

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.392 OF 2020

(Smt. Ratnamala w/o Babanrao Deshmukh Vs. The State of Maharashtra thr. PSO PS
Washim (Rural), Tah. & Dist. Washim)

CRIMINAL APPLICATION (ABA) NO.344 OF 2020

(Ku. Sumita Bhaskar Wankhade Vs. The State of Maharashtra thr. PSO PS Washim
(Rural), Tah. & Dist. Washim)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Rishikesh Mardikar, Advocate for Applicant. [Cri. Appln. (ABA) 392/2020]

Mr. S.M. Vaishnav, Advocate for Applicant. [Cri. Appln. (ABA) 344/2020]

Mrs. K.R. Deshpande, APP for Non-Applicant/State. [Cri. Appln. (ABA) 392/2020 & Cri. Appln. (ABA) 344/2020]

CORAM: ROHIT B. DEO, J.

DATE: 16th DECEMBER, 2020.

Heard.

2. These applications arise from the same crime and are heard and decided together.

3. Criminal Application (ABA) 392/2020 is preferred by the then Sarpanch of the Gram Panchayat, Chikhli and Criminal Application (ABA) 344/2020 is preferred by the then Gram Sevak/Secretary of the Gram Panchayat, Chikhli, apprehending arrest in Crime 395/2020 registered with Police Station Washim Rural, Washim for offences punishable under sections 420, 365, 371 read with section 34 of the Indian Penal Code.

Applicant in Criminal Application (ABA) 392/2020 Smt. Ratnamala w/o Babanrao Deshmukh demitted office in December, 2017. On 28.05.2018 the newly elected Sarpanch and other members of the Gram Panchyat lodged an extremely serious complaint alleging gross financial irregularities *inter alia* in purchase of LED lights.

4. The complaint was inquired into by the Block Development Officer (BDO) on the directions of the Chief Executive Officer (CEO), Zilla Parishad and on the basis of the findings arrived at, report was lodged with the concerned police station on 22.07.2020.

5. I have heard the learned counsel Mr. Rishikesh Mardikar for the applicant in Criminal Application (ABA) 392/2020 and the learned counsel Mr. S.M. Vaishnav for the applicant in Criminal Application (ABA) 344/2020 and with the assistance of the learned APP Mrs. Deshpande and the I.O. who is personally present, the case diary is perused.

6. The submissions canvassed by the learned counsel primarily focused on the premise that the alleged irregularities do not suggest criminal culpability and are at the most administrative irregularities. Mr. Rishikesh Mardikar would submit in addition that in any event, the then Sarpanch has challenged the findings of the inquiry committee. Mr. Vaishnav, would not only reiterate the

submissions recorded *supra*, he would further submit, relying on certain decisions, that ordinarily bail and not jail is the rule, and that the prosecution claim that custodial interrogation is necessary cannot be ground to refuse pre-arrest protection.

7. Mr. Vaishnav has however, not placed on record the Constitution Bench decisions which are relevant, *inter alia* the decision in *Sushila Aggarwal and others v. State (NCT) of Delhi and another* reported in 2018 (7) SCC 731. Mr. Vaishnav has relied on the decision of the Apex Court in *Siddharam Satlingappa Mehre v. State of Maharashtra and others* reported in (2011) 1 SCC 694, which is not only explained, but over ruled on certain aspects in *Sushila Aggarwal*. The next judgment on which Mr. Vaishnav is relying is *Arnesh Kumar v. State of Bihar and another* reported in (2014) 8 SCC 273. Reliance is also placed on the decision of the Apex Court in *Dilip Ch. Kalita v. State of Assam* and the decision of a learned Single Judge of this Court in *State of Maharashtra & anr. v. Naresh Rajeshwarrao Patil & ors.* reported in 2015 (2) Bom. C.R. 590. The last decision on which reliance is placed in *Jagannath Ramchandra Biyani v. State of Maharashtra* reported in 1981 Mah.L.J. 791.

8. The law is fairly settled and since I cannot possibly demur with the ratio on articulation in the decisions, save and except, to the articulation in *Siddharam*

Mhetre which the constitution Bench of the Apex Court has over ruled, it would not be necessary to discuss the decisions cited in any detail.

9. The legal position that ordinarily the bail is rule cannot be disputed. Further, pre-arrest bail cannot be rejected on the mere *ipse dixit* of the prosecution is also beyond debate. The discretion cannot be fettered by a straight jacket formula and several considerations will weigh within the Court while deciding entitlement to pre-arrest protection. The gravity of the offence, the need of custodial interrogation and the possibility that the investigation shall be derailed or rendered ineffective if the accused are granted pre-arrest protection are few relevant considerations.

10. In the facts of the present case, I have no doubt whatsoever, that there is more than ample material in the case diary to link the applicants with the crime. The Sarpanch and the then Secretary were trustees of public money. The *modus operandi* rules out the possibility that the irregularities are only administrative or that the applicants did not have *mens rea*.

11. An amount of Rs.13,50,000/- is shown paid to one Prem Industry for purchasing LED lights. Notably, it is irrefutable that in the financial plan the provision for purchase of LED lights was Rs.4,00,000/-. The material in

the case diary *prima facie* indicates that the entire tender process was suspicious. Prem Industry, assuming that there is some business concern in existence which goes by that name, was not qualified to participate in the tender. While 240 LED lights are shown purchased at the cost of Rs.4587/- per unit which amounts to Rs.11,00,000/-, an amount of Rs.13,50,000/- is paid to Prem Industry and there is no conceivable reason for the additional payment.

12. The physical inspection shows that 42 LED lights could not be traced and even the remaining lights reportedly became dysfunctional within four to six months of the installation. The applicants did not obtain the test report which was the tender condition. The test report which was obtained pertains to 90 Watt LED lights and what was supplied was 30 Watt LED lights, and that too when the tender condition was that 36 Watt LED lights be supplied. Assuming that 240 LED lights were received, about which there is a serious doubt, no quality sample check thereof was carried out, as the applicants were bound to do in view of the extant government directives. The version of the prosecution is that the existing CFL lights were properly functioning and there was no occasion for the purchase of the LED lights. The existing CFL lights and fixtures are missing. Statements are recorded which indicates that the CFL lights and fixtures were in the possession of the then Sarpanch – applicant in Criminal Application (ABA) 392/2020. There is no record in the Gram Panchayat as

regards the existing CFL lights which were allegedly replaced by LED lights.

13. According to the learned APP Mrs. Deshpande, and there is more than ample material in the case diary to *prima facie* substantiate her submission, Prem Industry was not at all eligible to participate in the tender since the tender condition envisaged that the bidder shall be either a manufacturer or an authorized dealer, which Prem Industry is not. Attempt to locate the said industry has not bore fruits. Be that as it may, even *de hors* this angle, in my considered view, in view of the *modus operandi* adopted, the material which will have to be unearthed, and the facets of the crime on which light will have to be thrown, custodial interrogation is indispensable. It would be extremely unfair to deny the Investigating Officer the opportunity to custodially interrogate the applicants. As observed by the Apex Court, interrogation when the accused is protected by the umbrella of pre-arrest protection and custodial interrogation are qualitatively different. At times, there is no substitute to custodial interrogation, particularly when there are more than one accused who may have to be confronted, not in a secure environment or when protected, but in custody, with the respective versions.

14. I am more than satisfied that no case is made out whatsoever for exercise of discretion.

15. The applications are dismissed. It is made clear that every observation reflects only a *prima facie* consideration and is made only for the limited purpose of deciding entitlement to pre-arrest protection and shall not influence the court if application seeking regular bail is moved.

JUDGE

NSN