

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 955 OF 2016

Sanjay Dhaya Bhoir	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Kuldeep S. Patil, Advocate for the applicant.
Mr. Vinod Chate a/w Mr. Arfan Sait, APP, for the State.
Mr. B.K.Daquirekar, P.I., Nagothane Police Station, Dist. Raigad present.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 3rd October, 2016.

P.C.

1. Heard. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.42 of 2015 registered at Nagothane Police Station, Dist. Raigad for the offences punishable under Sections 420, 467, 468, 471, 477-A read with Section 34 of the Indian Penal Code.

2. It is the case of prosecution that on 28.5.2015, the first information report was lodged by one Jagannath Kulkarni, who was working as the Sectional Engineer of Maharashtra Jeevan Pradhaikaran Mangaon.

3. According to the first informant, in the year 2012-13, District Planning Authority had sanctioned an amount of Rs.8 lakhs for the purpose of laying down the water pipeline for the villages of Gandhe and Shihu – Atiwali, Tal. Pen. An administrative approval was accorded. Tenders were floated. Kalambadevi Majoor Sahakari Sanstha Karav Gadab (for short “Kalambadevi Society”) was given the work order for laying down the said pipeline. That the Executive Engineer Mr. Savkari, In charge Deputy Engineer Mr. Satpute and the Sectional Engineer Mr. Rauthad allotted the amount of Rs.6,80,759/-. There was no physical verification by all the three Engineers as to whether the work order which was given to Kalambadevi Society was actually executed or not. They had not even enquired as to whether the work has commenced. The amount was disbursed in favour of Kalambadevi Society on the assumption that the work order has been executed and the work is completed. It appears that there were complaints that the work has not commenced at all and, therefore, an enquiry was initiated. In the course of enquiry, it had surfaced that let apart the completion of work, but the work had not even commenced and the amount allotted was disbursed. There was no record to show that the said three Engineers had taken any measurement of the work completed and had only submitted a report that the work is completed

and on the basis of the said work, the amount was disbursed by issuing a cheque in favour of Kalambadevi Society.

4. It is a matter of record that the present applicant has not been named in the first information report . The present applicant happens to be the member of the Panchayat Samiti, Pen. On the basis of the investigation which was in progress, it had surfaced in the investigation that Dwarkanath Mokal is the Sarpanch of panchayat Village Gandhe and Shihu Atiwali. It appears from the record that all the reports and certificates were given by Upa-Sarpanchn and not by Sarpanch. The names of Amrut Kuthe and Ghanshyam Kuthe had surfaced in the course of investigation. It appears from the records that the Chairman of Kalambadevi Society, the said three Engineers and Ghansham Kuthe were granted pre-arrest bail. It appears that in the course of investigation, it was revealed that the present applicant was instrumental in the allotment of work order to Kalambadevi Society. It appears that there was an agreement that work is allotted. 4% of the amount shall be retained by the Chairman of the Society and rest of the amount would be passed on to the present applicant, Amrut Kuthe and Ghansham Kuthe. it also appears that upon enquiry by Dwarkanath Mokal, it was revealed that cheque was also collected by all these three persons.

That when Mokal was in the hospital, the cheque was deposited in the account of the Society, but in fact the amount was received by the applicant, Amrut Kuthe and others and that the Society had retained 4% of the total cost.

5. The learned counsel for the applicant vehemently submits that the Engineers were granted pre-arrest bail on the ground that they had defended themselves by saying that they had not taken measurements and had not conducted any physical verification of the work but had relied upon the letter of Sarpanch that the work is completed and, therefore, had endorsed and issued a certificate that the work is completed. According to the learned counsel for the applicant, the applicant herein had apprehended his arrest since Amrut Kuthe and others had filed an application for pre-arrest bail. It was only after he was granted interim relief, that the statements of the witnesses are recorded and they have shifted the liability on the present applicant along with Amrut Kuthe and others. The learned counsel for the applicant vehemently submits that the applicant is being falsely implicated due to political rivalry and that this is the political motive to implicate the applicant in order to malign his image in the Society and, therefore, he deserves to be granted pre-arrest bail.

6. As against this, the learned APP submits that the papers of investigation, especially the statements of the villagers and the Sarpanch of the said Shihu Grampanchayat would clearly indicate that the present applicant was instrumental and had vested interest in the said project right from initiation of allotment of tender. According to the learned APP, the papers of investigation would clearly reveal that it was at the behest of the present applicant, Amrut Kuthe, and Ghansham Kuthe , the work was allotted in favour of Kalambadevi Society. The statement of the Chairman also indicates that he was only to sign the document and it was never agreed that he is to actually undertake the work. The work was given at the rate of 4%. The Bank statement of the said Society would clearly indicate that a cheque was issued for an amount of Rs.6,19,698/- and the amount which was withdrawn on 5.10.2013 i.e. within 2 days of depositing the said cheque was Rs.5,94,900/- and on the basis of the said statement, the learned APP submits that the Society had retained an amount of Rs.35,850/- and that was the closing account. The work was allotted on 1.3.2013. The cheque was deposited on 3.10.2013. The amount was withdrawn on 5.10.2013. The Bank statement clearly indicates that an amount of Rs.5,94,000/- was in fact withdrawn by Amrut Kuthe. The statements of

the Sarpanch as well as the villagers would show that the letter recommending the allotment of work as well as completion of work was fabricated by Amrut Kuthe and the present applicant.

7. The learned APP vehemently submits that the applicant has criminal antecedents. That externment proceedings were initiated against him in the year 2011. That he is also convicted for the offence punishable under Section 326 of IPC. The learned APP further submits that the applicant has no fear of law and apart from the offence against the human body, the applicnt has also committed an offence of forgery and fabrication of documents and has not only incurred loss to the public exchequer, but the villages of the two Grampanchayats. It is clear from the records that a scheme was floated as a welfare scheme only to comply with the directive principles that the villagers have a fundamental right to proper supply of water. That some persons, like the present present, the Engineers and Amrut Kuthe and Ghansham Kuhe having vested interests, misappropriate the said amount in their own pockets. It is a sorry state of affairs that the applicant happens to be a representative of the people and therefore the offence attributed to him is all the more serious. After perusing the papers of investigation, it would not be necessary to even read or refer the letter

written by the villagers against the present applicant as that would be an extraneous consideration. However, the papers of investigation, prima facie, reveal that the applicant is involved in the said offence and hence the applicant does not deserve to be granted pre-arrest bail. The custodial interrogation of the applicant in such a case would become imperative.

8. The observations made are prima facie in nature and shall not be considered while considering the application under Section 437 or 439 of Cr.P.C. as they are restricted to an application under Section 438 of Cr.P.C.

9. The application being sans merits, stands rejected.

(SMT.SADHANA S.JADHAV, J.)