

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

**Criminal Application No.1259 of 2017  
With  
Criminal Application No.1469 of 2017**

Vyankatrao s/o Uttamrao Mundhe. .. **Applicant.**

**Versus**

The State of Maharashtra & Anr. .. **Respondents.**

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Shri. K.D. Bade Patil, Advocate, for applicant.

Shri. K.N. Lokhande, Additional Public Prosecutor, for respondents.

Shri. Girish A. Nagori, Advocate, for applicant in Criminal Application No.1469 of 2017

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**With**

**Criminal Application No.1264 of 2017  
With  
Criminal Application No.1470 of 2017**

Bharat s/o Pratap Shinde  
And Another. .. **Applicants.**

**Versus**

The State of Maharashtra & Anr. .. **Respondents.**

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2 Applns 1265, 1259, 1264,1266/2017

Shri. K.M. Gadhave-Patil, Advocate, for applicants.

Shri. K.N. Lokhande, Additional Public Prosecutor, for respondents.

Shri. Girish A. Nagori, Advocate, for applicant in Criminal Application No.1470 of 2017

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**With**

**Criminal Application No.1265 of 2017**

**With**

**Criminal Application No.1472 of 2017**

Kundan s/o Dattatraya Dhake. .. **Applicant.**

**Versus**

The State of Maharashtra & Others. .. **Respondents.**

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Shri. N.K. Kakade, Advocate, for applicants.

Shri. K.N. Lokhande, Additional Public Prosecutor, for respondents.

Shri. Girish A. Nagori, Advocate, for applicant in Criminal Application No.1472 of 2017

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**With**

**Criminal Application No.1266 of 2017**

**With**

**Criminal Application No.1471 of 2017**

Chandrakant s/o Bhagwat Patil  
And Another.

**.. Applicants.**

**Versus**

The State of Maharashtra & Anr.

**.. Respondents.**

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Shri. V.H. Dighe, Advocate, for applicants.

Shri. K.N. Lokhande, Additional Public Prosecutor, for respondents.

Shri. Girish A. Nagori, Advocate, for applicant in Criminal Application No.1471 of 2017

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**Coram: T.V. NALAWADE, J.**

**Date: 20 March 2017**

**ORDER:**

1) All the aforesaid applications are filed for the relief of anticipatory bail in Crime No.8/2017 registered in Jalgaon Taluka Police Station for offences publishable under sections 120-B, 420, 477-A etc. of the Indian Penal Code. Both the sides are heard.

2) Criminal Application Nos.1469, 1470, 1471 and 1472 of 2017 filed for permission to assist the learned Additional Public Prosecutor are allowed and disposed of.

3) The crime is registered on the basis of order given by the Judicial Magistrate, First Class in a private complaint filed by one Mahendra Sonwane, R/o Mamurabad, Tahsil and District Jalgaon. He has made allegation that the offences under the aforesaid sections are committed by the present applicants while implementing the project of Central Government of drinking water to Village Panchayat Mamurabad. As per the scheme prepared for implementation, one committee which consists of members of Village Panchayat and others was constituted. Accused No.1 Chandrakant and accused No.2 Sow Sunita were members of the Village Panchayat and they were first made Chairman and Secretary of the Committee. The project was given in the year 2011. Accused No.1 and 2 were holding the aforesaid posts as they were members of the Village Panchayat till October 2015. As their tenure was over, from October 2015 till this date accused Nos.3 and 4 are holding these posts.

4) The value of the project work was around Rs.2.29 crore. The Superintending Engineer, Nashik

Division is the ultimate authority for technical sanction purpose. The officers of the Zilla Parishad of technical side viz. accused Nos.5 and 6 were the supervisory officers in respect of this project. Though accused Nos.5 and 6 were deleted from the private complaint by the original complainant before making an order under section 156(3) of the Code of Criminal Procedure, it cannot be said that they stood deleted from the trial of the offence.

5) The project work was initially given to accused No.7, a contractor. He stopped the work in the midst in the year 2014 and he had collected huge amount. Then the work was allotted to accused No.8, other contractor, and till this date and also on the date when the order made under section 156(3) of the Cr.P.C. was made, accused No.8 was executing the remaining work.

6) There is allegation against accused Nos.1 to 4 that they joined hands with the contractor and they falsely showed more work than the work actually done and they made payment of excess amount to the contractor. It is alleged in the complaint that when the

work up to value of one crore rupees only was done, more amount was shown to be disbursed by the Village Panchayat and by using various *modus operandi* accused persons have misappropriated the public money.

7) Some more specific allegations are made in the complaint against the persons and they are of following nature :

(i) When the distance between Nandra and Mamurabad is only 6000 meters, the distance is falsely shown as 6800 meters and the amount in respect of 800 meters which was of laying of main pipe is misappropriated. There are more allegations that the main pipe of standard quality was not used but old and low quality pipeline was used and thereby the accused have misappropriated the amount of Rs.87.36 Lakh.

(ii) When the work of slotted pipe gallery worth Rs.22.83 Lakh is not actually done, false record of execution of such work is created and this amount is misappropriated.

(iii) The work of over-head tank is made but it is of very low quality and in that work amount of Rs.3.28 lakh has been misappropriated.

(iv) Valve on main line is not fixed but it is falsely shown that such valves were fixed and amount of Rs.39,000/- has been misappropriated.

8) There is allegation made in the complaint that to suppress illegal activities and the offences committed, the record of the project is not produced in the office of the village panchayat. It is contended that when the information was sought under the Right to Information Act by the complainant, it was informed to him that such record is not produced in the office of the Village Panchayat. There is allegation that the members of the Village Panchayat who are accused are responsible for this act.

9) It is the case of the complainant that the contractor was changed intentionally by the accused to suppress the aforesaid offences. Allegations are made that there was one old project for drinking water but that project was also not properly functioning and impure water is being supplied which is causing harm to the health and life of the people of that area. It is contended that the Sub Divisional Engineer of the Zilla Parishad had given report dated 1-6-2016 about the irregularities and due to the irregularities the Executive Engineer had given directions to take steps like giving report to the police on

7-10-2016 but no action was taken by the concerned and no report was given to police. It is contended that even when the Sub Divisional Engineer was expected to give report to police he did not give report and departmental action is not taken against him. It is contended that even the Collector is not taking action against the accused persons.

10) In view of the aforesaid circumstances, private complaint was filed. The learned Judicial Magistrate made order under section 156(3) of the Cr.P.C. on 30-1-2017. This order is not challenged by the applicant. While rejecting the applications filed for anticipatory bail the Sessions Court has observed that the investigating agency is expected to give notice under section 41A of the Cr.P.C. to the accused before taking any coercive action and therefore relief of anticipatory bail need not be given.

11) The investigation is virtually hampered as the relevant record of the project is not made available. Whatever police received is made available to this Court and that record shows that investigating agency is feeling helpless due to absence of the record. The record like

extract of bank account of the Village panchayat is produced. It is for the period from 1-1-2011 to 1-7-2016. This extract shows that payments were made to both the contractors. To the second contractor amount of Rs.87 Lakh has been paid. The account, however, does not show that the amount was paid subsequent to October 2015. It is the contentions of accused Nos.3 and 4 and the present members of the Committee that during their tenure not a single pai is paid but there are the circumstances as mentioned above.

12) The private complaint was filed on 27-12-2016 and till that date the execution of the work was going on and it can be said that during the tenure of the present accused also the project work was going on. The present committee was expected to give report to various officers about the illegalities and irregularities but that is not done by them and they are also not handing over the papers of the project to police.

13) There is report prepared by the supervisory staff of the Zilla Parishad. It appears that officers like

applicant Nos.5 and 6 had submitted inquiry report to the Executive Engineer and this information is supplied by the Executive Engineer to the complainant. It can be said that there are allegations even against accused Nos.5 and 6 as the police papers show that the amount has been disbursed but the work is not completed and many things for which the amount is shown to be paid were not found on the spot. Amount of Rs.1.57 crore was spent from 1-11-2011 to 31-3-2014 and amount of Rs.62.5 lakh was spent from 2-4-2014 to 1-7-2016 as per the account extract. Thus till this date the amount of Rs.2.05 crore is shown to be spent for the project work but the project is not completed and the old pipeline is being used for drinking water supply. It is already observed that the complainant cannot pick and chose the persons against whom case can be filed and it is open to the police to file case against accused Nos.5 and 6 also and also against others who are found involved in the offence.

14) There is inconsistency in the report submitted by the supervisory staff of the Zilla Parishad to the Executive Engineer and the panchanama prepared by

police. It appears that the inspection was done by the supervisory officer of the Zilla Parishad on 25-7-2016 and the police prepared the panchanama on 1-2-2017. The panchanama shows that no work of slotted pipe gallery was done but the Zilla Parishad staff found that such work was done. Further, the value of this work was found as more than the work value. The panchanama shows that items like submersible pump, valve on main line were not found. Quality of the over head tank also was not found proper. The aforesaid circumstances are sufficient to infer that the attempts are being made by everybody to suppress the things. It is surprising that the record in respect of the project is not available. Such schemes are prepared for the benefit of general public and the persons like accused cannot be spared and lenient view cannot be taken in their favour. Custodial interrogation of the present applicants is a must. In the result, the applications stand rejected.

Sd/-  
**(T.V. NALAWADE, J.)**

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