

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

CRIMINAL APPLICATION NO.2480 OF 2017

Rajendra s/o. Ramdas Jadhav,
Age : 43 years, Occ. Service,
r/o. College Road, Rahuri,
Tq. Rahuri, Dist. Ahmednagar .. Applicant

Vs.

The State of Maharashtra .. Respondent

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Mr.K.N.Shermale, Advocate for applicant
Mr.K.N.Lokhande, APP for respondents/State

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CORAM : SANGITRAO S. PATIL, J.
DATE : JUNE 02, 2017
(VACATION COURT)

ORAL ORDER :

Heard the learned Counsel for the applicant.

2. The applicant has been alleged to have committed offences punishable under Sections 409 and 420 read with Section 34 of the Indian Penal Code. He is seeking pre-arrest bail in respect of Crime No.I-85 of 2016 registered with Ashvi Police

Station, Tq. Sangamner, Dist. Ahmednagar, for the said offences.

3. The learned Counsel for the applicant submits that the applicant is Gramsevak of village Varawandi. He did not commit any offence. He withdrew the amount which was required to be paid for completing certain works. He was given a notice to deposit the amount of Rs.12,82,428/- towards his share in the alleged misappropriated amount. The applicant replied that notice and denied the allegations levelled against him. He submits that the applicant was not given any opportunity of hearing before fixing the liability on him to pay the said amount. He has been wrongly suspended from the service. He further submits that the applicant has deposited the said amount under protest. He submits that though the previous application filed by the applicant for pre-arrest bail has been rejected, in view of the fact that the applicant has deposited the amount that was

claimed from him, the present application is maintainable. According to the learned Counsel, a civil dispute has been converted into a criminal one and the applicant has been tried to be arrested and detained. Relying on the judgment of the Hon'ble Supreme Court in the case of **Ravindra Saxena Vs. State of Rajasthan, AIR 2010 SC 1225**, he submits that the applicant is entitled to get pre-arrest bail.

4. The learned A.P.P. submits that the amount of Rs.25,64,855/- was misappropriated by the applicant and the then Sarpanch of village Varawandi. The applicant was required to deposit the amount of Rs.12,82,428/- towards his share out of the said amount. The amount withdrawn by the applicant from time to time was not shown in any account. It was with the applicant only. Ultimately, he deposited the said amount. According to the learned A.P.P., there is a very strong *prima facie* case against the applicant for

the above-mentioned offences. He, therefore, prays that the application may be rejected.

5. As seen from the show-cause notice dated 23.06.2016, the amount of Rs.25,64,855/- is alleged to have been withdrawn by the applicant being Gramsevak during the period from 19.08.2012 to 08.04.2014. He was called upon to deposit the amount of his share by the said notice. It was specifically mentioned in the said notice that the applicant and the then Sarpanch were equally responsible for committing misappropriation of the said amount. The applicant replied that notice on 05.11.2016 and denied the allegations levelled against him. He refused to deposit the amount of Rs.12,82,428/- as claimed in the notice. However, he has deposited the amount on 06.05.2017. It *prima facie* indicates that the liability, which was flatly denied by the applicant on 05.11.2016 in his reply to the notice, seems to have been accepted by him by depositing that amount on

06.05.2017, though under protest. In my view, by depositing that amount belatedly, the applicant cannot dis-own his liability for making use of that amount for his own purpose. Such a huge amount seems to have been utilised by the applicant without any authority. All the circumstances *prima facie* show involvement of the applicant in the above-mentioned offences. These facts do not show that a civil dispute has been converted into a criminal one.

6. It is well settled that the extraordinary provision of pre-arrest bail is meant for innocent persons to protect them from the harassment of arrest and detention. The said provision cannot be used in favour of a person who *prima facie* seems to have participated in the criminal activity. In the circumstances, the judgment in the case of **Ravindra Saxena** (supra) cited by the learned Counsel for the applicant,

would be of no assistance to the applicant to seek indulgence of this Court.

7. The previous application for pre-arrest bail filed by the applicant was rejected by this Court on 02.02.2017. There is no material change in the circumstances after rejection of that application. This fact also goes against the applicant in seeking the relief of pre-arrest bail in this successive application.

8. In the above circumstances, I pass the following order :-

The application is rejected.

[SANGITRAO S. PATIL, J.]

kbp