IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1289 OF 2015
WITH
CRIMINAL APPLICATION NO.34 OF 2016
(For Intervention)

Manisha Devendra Phule	… Applicant.
V/s.	
The State of Maharashtra	… Respondent
AND	
Mahiti Adhikari Shikshan Samiti, Sangli	… Intervener

WITH
ANTICIPATORY BAIL APPLICATION NO. 524 OF 2016

Jayshri @ Baida Dattatray Kale and Anr.	… Applicants.
V/s.	
The State of Maharashtra	... Respondent.

WITH
ANTICIPATORY BAIL APPLICATION NO.1245 OF 2015
WITH
CRIMINAL APPLICATION NO. 33 OF 2016
(For Intervention)

Dhananjay Mahadev Chougule	… Applicant.
V/s.	
The State of Maharashtra	… Respondent.
AND	
Mahiti Adhikari Shikshan Samiti, Sangli	… Intervener.

WITH
ANTICIPATORY BAIL APPLICATION NO. 1724 OF 2015
WITH
CRIMINAL APPLICATION NO. 32 OF 2016
(For Intervention)

Deepak Bhaskarrao Ghate … Applicant.
V/s.
The State of Maharashtra … Respondent.
AND
Mahiti Adhikari Shikshan Samiti, Sangli … Intervener.

WITH
CRI. BAIL APPLICATION NO.909 OF 2016

Sarika Dattatraya Kale … Applicant.
V/s.
The State of Maharashtra ... Respondent.

Mr. Rizwan Merchant, Senior Advocate alongwith Ms. Kiran Jain, Ms. Preeti Karne, Mr. Ish Jain and Ms. Amita Kamble i/b. Kiran Jain & Co. for Applicant in ABA-1289/15.

Mr.S.V. Kotwal, Advocate, i/b. Reddy (Aradwad) Jagdish G., Advocate for Applicant in ABA-1724/15.

Mr. Priyal G. Sarda, Advocate for Applicant in ABA-524/15 & BA-909/16.

Mr.Pradip K. Patole, Advocate for Applicant in ABA-1245/15.

Mr.Yogesh Sidram Sankpal, Advocate i/by Makarand Kale and Mr.Nikil Mendge, Advocate for Intervenor in Cri. APPP-34/16, APPP-33/16 and APPP-32/16.

Mr.Y.M.Nakhwa, APP for the State in ABA- 1289/2015, ABA-1245/15, ABA-524/16 and BA-909/16.

Mr. Deepak Thakery, APP for the State in ABA-1724/15.

I.O. -Mr. S.G. Walwalkar, ACP, Crime Solapur City, is present.
API- R. R. Shaikh, Economic Offence Wing, Solapur is present.
ASI- S.S.Jadhav, Economic Offence Wing, is present.
PSI- K. N.Chavare, Economic Offence Wing, is present.
PSI- D.V. Ingale, Economic Offence Wing, is present.

CORAM : A. M. BADAR, J.
DATE : 21st JULY, 2016

P.C. :

1 Applicant- Manisha Phule in ABA No.1289 of 2015, the then Assistant Commissioner of Social Welfare Department, Applicant-Deepak Ghate in ABA No. 1724 of 2015, the then Assistant Commissioner with Social Welfare Department, Applicants -Jayshri Kale and Reshma Kale in ABA No. 524 of 2015 and Applicant-Dhananjay Chougule in ABA No. 1245 of 2015 by these applications are seeking pre-arrest bail, whereas Applicant-Sarika Kale in Bail Application No. 909 of 2016 is seeking regular bail. All these applicants are accused in Crime No. 222 of 2015 registered with Sadar Bazar Police Station, Solapur, for the offences punishable under sections 120 (B), 408, 409,420, 467, 468, 471 r/w. 34 of the Indian Penal Code, under section 13(1)(c) of the Prevention of Corruption Act and under section 3(2) (v)(vii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 Heard the learned counsel appearing for the respective applicants/accused as well as the learned Additional public prosecutors.

3 It is submitted on behalf of Applicant/accused - Manisha Phule that reply of the State shows that four firms are recipients of the amount of more than Rs. 1.20 crores during her tenure. The learned counsel for applicant-Manisha Phule argued that accused-Amir Mehboob Tamboli is stated to be at the helm of affairs of these three firms and he has been bailed out with a condition to deposit the amount of Rs. 1.71 crores. The learned counsel further argued that, as on the date, the amount of about Rs. 1.18 crores is recovered from the co-accused. By pointing out the chargesheet, the learned counsel further argued that role attributed to applicant-Manisha Phule is that of sending ECS list (electronic clearance list) in excel sheets to the bank not as per bill sanctioned by the treasury but by including the names of ineligible persons with the help of deceased accused–Angad Mukate and appellant/accused-Sarika Kale. The learned counsel pointed out that the FIR came to be registered at the instance of the present applicant after she made enquiry of RTI application and after she suspected something fishy in the transaction. Therefore, according to the learned counsel for applicant-Manisha Phule, custodial interrogation of Manisha Phule is not warranted as she had co-operated with the police department from time to time.

4 Learned counsel for applicant-Deepak Ghate argued that apart from the duties as Assistant Director at the relevant period, the applicant was asked to work as an administrator on the private school. He was also asked to shoulder responsibilities as member of the Caste Scrutiny Committee of the Social Welfare Department. Learned counsel argued that about one lakh applications for grant of scholarships were dealt with by present applicant - Deepak Ghate and in 366 cases misappropriation was noted. According to the learned counsel, it is humanly impossible to verify each and every details contained in the ECS list sent for disbursement of the scholarship. Learned counsel further argued that part of the mis-appropriated amount is stated to be transferred in the account of one Mr. Angad Mukate, Inspector of Social Welfare Department who committed suicide. In submission of the learned counsel for the applicant not a single pie of misappropriated amount is stated to have been appropriated by the present applicant.

5 Learned counsel for applicant-Dhananjay Chougule, argued that applicant -Dhananjay is an agriculturist from village Ranjani in Pandharpur taluka and he is friend of accused no.17-Vinayak Khadasae. At the request of Vinayak, he permitted accused Vinayak to use his account. An amount of Rs. 2.01 lakhs came to be deposited in his account which was immediately withdrawn by accused no.17-Vinayak

Khadasare. The said accused is already directed to be released on bail on depositing of an amount of Rs. 30 lakhs.

6 On behalf of applicants-Jayshri Kale and Reshma Kale it is argued that their properties are already seized by the police department. Seized properties are worth about Rs. 54,20,600/-, which is alleged to have been misappropriated by these applicants.

7 On behalf of applicant-Sarika Kale, it is argued that now investigation is over and the chargesheet is filed on 04.09.2015. The property worth Rs. 20 lakhs is seized from this applicant. Entire allegations are based on the documentary evidence, warranting no further pre-trial detention as no question of tampering of evidence arise. Learned counsel relied upon the observations in para – 46, quoted below, of judgment of the Hon'ble Supreme Court in the matter of **Sanjay Chandra** vs. **Central Bureau of Investigation,** reported in (2012) 1 Supreme Court Cases 40.

> "46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the chargesheet is already

> filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail pending trial on stringent conditions in order to ally the apprehension expressed by CBI.".

8 All these applications came to be opposed by the learned APP. It is argued by the learned APP that the offence alleged against the applicants is serious, warranting stringent punishment. By drawing my attention to the statement of - Nagnath Gaikwad, the Inspector with the Social Welfare Department, it is argued that amount of bills sent to the treasury did not match with the amount shown in the list sent to the bank for payment by ECS. It is further argued that there are five beneficiaries of the scheme from social welfare department. The procedure of the scheme is pointed out from the statement of Ajit Anguir Dixit, Project Manager of Mastek Company. By pointing out the letter dated 11.7.2016, issued by the Commissioner of Social Welfare Department duties of the post of Inspector in Social Welfare Department are pointed out. Duty list is also pressed into service. Covering letters issued by the Assistant Commissioner are also pointed out to show that lists accompanying these letters are under the signature of the Assistant Commissioners, who are arrayed as accused in the instant case. By pointing out list of 125

colleges furnished by the Solapur University, it is argued that beneficiary colleges, such as SSD College Vairag, SM ENGG C, SSMTEc, SHREE Swery TE College, Pandharpur are not in existence. It is also argued that Login Id came to be given wrongly by the accused officers to the employees of the Mastek Company.

9 I have also heard learned counsel appearing for intervenors. They vehemently argued that applications for anticipatory bail moved by the accused persons are not maintainable as penal provision of 3(2)(v)(vii) of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is invoked and therefore, bar of section 18 of the said Act comes into play. They further argued that there is every possibility of absconding and accused persons may not available for trial. Letters sent to the bank by them shows name of ineligible persons.

10 With the assistance of the learned counsel appearing for the parties, I have carefully perused the compilations of the documents relied upon by applicants as well as papers of investigation furnished by the learned APP.

11 Huge financial scam came to be unearth because of query made by RTI activists named-Tupsaminder to the Office of the Social Welfare Department. Simultaneously some

complaints are also stated to have been received by the Mohol Police Station in respect of mis-appropriation in the scheme of scholarship, warranting explanation from applicant-Manisha Phule, who at the relevant time was holding the post of Assistant Commissioner. According to the prosecution case, this financial scam in the scheme of scholarship is the outcome of conspiracy by accused persons headed by Assistant Commissioners, occupying the posts for the period from 2011 till filing of the FIR.

12 So far as present applicants are concerned, applicant-Manisha Phule was holding that post from March, 2014 till her suspension; whereas applicant - Deepak Ghate was holding the same post from 06.08.2012 to 03.03.2014.

13 Perusal of the papers of investigation shows that the scheme for providing scholarship for the students belonging to Scheduled Castes and Scheduled Tribes, Nomadic Tribes, Vimukta Jati and Special Backward Class came to be formulated by the State. It appears to be the joint venture of the State Government as well as the Central Government. The State Government used to contribute funds for providing scholarship to special back ward class students and students belonging to V.J. & N.T. categories. The scheme is for reimbursement for tuition fess as well as payment of scholarship to the students belonging to backward class of the

society. The scheme is known as "e-Scholarship" and it was being implemented from the academic year 2011-2012. As per the scheme, students of the backward class were supposed to make on line applications to concerned colleges / educational institutions. Educational institutions were to verify those applications by getting hard copies of applications as well as supporting documents. Under the signatures of the head of those colleges/educational institutions, list of eligible students was to be forwarded to the Social Welfare Department by using Login ID of the Principal/ Head of the college. It is seen that the State Government had hired services of "Mastek Company" for implementing the e-Scholarship Scheme. Lists received from the educational institutions were supposed to be examined by Inspectors attached to the Social Welfare Department and on scrutiny of such proposals, scholarship used to be sanctioned by the Assistant Commissioner. Approved list of beneficiaries was then required to be sent to concerned institutions. Simultaneously, lists of eligible students and institutions were required to be submitted to the Treasury for sanction of the amount to be paid to the beneficiaries of the scheme. Thereafter, on receipt of the amount from the Treasury, with covering letter signed by the Assistant Commissioner, the list of eligible students and institutions was used to be sent to the concerned bank for effecting payment by ECS/ Nifty/RTGS. The amount of tuition fees used to be paid to the educational institution, whereas the amount of scholarship used to be paid to the concerned student of backward class. This is how the scheme of e-Scholarship Payment was used to be implemented. As seen from the statement of Ajit Dixit, Project Manager as well as from the papers of investigation. For this work the Mastek Company had deputed its three employees to the office of the Assistant Commissioner, Social Welfare Department. Applicant- Sarika Kale is one of such employees apart from other two employees named-Sunita Salunke and Sonali Pandey.

14 Perusal of the police report addressed to the Assistant Public Prosecutor vide letter dated 21.07.2016 signed by the Assistant Police Commissioner shows that as on today, the amount of mis-appropriation is to the tune of Rs. 6,27,17,273/-. This mis-appropriated amount went to total 107 ineligible beneficiaries. This report further shows that 86 ineligible beneficiaries who are arrayed as accused are still absconding.

15 As noted in forgoing paragraphs of this order, the chargesheet filed by the police and more particularly column no.17 thereof, states brief facts of accusation against the accused persons. According to the prosecution case, applicants - Manisha Phule, Deepak Ghate and other accused persons misappropriated the amount of scholarship by engaging in conspiracy. It is alleged as against applicants - Deepak Ghate

and Manisha Phule, who at the relevant time were the Assistant Commissioners of the Social Welfare Department that after sanction of bills regarding scholarship from the Treasury when the list of beneficiary students was sent to the bank for disbursement of the amount, names of ineligible persons used to be introduced in such list, thereby allowing siphoning of funds meant for the scholarship to candidates belonging to the backward class. It is alleged that during the tenure of accused-Deepak Ghate on 369 occasions amount totaling to Rs. 2,39,86,399/- came to be transferred in accounts of ineligible beneficiaries. So far as applicant- Manisha Phule is concerned, it is alleged in the chargesheet that amount totalling Rs. 1,23,19,039/- came to be transferred from time to time on 176 occasions to accounts of ineligible persons.

16 Perusal of replies filed by the State shows that during the tenure of applicant-Manisha Phule more than Rs. 1.20 corers came to be transferred in bank accounts of Shri Sant Tukaram Electric, Shri Sant Ekhanath Electric and Shri Shhradha Engineering Works. It is further averred that in her tenure, an amount totalling Rs. 1,28,80,604 /- came to be disbursed to ineligible persons.

17 In reply filed for opposing the application of Deepak Ghate, it is averred that during the period from 6th August, 2012 to 14th April, 2013 and 6th May, 2013 to 4th

March, 2014, under his signature, an amount of Rs.2,37,94,144/- came to be transferred in accounts of ineligible beneficiaries on 366 occasions. It is also averred that applicant-Deepak Ghate conspired with co-accused. According to the prosecution case, these Assistant Commissioners have given their login ID and password to Sarika Kale, an employee of Mastek company unauthorizedly, for enabling her to siphon of huge amounts from the State Exchequer. It is also averred that applicant - Deepak Ghate had opened 15 different accounts in various banks without permission of the State Government.

18 The sum and substance of the allegations against applicants, who were Assistant Commissioners, is to the effect that they had disclosed their own login Id and password to main accused Sarika Kale. Neither the chargesheet nor replies filed by the State, opposing applications of the accused/ Assistant Commissioners, show that they are financially benefited by this mis-appropriation which is to the tune of Rs. 6,27,17,273/-. It is not alleged by the prosecution that a single pie from this amount is received by either of these applicants viz. Manish Phule and Deepak Ghate. In fact the FIR came to be lodged by applicant-Manisha Phule.

19 It is seen that both these applicants have disclosed their login Id password to the main accused Sarika Kale

though they were trained to handle the computer work in the training imparted by the Masket Company. It appears that excel sheet containing names of beneficiaries came to be edited after bills were sanctioned by the Treasury. The learned counsel for applicant -Manisha Phule pointed out as to how the excel sheet came to be edited subsequently. It is seen that there are several beneficiaries. Excel sheet is containing various details of the beneficiaries including details of their bank accounts. Financial institutions are also beneficiaries as tuition fees of backward class students is required to be reimbursed to those educational institutions. After editing the relevant column in the excel sheet, abbreviation of names similar to the names educational institutions came to be typed on the excel sheet apart from changing account numbers of such beneficiaries. Such edited list appears to have been sent to the concerned bank under the signatures of applicant- Manisha Phule and Deepak Ghate. It appears that both these accused have not verified and tallied the bills submitted to the Treasury with such list sent to the bank for disbursement of the amount to the beneficiaries. However, it is not the case of the prosecution that by adopting this modus operandi, applicants who were Assistant Commissioners obtained financial advantage or financial gain in this scam. Prima facie, it appears that both applicants- Manisha Phule and Deepak Ghate were negligent in discharging their duties which may constitute service misconduct. Prima facie, there is no evidence of conspiracy by these applicants with the employees of Mastek Company, who actually received amount misappropriated from the State Exchequer. It is seen that the amount which went to the bank accounts of Shri Sant Tukaram Electric, Shri Sant Ekhanath Electric and Shri Shhardha Engineering Works came to be misappropriated largely by accused Amir Mehboob Tamboli and on behalf of this accused statement came to be made that he is willing to deposit the amount of 1.71 crores and on such statement, he is directed to be released on bail by the Sessions Judge.

20 On behalf of applicant-Manisha Phule it is pointed out that by now the investigating agency recovered an amount of Rs. 1,18,17,580. It is not pointed out to me that any amount is required to be recovered from the applicants, who were Assistant Commissioners at the relevant time. Perusal of the order of the learned Sessions Judge, rejecting the application for anticipatory bail of applicant-Manisha Phule shows a reason that her account extracts show that in all Rs. 1,54,71,035/- came to be transferred to her account and she had utilized this amount for her own purpose. Nothing is pointed out on behalf of the State to substantiate this statement in the order of the learned Sessions Judge. Rather it is argued by the learned APP that this information was never provided to the learned Sessions Judge by the prosecution and such finding is factually incorrect.

21 Considering the role attributed to applicant-Manisha Phule and Deepak Ghate in this crime their custodial interrogation is not warranted.

22 So far as applicant -Dhananjay Mahadev Chougule in Anticipatory Bail Application 1245 of 2015 is concerned, his affidavit reveals that an amount of Rs. 2.10 lakhs came to be deposited in his account which was subsequently withdrawn by Accused No. 17-Vinayak Khadasare. Accused No.17 Vinayak is reported to have married accused no.1-Sarika Kale. In support of his contention, applicant-Dhananjay Chougule has placed on record extracts of his bank account. Prima facie, no criminal intention is reflected from the act of Dhananjay Chougule in allowing accused no.17 -Vinayak to use his bank account for depositing the amount in it and subsequently withdrawing it. As such considering the role of applicant -Dhananjay Chougule in the crime in question, his custodial interrogation is also not warranted.

23 Now let us examine whether accused-Jayshri Kale and Reshma Kale are entitled for protection of their liberty and whether her liberty needs to be restored to Sakira Kale. Affidavit filed by the State, opposing the application of Jayshri Kale and Reshma Kale shows that they both are beneficiaries of this scam having received an amount of Rs. 54,20,600/-

misappropriated from the State Exchequer. Applicant Jayshri is the mother of main accused-Sarika Kale and applicant Reshma is her sister. Accused -Sarika was an employee of Mastek Company, deputed with the Social Welfare Department. It is seen that both these applicants viz. Jayshri and Reshma have furnished their residential address as address of Shri Sant Tukaram Electric and Shri Sant Eknath Electronic, who are major beneficiaries of this financial scam. Both these accused persons appear to be part of the conspiracy. As yet, major portion of the misappropriated amount is yet to be recovered. Seizure of their properties would not solve the interest of the investigator in tracing out the misappropriated amount which is more than Rs. Six crores. Many beneficiaries of this financial scam are still absconding and are not traced out. Those accused persons must be having link with these applicants.

24 So far as applicant- Sarika Kale is concerned, she is reported to be behind bar since about one year. She is the kingpin in this scam who has played lead role in cheating the State by engaging in conspiracy in a planned manner. The offence alleged against her is serious. While considering whether the applicant is entitled for bail or not, the enormity of charge, the nature of accusation, role played by the accused in the crime in question, the severity of punishment if the conviction is awarded and available of the accused for

undergoing sentence, are the relevant considerations apart from the nature and gravity of the circumstances in which the crime is committed. In the case in hand, an amount of more than Rs.Six crores is syphoned from the coffers of the State. This amount was meant for student of backward class in order to enable them to pursue further studies. This economic offence must have ruined educational career of several students belonging to backward class category. Reliance is placed on para 46 of the judgment of the Hon'ble Supreme Court in the matter of **Sanjay Chandra** (supra). No doubt the observations made therein are binding on this court but the circumstances of the present case does not warrant enlargement of applicant-Sarika on bail because the offence is not merely an economic offence but it has destroyed social fabric and upliftment of the student belonging to the reserved categories. In fact, the gole of the Constitution is frustrated by conspiring in a planned manner. Mastermind behind this scam appears to be applicant Sarika Kale. She is main beneficiary of the financial scam.

25 Now let us examine whether irrespective of the bar of section 18 of S.C. & S.T. (Prevention of Atrocities) Act, applications for anticipatory bail in the case in hand can be entertained.

26 According to the prosecution case, applicants / accused have committed offence under section 3(2) (v)(vii) of the said Act. This provision reads thus :

> 3. Punishments for offences of atrocities :-
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> ….. …..
>
> (2) Whoever, not being a member of a Scheduled Caste or a Schedule Tribe,--
>
> …. …..
>
> (v) commits any offence under the Indian Penal Code(45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;
>
> (vi) …. …..
>
> (vii) being a public servant, commits any offence under this section, shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to the punishment provided for that offence.

27 Bear reading of this provision makes it clear that on proof of offence under the provisions of Indian Penal Code, which are punishable with imprisonment for a term of ten years or more against a person or property of a member of scheduled caste or schedule tribe, an offence under section 3(2)(v)(vii) of the said Act can be said to be made out. We are

at the stage of allegations against the accused persons. As yet there is no proof of offence allegedly committed. As yet no offence against public service is proved. As such in my opinion, that no prima facie case against accused - Manisha Phule and accused Dhananjay Ghate, punishable under the provisions of S.C.& S.T. (Prevention of Atrocities) Act, 1989 is made out. Therefore, bar of section 18 of the said Act is not applicable.

28 In the result, the following order :-

ORDER

i. Anticipatory Bail Application No.1289 of 2015 filed by applicant-Manisha Phule, Anticipatory Bail Application No.1245 of 2015 filed by applicant-Dhananjay Chougule and Anticipatory Bail Application No.1724 of 2015 filed by applicant-Deepak Ghate are allowed.

ii. In the event of their arrest in Crime No. 222 of 2015, registered with Sadar Bazar Police Station, Solapur, for the offences punishable under sections 120 (B), 408, 409,420, 467, 468, 471 read with section 34 of the Indian Penal Code and under section 13(1)(c) of the Prevention of Corruption Act and under section 3(2) (v)(vii) of the

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, applicants/accused viz. Manisha Phule, Dhananjay Chougule and Deepak Ghate be released on bail on executing P.R. Bond in the sum of Rs. 50,000/- each and on furnishing one or two solvent surety in the like amount by each of them.

iii. Anticipatory Bail Application No.524 of 2016 filed by applicant/accused-Jayshri Kale and Reshma Kale is rejected.

iv. Regular Bail Application No.909 of 2016 filed by applicant/accused Sarika Kale is also rejected.

v. As a condition of this order, Applicant/accused viz. Manisha Phule, Dhananjay Chougule and Deepak Ghate should attend the concerned police station as when reasonably called and should co-operate in investigation of the crime in question, as also co-operate the trial court in expeditious disposal of trial, on filing of the chargesheet, if any.

vi. In addition, Applicants/accused are directed that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicants/accused shall not tamper with the prosecution evidence in any manner.

vii. Applicants should not commit any offence of similar nature in future.

viii. In view of the disposal of the main applications, the intervention applications filed therein i.e. Criminal Application No. 34 of 2016, Criminal Application No. 33 of 2016 and Criminal Application No. 32 of 2016 filed in the concerned main applications, are also disposed of.

(A. M. BADAR, J.)

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