

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

**ANTICIPATORY BAIL APPLICATION NO. 126 OF 2021
WITH
ANTICIPATORY BAIL APPLICATION NO. 127 OF 2021**

Arun s/o Narhari Kuyarewar, ... **Applicant**
Age 42 years, Occu: Business
(Proprietor of A-One Enterprises, Mumbai,
Shop No.1, Balewadi, Pune)
R/o Rani Sawargaon, Parbhani
Taluka and District Parbhani

VERSUS

1. The State of Maharashtra, ... **Respondents**
Through the Police Station Officer,
Anandnagar Police Station, Osmanabad,
Taluka & District Osmanabad.
2. The Superintendent of Police,
Osmanabad.

Mr. Rajendra Deshmukh, Senior Advocate i/by Mr. Devang R. Deshmukh,
Advocate for the applicant
Mr. V. M. Kagne, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 18th August, 2021.
PRONOUNCED ON : 31st August, 2021

ORDER:

1. Present applications under section 438 of the Code of Criminal Procedure, 1973 are preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.180/2020 and Crime No. 179/2020 respectively, both registered with Anandnagar Police Station, District Osmanabad for the offences punishable under Sections 409, 420, 467, 468, 471, 34 of the Indian Penal Code, 1860.

2. It is the case of prosecution in respect of First Information Report No. 180/2020 (ABA No.126/2021) that District Administrative Officer, Municipal Council, Administration Division, Collector Office, Osmanabad had published a tender on 10.07.2019 for installing compactors for storing record of the Municipal Councils, Paranda, Omerga, Naldurg and Nagar Panchayat, Lohara (Bk.) of Osmanabad District. The said tender worth Rs.1,99,29,000/- was allotted to the applicant through GeM Portal. It was incumbent on the part of the then District Administrative Officer-Mr.Abhay Devidas Maske to accept the said material, verify the standard and quality of goods and thereafter to pay bill amount to the applicant. The prosecution alleges that during the enquiry conducted by the Collector, Osmanabad, it transpired that the co-accused namely said Abhay Devidas Maske, without following rules, had opened Saving Account of the Municipal Council Department in Equitas Bank, Branch Osmanabad in collusion with a private person by name Manoj Audambar More and without verifying the standards and quality of compactors and without following rules, accepted material and thereafter without handing over the said material to the Municipal Councils/Nagar Panchayat, unauthorizedly kept the said material in his own custody. So also, some material has been unauthorizedly given by the applicant to Municipal Council, Paranda and got the bill amount worth Rs.1,99,29,000/- released in collusion with said Manoj More via Internet Banking. It is further alleged that the present applicant prepared forged challan with the help

of District Administrative Officer Abhay Maske and received the amount of bill.

3. Similarly, it is the case of the prosecution in respect of First Information Report No. 179/2020 (ABA No.127/2021) that District Administrative Officer, Municipal Council, Administration Division, Collector Office, Osmanabad had published a tender worth Rs.4 crore on 23.07.2019 by generating it on GeM Portal for installation of solar lights in the cremation grounds within the limits of Municipal Councils/Nagar Panchayats of Osmanabad District . The tender was allotted to the present applicant. The prosecution alleged that similar modus operandi was adopted by the applicant as per details given in First Information Report No. 180/2020. In this factual background, two different first information reports as noted above came to be registered against the present applicant.

4. Mr. Rajendra Deshmukh, learned Senior Counsel, appearing for the applicant (FIR 180/2020), submits that masterminds behind the alleged offence are said Abhay Maske and Manoj More. According to the learned Senior Counsel, said Manoj More has been granted interim relief by the Hon'ble Apex Court. The learned Senior Counsel then next submitted that it was one Bibhishan Shamrao More, who with approval and authorization of the Collector Osmanabad, had published tender over the GeM Portal. Bibhishan More is Consignee/Buyer. The

applicant had delivered material to said consignee and after verification of goods, its standard and quality, the said consignee/buyer generated delivery challan and invoice over the GeM Portal and bill amount was disbursed to the applicant as per invoice. In such circumstance, the question of cheating, misappropriation or forgery at the hands of the applicant does not arise.

5. The learned Senior Counsel, stretching the submissions further would submit that the applicant supplied 42 compactors as per the work order. Consignee receipt and acceptance certificate bearing No. GEMCRAR 1-511687498477393-1 was generated Online and thereafter payment was disbursed to the applicant on 25.07.2021. Even Compactors were duly handed over as per acknowledgment bearing No. GEMCRAR 1-511687498477393-1. Since the delivery challan was generated Online from the GeM Portal, it does not require signature and seal. According to the learned counsel, the applicant had installed 15 compactors and remaining 27 compactors were not installed as the concerned Municipal Councils refused permission for installation of said compactors. However, the applicant was and is ready to install remaining 27 compactors which are in custody of the competent authority.

6. As far as First Information Report No. 179/2020 is concerned, the learned Senior Counsel would submit that the applicant had supplied

579 solar street lights and got the consignee receipt and acceptance certificate bearing No. GEMCRAR 1-51168773934984-1 which was generated Online and thereafter payment was disbursed to the applicant on 02.08.2019. According to the learned Senior Counsel, out of 570 solar street lights, solar 230 solar street lights had been installed and as rest of the Municipal Councils refused to accept the said street lights, the applicant was required to hand over the remaining material to the District Administrative Officer. However, the learned senior counsel submitted that the applicant was and is ready to install remaining 349 solar street lights which are presently in the custody of the competent authority.

7. The learned Senior Counsel, to substantiate the above submissions, invited my attention to various documents filed on record. The learned Senior counsel also invited my attention to the order passed by this Court on 16th February, 2021 in Anticipatory Bail Application No. 999/2020 and would submit that anticipatory bail was granted to Pratap Rajendra Gaikwad, applicant therein and the facts of ABA No.999/2020 are applicable to the applicant's case and therefore the present applicant also deserves to be given benefit of pre arrest bail.

8. Mr. V. M. Kagne, learned A.P.P., on the other hand, vehemently opposed the submissions and took me through the compilation of investigation papers. According to learned A.P.P., the applicant, in

collusion with said Abhay Maske, only completed the paper work and nothing was supplied and this was done with intention of cheating the Government. The learned A.P.P. also took me through the findings of the Enquiry Committee which is also filed on record by the learned counsel for the applicant and would submit that there was clear finding of the Enquiry Committee of the complicity of the accused in the offence.

9. I have also gone through the highlighted portion of the investigation papers which were impressed upon me during the course of argument. Learned A.P.P. invited my attention particularly to a form wherein details of organization are given, more particularly that of buyers details, product details i.e. Solar lights having quantity of 579 worth Rs.4 core and expected delivery date of 6th September, 2019. The learned A.P.P. then invited my attention to the Consignee receipt and acceptance certificate, which according to him, were falsely created in collusion with said Abhay Maske.

10. During the course of argument, learned A.P.P. also submitted that said Abhay Maske had in fact opened the GeM portal in the name of Bibhishan More and used the same. To substantiate that, the learned APP also invited my attention to the statement of Bibhishan More recorded during the course of investigation.

11. The learned APP lastly would place reliance on the observation of this Court in ABA No. 857/2020, paragraph 13 in particular and would submit that having regard to the facts and circumstances of the case, since the investigation is in progress and the fact that the Government has been cheated to the tune of crores of rupees by the applicant in collusion with others by forging documents the present application deserves to be rejected.

12. Mr. Deshmukh, learned Senior Counsel, by way of rejoinder, would submit that main accused namely Abhay Maske is not before the Court. The learned senior counsel then again invited my attention to various documents and would submit it does not lie in the mouth of the prosecution that they did not receive the consignments. The prosecution has not been able to made out a case for custodial interrogation and at the most the dispute between the parties, if at all, is of civil nature and this aspect must be considered while deciding the present application. The learned senior counsel further made a submission that the applicant is ready to assist and render all possible cooperation to the investigating officer and he being respected businessman and having deep roots in the society, would not flee from justice.

13. I have carefully perused the record. To begin with, it appears that pursuant to show cause notice bearing No. 2020 नपाप्र/कार्या-1/

कावी/189 dated 01.06.2020 that there has been misappropriation of Rs.9.35 crores and why criminal action should not be taken against the concerned, the present applicant replied the said show cause notice on 10.06.2020 contending therein that after getting the work order in respect of installation of 42 units of compactor, the same have been supplied to the concerned office on 23.06.2019 and a note to that effect was given on GeM Portal bearing No. GEM CARC-1-511687498477393-1. Accordingly, the payment in the sum of Rs.1,99,29000/- was done on 25.07.2019 through RTGS. It was further replied that as per the work order, 15 units of compactors were supplied at Municipal Council Paranda vide Chalan No.0025. Remaining 27 compactors were refused by Omerga, Naldurg and Lohara Municipal Councils and therefore, the said 27 compactors were deposited with the office of Collector, Osmanabad vide receipt No. GEM CARC-1-511687498477393-1. It then appears that additional explanation was given by the applicant on 26.06.2020 by giving reference to the earlier reply dated 10.06.2020, which is referred herein above. The applicant requested that the said explanation be added to his explanation dated 10.06.2020. The explanation was to the effect that with reference to the terms and conditions of the tender, the applicant was ready to install the compactors at the estimated places. Thus, the said show cause notice was promptly replied by the applicant herein.

14. This brings me to the order of the learned Collector, dated 26th

June, 2020 based on the findings of the Enquiry Committee. This order has been extensively referred to by the learned Senior Counsel for the applicant as well as the learned A.P.P. in order to canvass their respective stand and the points in the matter. Needless to say, this order is full of significance from the point of view of the applicant. This order also deals with the explanation given by the applicant in both the matters i.e. in respect of installation of compators as well as Solar street lights.

15. After referring to the detailed explanation offered by the applicant and others, the learned Collector then put his observations. The observations of the learned Collector at page No.138 of the compilation filed by the learned counsel for the applicant are material. Observation at para 4 is in respect of solar street lights to be installed at crematorium grounds. Incidentally, it may be noted here that the applicant has clearly and categorically referred consignee receipt and acceptance certificate in respect of Solar street lights, however, the observation of the learned Collector to that effect is that since the said consignee receipt and acceptance certificate does not bear seal of the office, the possibility of the consignee receipt and acceptance certificate being forged one cannot be ruled. In my considered opinion, this was the inference, without any basis, drawn by the Collector. It is nowhere made clear that it was mandatory or compulsory to have stamp and seal of the department on the consignee receipt and acceptance

certificate. Similarly, learned Collector observed that certain solar street lights were refused by certain Municipal Councils. That out of 579 Solar street lights, five municipal councils namely Kalamb, Tuljapur, Omerga, Lohara and Paranda have accepted 50, 60, 40, 20, 50 solar street lights respectively, however, as remaining solar street lights were refused to be accepted by the remaining Municipal Councils, the same were handed over to Abhay Maske, the District Administrative Officer. Even the acknowledgment receipt was perused by the learned Collector and he noticed that 579 solar street lights were handed over to Abhay Maske. It was further observed that on what date, the said articles were received by said Maske from the applicant is not made clear. On thing is thus very much clear and that is that 579 solar street lights were handed over to Abhay Maske by the applicant.

16. Coming to the findings at paragraph 5, the learned Collector found that though the applicant claimed that 15 units of Compactors were delivered to Paranda Municipal Council and as remaining 27 units were refused by Omerga, Naldurg and Lohara Municipal councils, therefore those 27 Units were deposited with the office of Collector, Osmanabad but the acknowledgment receipt does not show as to on what date those compactors were received by the Office of Collector. It is pertinent to note here that the learned Collector did not deny that no such remaining compactors i.e. 27 units were received by the Office of Collector. His observation was only to the extent that

acknowledgment receipt does not show on what date the said compactors were received by the office of the Collector.

17. The learned Collector further observed that the consignee receipt and acceptance certificate bear signature of said Abhay Maske but as per rules there ought to have been official seal and therefore since it was not there, the possibility of the consignee receipt and acceptance certificate being forged cannot be ruled out. Again here the learned Collector does not deny that it was not having signature of said Abhay Maske.

18. The above being the state of affairs, in my considered opinion, the learned Collector prima facie jumped into conjectures and surmises without there being any concrete material to hold that there was possibility of consignee receipts and acceptance certificates being forged one. I do not find merit in the submissions of learned A.P.P. in this regard.

19. This takes me to the compilation of learned A.P.P. The learned A.P.P., during the course of argument, invited my attention to the document-contract wherein buyer details with address are given i.e. the name of buyer namely Bibhishan Shamrao More and the address where the consignment was to be delivered. It is at page 185 in respect of Solar 20 Watt light of 579 quantity. Expected delivery date

was 6th September, 2019. The sanction order is at page 191. Then, the learned A.P.P. invited my attention to the invoice in respect of said Solar 20 Watt street lights and consignee receipt and acceptance certificate regarding the same. Learned APP has also invited my attention in respect of 42 units of compactors. The buyer is same person namely Bibhishan Shamrao More and expected delivery date is 15th October, 2019. Learned A.P.P. also invited my attention to the invoice relating to said 42 Compactors and then would submit that all those documents were created without delivering the items in question.

20. What is apparent from the buyer's details is that Bibhishan Shamrao More was the buyer in respect of not only solar lights but also of Compactors. Consignee receipt and acceptance certificate is already on record which I have already commented upon during earlier part of discussion. It is also clear from the invoice that 579 solar lights of 20 watt were dispatched on 2nd August, 2019 whereas expected delivery date was 6th September, 2019. Similarly, there is invoice in respect of Compactors which were dispatched on 22nd July, 2019 whereas expected delivery date was 15th October, 2019. Thus, all these items were prima facie dispatched before the due date. It is also the specific case of the applicant that consignment were handed over to Bibhishan Shamrao More who after verification of goods, its standard and quality, generated delivery challan and invoice over the GeM portal. Consignee receipt and acceptance certificate bearing No. No.

GEM CARC-1-511687498477393-1 was generated Online. Similarly, Acceptance of 579 Solar street lights was acknowledged vide consignee receipt and acceptance certificate bearing GEMCRAR 1-51168773934984-1.

21. Here, it may be noted the submissions of learned A.P.P. that said Abhay Maske had misused the GeM Portal of buyer namely Bibhishan Shamrao More. Really speaking, whether the said consignment receipt and acceptance certificates as referred above are forged one or not will have to be appreciated, analyzed and finding to that can only be given at the time of trial. In this regard, the statement of said Bibhishan More has far reaching effect. I have carefully gone through the statement of said Bibhishan Shamrao More including his supplementary statements dated 02.07.2020, 07.07.2020 and 08.07.2020. In the said statements he has directly levelled allegations against said District Administrative Officer- Abhay More that under duress, the GeM account was opened by him in his name and it was misused by him later on. What is surprising to note is that Bibhishan Shamrao Mroe nowhere categorically, clearly and concisely denies of having received, as is claimed by the applicant, the consignments in question.

22. Apart from above, what appears to me is that there is contractual dispute between the parties. The applicant has shown

readiness to install those compactors which are lying in the custody of the competent authority. The dispute simply stated is of civil nature. Even if it is assumed for the sake of argument that certain documents namely consignee receipts and acceptance certificates are forged ones, but then those documents are in the possession of investigating authority. Taking overall view of the matter, in my considered opinion, custodial interrogation of the applicant is beyond question.

23. I have also gone through the order dated 16th February, 2020 passed by this court in ABA No. 999/2020. In that case accused Pratap Rajendra Gaikwad was given benefit of pre-arrest bail. It is the submission of learned counsel for the applicant that the present applicant is also similarly situated and therefore, he should be given the benefit of pre-arrest bail.

24. I have already discussed the case of the prosecution as against the present applicant independent of the case relating to Pratap Rajendra Gaikwad as discussed by this Court while passing order dated 16.02.2021. Broadly speaking, said Pratap Rajendra Gaikwad was somewhat similarly situated like the present applicant. I have given my own grounds and reasons that there is no necessity of custodial interrogation of the applicant herein and that stay here.

25. Learned A.P.P. also has placed reliance on the order of this

Court dated 11.02.2021 wherein application of the accused namely Fahim s/o Jameel Shaikh (ABA No. 857/2020) was rejected by this Court. There, the Court was of the belief that the applicant therein had recovered monies even before he actually supplied the goods. I have not discerned or discovered that kind of situation in the present case and therefore with due respect, the observation of the Court will not further the case of prosecution.

26. For the aforesaid reason, I am inclined to allow the present applications.

27. Hence, following order:

ORDER

- (a) In the event of arrest of the applicant in connection with Crime connection with Crime No.180/2020 and Crime No. 179/2020 respectively, both registered with Anandnagar Police Station, District Osmanabad for the offences punishable under Sections 409, 420, 467, 468,471, 34 of the Indian Penal Code, 1860, the applicant is directed to be enlarged on bail on his furnishing P.R. Bond of Rs.50,000/- [Rs. Fifty thousand only], with one or two solvent sureties in the like amount.
- (b) The applicant shall remain present before the Investigating Officer as and when called during the course of investigation and shall cooperate in the investigation.

(c) The applicant shall furnish his Mobile No. and address details to the Investigating officer and handover his passport, if any, to the investigating officer.

(d) The applicant shall not tamper with the prosecution evidence in any manner.

(e) The applicant shall not indulge in any criminal activity.

28. The applications stand disposed of in the aforesaid terms.

(V. G. BISHT, J.)

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