Those documents were not made available by the co-accused. He further argued that the applicant has not withdrawn the amount and his signature is not appearing on the document. Lastly, it is argued that the applicant himself has lodged report with the police and that the applicant is suffering from ailment and, therefore, his custodial interrogation is not warranted in the crime in question.

3. Learned A.P.P. opposed the application by contending that the crime in question is serious and it is based on 2 enquiries succeeded by open enquiry by Anti Corruption Bureau.

4. Investigating Officer has invoked Sections 13 (1) (c) and 13 (2) of Prevention of Corruption Act. Provisions of these Sections read thus,

“ 13 (1) (c) - if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a

public servant or allows any other person to do so.

13 (2) - *Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. ”*

5. Criminal mis-conduct as seen from Section 13 (1) (c) means dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as public servant. This criminal misconduct is made punishable u/s 13 (2) of the Prevention of Corruption Act.

6. Perusal of papers of investigation shows that on 11/09/2015, Block Development Officer had directed the Committee to examine whether grants of various beneficiaries schemes provided to Gram Panchayat, Pomnala were properly utilized or not. On 07/11/2015, said Committee reported that the applicant – public servant mis-appropriated amount of ₹ 3,89,793/- provided as grant to the Gram Panchayat, Pomnala.

7. R.T.I. activists have also made complaint with the report of the Committee and the Superintendent of Police, Anti Corruption Bureau had directed Dy. Superintendent of

Police to examine and report on that complaint. Ultimately, open enquiry was conducted and as a result, F.I.R. in question came to be lodged against present applicant as well as the then Village Development Officer Ananda Manohar Shelke by the Dy. Superintendent of Police, Anti Corruption Bureau, Nanded.

8. At the out set, it needs to be mentioned here that the legislatures are making attempt to give powers to the Panchayats and as a result of 1973 amendment, several articles are added to part IX of the Constitution of India for empowering the Panchayats. As a consequence, huge amount is being directly transmitted to the accounts of various Panchayats in order to strengthen the local self Govt. Considering the intention of the legislature, it is expected of the members of local self Govt. to be vigilant in spending public funds transmitted to the Panchayats. The averments in the instant case shall have to be looked into by keeping in mind these aspects.

9. F.I.R. lodged by Dy. Superintendent of Police, Anti Corruption Bureau and the report of the enquiry submitted by the members of the Committee show that while spending the amount received as grant towards backward region grant fund, present applicant and co-accused had misappropriated amount of ₹ 1,92,566/-. Categorical finding is recorded that amount of ₹ 3.51 Lakh was withdrawn for the work, whereas amount spend was only ₹ 1,58,434/-. Similarly, it was found by the Committee that amount of

₹ 8,91,510/- was withdrawn, whereas valuation of the work of road is to the tune of ₹ 3,04,475/-. Amount of ₹ 4,87,025/- was found to be mis-appropriated. Ultimately, the Committee has recorded the finding that present applicant had mis-appropriated amount of ₹ 3,89,793/- from the grants received on account of 13th Finance Commission and backward region grants fund. This is a finding recorded by the officials conducting the enquiry as well as in the open enquiry.

10. The offence allegedly committed by the applicant is serious and having direct impact on the development of the backward region. It reflects breach of trust committed by the person heading Gram Panchayat. As such, no case for anticipatory bail is made out.

11. In the result, the application stands rejected.

[A.M.BADAR, J.]