

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

901 ANTICIPATORY BAIL APPLICATION NO.258 OF 2020

Pramod s/o Devidas Pawar,
Age 46 years, Occ. Service,
R/o. At Kawaldari, Post Bavi,
Tq. & Dist. Osmanabad.

...Applicant.

VERSUS

The State of Maharashtra

...Respondent.

...

Mr. Sushant V.Dixit, Counsel for the applicant
Ms. V.S.Choudhari, APP for the respondent-State

...

CORAM : PRAKASH D. NAIK, J.

DATE : 13th OCTOBER, 2021

PER COURT:

1] This is an application for pre-arrest bail in CR No.0109 of 2019 registered with Ramteerth Police Station, Tq.Biloli Dist.Nanded for offences punishable under Sections 420, 409, 465, 466, 468, 470, 471, 474, 477-A, 109, 120-B and 166 read with Section 34 of Indian Penal Code (for short, 'IPC'). The First Information Report (for short, 'FIR') was registered on 19th July, 2019.

2] The case of the prosecution is that Lokshikshan Prasarak Mandal, Bijur is conducting four schools, namely Satyasaibaba Primary School, Biloli, Ashok Primary School, Kundalwadi, Primary School, Bijur and Treeshaladevi Primary School, Dattanagar, Nanded. Some of

the teachers working in these schools had complained about non-receipt of salary and unauthorized deduction by members of Trust. In pursuant to such complaints, inquiry was conducted by Office of Education Officer and it was revealed from such inquiry that various amounts payable to teachers have been misappropriated by Head Master of such schools. During inquiry, it was also brought to the notice of Committee that attendance of teachers is also irregular and no satisfactory explanation was given by the Head Masters of those schools. Upon perusal of record of the schools in respect of approvals, it was noticed that proper procedure was not followed, while giving appointment and no approval could have been granted to such teachers. The Head Masters had colluded and misrepresented the Government machinery on the basis of bogus documents and withdrawal the salary, which was not payable. Hence, the FIR was registered on 19th July, 2019.

3] The applicant had preferred an application for anticipatory bail before the Court of Sessions, which has been rejected by order dated 15th February, 2020.

4] Learned counsel for the applicant urged several submissions, which can be summarized as follows:

(I) There is no evidence to show the complicity of the applicant in the alleged offences. The applicant is presently working as Junior Superintendent in Office of Deputy Director, Educational Officer. The applicant has not been named in the FIR. The applicant was Superintendent of Pay Unit, Z.P, Nanded from 1st March, 2014 to 27th March, 2014. The applicant is not involved in withdrawing any salary or fabrication of documents.

(II) Mr.Namdeo Rathod was working as Superintendent of Pay Unit. He has been named in the FIR. He applied for anticipatory bail. By order dated 26th November, 2019, his application for anticipatory bail was allowed.

(III) Vide Resolution dated 28th May, 1997 Pay Unit was constituted and functions of Pay Unit have been provided in the Government Resolution. Clause 10 of the G.R.provides that all employees and officers of Pay Unit would be under the control of Education Officer. Disbursement of salary is required to be made with signature of Education Officer. Unless the Education Officer approved the salary bills, salary grant cannot be disbursed by the Superintendent of Pay Unit on his own.

(IV) The applicant was working as Superintendent, Class-II in Education Department of Z.P, Nanded from 09.12.2013 to 06.06.2015. During the said period, he was holding additional charge as Superintendent of Pay Unit only for a period of 4 months.

(V) The applicant has not committed any offence and not involved in withdrawal of any amount paid as salary, while discharging his work. The salary bills were prepared by the Head Master of the concerned school and presented to Office of Pay Unit and the note was prepared by the staff of Pay Unit and presented along with necessary documents before applicant during the period of 4 months.

(VI) The applicant had relied upon the permissions granted by the State Government to conduct school, order of Dy.Director of Education of granting aid and approvals granted to the teachers. The yearly inspection report was prepared by the Extension Officer. These schools were functioning and teachers were appointed. The entire matter relates to the documents, which are in custody of the Investigating Agency. Custodial interrogation of the applicant is not necessary.

5] Learned APP submitted that the applicant's complicity is disclosed during the investigation. Apart from Superintendent of Pay Unit, the applicant was also holding additional charge. He had all the

requisite knowledge and it can be inferred that he was aware about the documents were fabricated. The applicant's involvement is apparent from the documents and the evidence collected during the investigation. The custodial interrogation of the applicant is necessary. The applicant had acted in connivance with the co-accused. The offences are of serious nature. The applicant was aware about the sanction of posts of the schools and that there was no sanction of the competent authority. As a Superintendent, he has to verify the bills properly. He was Superintendent, Class-II, Education (Primary), Z.P., Nanded from 09.12.2013 to 10.7.2014. As per the recommendation given by him, the education Officer sanctioned the bills, and therefore, the bills of Rs.10, 88, 511 were sanctioned. The learned Sessions Judge had considered the evidence against the applicant, while rejecting the application. The role of the applicant was to verify the bills. The schools were closed. All the accused acted in collusion with each other. The documents were fabricated. It was necessary for the applicant to scrutinize the documents. The action of the applicant indicates that he was acting in connivance with the other accused. He has played a major role in granting approval. She relied on the statement of one Madan Bhagwat Hagawane, recorded on 12th September, 2019 and supplementary statement dated 10th October 2019.

6] The applicant has filed additional affidavit contending that he had sought documents related to his tenure from office of Education Officer under the Right to Information Act and he has been provided the copies of bills submitted by the Head Master of Ashok Primary School and Treeshaladevi Primary School, presented for payment of salary of staff. The requisite documents are annexed to the additional affidavit dated 24th September, 2021 filed by the applicant. According to him, these bills included approvals given to employees by Education Officer and approved staffing pattern indicating availability of posts. Even auditor has verified the calculations and salary bills submitted by Head Masters. Therefore, the applicant processed such bills and after verifying the calculations forwarded it to Education Officer for necessary payment. The applicant had authority to disburse salary. He was not having any authority to dispute the correctness of approval given by the Superior Officer.

7] The co-accused Namdev Rathod had preferred an application for anticipatory bail before this Court, which has been allowed vide order dated 26th November, 2019. While allowing the said application, it was observed that he was Superintendent of Pay Unit, Z.P, Nanded during the period of 18.10.2010 to 25.06.2017. It is further observed that the appointment of teachers and approvals to their appointments

took place before he was transferred as Superintendent of Pay Unit, Z.P., Nanded. The authority to grant approvals to the appointment is the Education Officer. After the salary bills are wetted and approved by the Education Officer, the role of Superintendent of pay Unit comes into picture. The Court also taken into consideration Clause 10 of G.R. dated 30th May, 1997. It suggests that the offices and employees of Pay Unit were to work or discharge their duties under the control of Education Officer (Primary), Z.P., Nanded. Learned APP, however, submitted that the application of the said co-accused was allowed primarily on the ground that he was Superintendent of Pay Unit for a period stipulated therein and approval to the appointment took place before he was transferred to that department as Superintendent of Pay Unit. However, it is pertinent to note that the order also refers to the fact that the authority to grant approval to the appointment is Education Officer. The Court has also taken into consideration the G.R.dated 30th May, 1997. The documents are apparently in the custody of the investigation agency. The applicant was Superintendent of Pay Unit for a period about 4 months. At the time of registration of the FIR, applicant was working as Junior to Dy. Director, Education Officer, Z.P., Nanded. Apart from inferences, there is no cogent evidence to establish that the applicant was involved in the approvals

or fabrication of any documents or withdrawal of salary or sanctioning with *malafide* intentions.

8] In view of the aforesaid circumstances, the applicant need not be subjected to custodial interrogation. Hence, I pass following order.

ORDER

- (i) Anticipatory Bail Application No.258 of 2020 is allowed.
- (ii) In the event of arrest of applicant in connection with CR No.109 of 2019 registered with Ramteerth Police Station, Tq.Biloli Dist.Nanded, the applicant be released on bail on his executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (iii) Applicant shall report Investigating Officer on 20th, 21st and 22nd October, 2021 at 11.00 am to 01.00 pm and thereafter as and when called for,till filing of charge-sheet.
- (iv) Application stands disposed of.

(PRAKASH D. NAIK, J.)