

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Application (ABA) No.617/2018
(Ku. Dipali d/o Janardan Chavan.vs. State of Maharashtra through PSO PS
Dharni, Dist. Amravati (Rural))

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr. H.D. Dangre, Advocate for Applicant.
Mr. M.K.Pathan, APP for Non-applicant.

CORAM : NITIN W. SAMBRE, J.
DATED : SEPTEMBER 07, 2018.

The applicant, a gazetted officer, working with the Forest Department in the capacity of Range Forest Officer, has invoked the provisions of Section 438 of the Code of Criminal Procedure, seeking pre-arrest bail in Crime No.149 of 2018 punishable under Sections 406, 409, 420, 467, 468, 471, 477-A read with 34 of the Indian Penal Code.

2. The prosecution case as appears from the complaint is, the present applicant being Technical Officer, pursuant to the provisions of Mahatma Gandhi National Rural Employment Guarantee Scheme, has received an amount from the co-accused, who withdrew the same from the accounts of the labours for her personal gain.

3. The applicant's earlier bail application came to be withdrawn before this Court vide A.B.A. No.531 of 2018.

4. The subsequent development which is brought to the notice of this court, which prompted the applicant to move the present application, in a proceeding arising

out of the crime in question, the Sessions Judge made certain observations at interlocutory level of which clarification was sought from this Court. This Court has observed that there is no impediment in the arrest of the applicant. As such the present application is entertained as applicant is apprehending arrest.

5. Heard Mr. Dangre, learned counsel for the applicant at length. Mr. Dangre, would urge that the applicant, a highly educated officer, came to be booked upon a complaint, in relation to the illegal financial benefits alleged to have received by the applicant from one of the co-accused. According to him, for providing work under the Employment Guarantee Scheme, the labours were provided with the job cards containing name of the head of the family and other details by a Gram Rojgar Sewaks of the concerned Gram Panchayat. According to him, it is the duty of the said Gram Sewak to carry attendance and the role attributed to the applicant in the work in question is that of preparing technical estimate about the proposed work to be executed. The said estimate then is required to be forwarded for administrative approval. It is claimed that said work pursuant to the approval granted, was executed in between January and March, 2017 and such labours who were shown to have attended the work on muster role and also actually worked, were paid wages in their accounts. Such amount which is deposited in the postal account of workers, is at disposal of such labours. It is claimed that accused no.3 Ratnadeep Gaikwad used to withdraw the payment from the postal accounts of the concerned labours.

6. It is also claimed that the said amount fraudulently withdrawn by the applicant no.3 is claimed to have been handed over to the applicant. As such the applicant is booked in the crime.

7. The learned counsel for the applicant submits that in view of registration of forest Crime No. 419 of 2012 against Ratnadeep Gaikwad and his relatives, the applicant is falsely implicated. It is also claimed that in the said crime, the applicant was assaulted by said accused no.3, who later on secured a pre-arrest bail in the said forest crime and he tried to implicate the applicant in the present false offence. It is also claimed that one Sukhdeo Taiwade who had made encroachment, was ordered to be removed by the order of the Divisional Commissioner, who along with the aforesaid accused no.3 has connived in implicating the applicant in the false crime. The learned counsel then would urge that the record would depict the withdrawal of the amount by Ratnadeep Gaikwad, that too by forging the signatures of his relatives and that being so, there is no material to infer that the amount is paid to the applicant. As such this application.

8. Mr. M.K. Pathan, learned APP would oppose claim on the ground that the amount paid to the relatives of Ratnadeep Gaikwad, have stated that they never worked but the amount was deposited in their accounts. It is also claimed that Ratnadeep has given a statement that after withdrawing the amount, he has paid the said amount to the applicant.

9. The learned APP then submits that since the offence is having financial implications, being an

economic offence, this Court should reject the application.

10. Considered rival submissions.

11. It is not in dispute that co-accused Ratnadeep was booked in Forest Crime No. 419 of 2012 when the tractor which he was carrying with co-accused Rahul, his real brother, was found to be transporting teak wood illegally covering the sand. The tractor which was used by the accused in the said crime was also seized. The co-accused at that time, has tried to assault the present applicant as his tractor was seized.

12. As such Ratnadeep Gaikwad, accused no.3, carrying personal grudge against the applicant, cannot be ruled out. The fact remains that the applicant has neither withdrawn the amount from the accounts of relatives of Ratnadeep Gaikwad, nor the said amount is transferred to the account of the applicant. It is the prosecution case that accused no.3 has withdrawn the amount from the post office accounts of the seven persons who are his relatives and claimed to have paid to the applicant. The relatives of the accused no.3 have given a statement that they have not worked but the amount was deposited in their accounts. However, the statement of the accused no.3 that he has paid the amount to the applicant cannot be believed particularly in the backdrop of he having grudge against the applicant in view of registration of forest crime No. 419/2012 and seizure of his tractor therein.

13. The Divisional Commissioner vide order dated 7.4.2017 pursuant to the proceedings initiated by the applicant, has ordered removal of encroachment of one

Sukhdeo Taiwade.

14. Apart from above, the fact remains that the co-accused nos. 4,5,6 and 9 are already protected by granting pre-arrest bail in their favour. The applicant, a public servant, is very much available for investigation. There are no criminal antecedents. If the statement of the co-accused and the conduct of Ratnadeep Gaikwad , is considered so as to deny the bail to the present applicant, the morale of the Forest Officers who are protecting the flora and fauna will be adversely affected.

15. In the aforesaid backdrop, in my opinion, a case for bail is made out. In view thereof, the application deserves to be allowed.

(i) In the event of the arrest of the applicant in Crime No.149 of 2018 punishable under Sections 406, 409, 420, 467, 468, 471, 477-A read with 34 of the Indian Penal Code, the applicant be released on furnishing personal bond of Rs.10,000/- with one or two solvent sureties in the like amount.

(ii) The applicant shall attend the investigating officer as and when directed by the investigating officer, for which an intimation be served through the concerned Divisional Forest Officer of the Division under which the applicant is working.

(iii) The applicant shall not tamper with the prosecution evidence nor shall attempt to influence the prosecution witnesses in any manner.

JUDGE

halwai