

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 6052 OF 2016

Eknath S/o Vithoba Doifode,
Age : 35 years, Occu.: Labourer,
R/o : Antarwali Khadi, Taluka:
Paithan, District : Aurangabad

.. Applicant/
Accused

Vs.

1] The State of Maharashtra,
through the Police Sub Inspector,
Pachod Police Station, Pachod,
Taluka : Paithan,
District : Aurangabad

2] The Superintendent of Police,
Aurangabad Rural, Aurangabad

.. Respondents

WITH
CRIMINAL APPLICATION NO. 5971 OF 2016

Shivaji S/o Babasaheb Dighole,
Age : 40 years, Occu.: Service,
R/o. Antarwali Khandi, Tq. Paithan,
District Aurangabad

.. Applicant

Vs.

The State of Maharashtra,
through the Police Inspector,
Pachod Police Station, Pachod,
Taluka : Paithan,
District : Aurangabad

.. Respondent

AND
CRIMINAL APPLICATION NO. 5802 OF 2016

Krushna S/o Namdeo Kirve
Age : 34 years, Occu.: Service,
R/o. A4, Satara Parisar,
Near Chate School,
Beed Bypass, Aurangabad,
Tq. and Dist. Aurangabad

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. R.S. Deshmukh, Advocate for the applicant (6052/2016)
Mr. V.D. Sapkal, Advocate for the applicant (5802/2016)
Mr. M.S. Karad, Advocate for the applicant (5971/2016)
Mr. S.D. Ghayal, APP for the respondent/State in all
Applications

CORAM : A.S. CHANDURKAR, J.
DATE : 21/11/2016

ORAL ORDER :

Heard.

2. Since all the three applicants apprehend their arrest in crime no. 302 of 2016 registered at Pachod Police Station, Dist. Aurangabad for the offences punishable under Section 406, 409, 420, 467, 468, 471 and 34 of the Indian Penal Code, they are being decided by this common order.

3. In the matter of construction of canals, the work in question was to be carried out under the directions of Zilla Parishad, Aurnagabad. The said work was to be undertaken at Mouje Antarwali Khandi. These canals were to be constructed in five agricultural fields. During inspection, it was noticed that the work

with regard to two canals had received administrative sanction while in respect of four works, there was no such sanction. It was also noticed that the works completed were defective and, therefore, an amount of Rs.11,00,539/- was liable to be recovered. After holding preliminary enquiry, followed by re-enquiry, report came to be submitted to the Chief Executive Officer. These events occurred in the year 2013.

. Thereafter, on 3/8/2016, another enquiry report submitted by a joint committee was forwarded to the Collector. On that basis, the Collector, on 10/8/2016, directed the Chief Executive Officer, Zilla Parishad, Aurangabad to lodge complaint in the matter. On that basis, FIR No. 302 of 2016 was lodged on 7/9/2016.

. The applicant in Criminal Application No. 5802 of 2016 was the Gramsevak at Gram Panchayat, Antarwali Khandi at the relevant time. The applicant in Criminal Application No.6052 of 2016 was the Gram Rojgar Sevak of the same Gram Panchayat during said period while the applicant in Criminal Application No.5971 of 2016 was postmaster of the post office at said village. Since these applicants were named in the FIR, they

approached the Sessions Court under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail, but their applications came to be rejected. Hence, they have approached this Court by filing the aforesaid applications.

4. Learned counsel for the applicants submitted that the offence in question has been registered on the basis of earlier enquiries conducted by the Zilla Parishad. The initial enquiry dated 6/3/2013 was followed by re-enquiry and report dated 21/3/2013. Thereafter, the Enquiry Officer submitted another report dated 21/8/2013. On that basis, the Collector had directed the Chief Executive Officer to lodge a report. It was submitted that there were no specific allegations in the FIR against any of the applicants. The offence was registered on the basis of documents that form part of the enquiry proceedings. The entire record was available with the authorities and hence there was no reason whatsoever for the custodial interrogation of any of the applicants.

. It was pointed out that the applicant in Criminal Application No.5802 of 2016 had faced

departmental proceedings and he had been exonerated in the same as per report dated 16/1/2016. This subsequent report was not taken into consideration before registering the offence. The applicant in Criminal Application No.6052 of 2016 had been already dismissed from service while the applicant in Criminal Application No.5971 of 2016 is still in service and his arrest would prejudice his career. It was submitted that all the applicants were willing to co-operate with the investigation and that there was no possibility of they absconding.

5. All the applications were opposed by learned A.P.P., by relying upon the police papers. It was submitted that the offence in question was serious in nature and after considering various enquiry reports, it had been decided to lodge a police complaint. The members of the enquiry committee had visited the said village and had noticed various deficiencies in the works alleged to have been carried out. The statements of various villagers indicate that they had not received any benefit from the aforesaid works despite the object of such scheme being to assist the rural population. Considering the nature of allegations, it was submitted

that the applicants are not entitled for any protection whatsoever.

6. I have heard the respective counsel for the parties at length and I have perused the police papers. The FIR is entirely based on the enquiry reports received by the Gram Panchayat and the Zilla Parishad. These reports are dated 6/3/2013, 21/3/2013, 21/8/2013 and 3/8/2016. These reports have been prepared after collecting necessary documents and analysing the same. They have also been made the basis of FIR No. 302 of 2016 and there is no other material that has been relied upon by the informant while submitting the report. The work in question relates to the year 2012-13.

7. Considering the fact that the entire records are now available with the authorities under the Zilla Parishad and same records have been made the basis of FIR, I do not think that custodial interrogation of the applicants is warranted in these facts. It is also pertinent to note that the applicant in Criminal Application No.5802 of 2016 is presently working as an Extension Officer, Panchayat Samiti, Paithan, which is a

different place from where the works in question were to be carried out. The applicant in Criminal Application No.6052 of 2016 is no longer in service, the applicant in Criminal Application No.5971 of 2016 is still in service and would be available as and when his presence would be required.

8. Considering the facts of the present case and especially when the entire record is already available with the prosecution, the applicants can be directed to regularly attend the concerned Police Station and co-operate with the investigation.

9. In view of aforesaid, the following order is passed :-

ORDER

I) Criminal Applications are allowed.

II) In the event of arrest of the applicants in these applications with regard to crime no. 302 of 2016 registered at Pachod Police Station, Dist. Aurangabad for the offences punishable under Section 406, 409, 420,

467, 468, 471 and 34 of the Indian Penal Code, they shall be released on bail, on their furnishing P.R. bond of Rs.15,000/- (Rs. Fifteen Thousand) and one surety in the like amount, by each of them.

III) The applicants shall attend the concerned Police Station on 28/11/2016 and, thereafter, as and when directed by the Investigating Officer.

IV) The applicants shall not take any steps whatsoever to tamper with the material collected by the prosecution and they shall not attempt to influence the witnesses.

V) It is made clear that the observations made in this order are only for the purpose of deciding the anticipatory bail applications.

10. Criminal Applications are allowed in aforesaid terms and disposed of.

[A.S. CHANDURKAR]
JUDGE

arp/