

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 321 OF 2021

SUNIL S/O. SHANKAR SHELKE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. K.N. Shermale, Advocate for the applicant,
Mr. S.D. Ghayal, APP for the respondent.

CORAM : V.G. BISHT, J.

ORDER RESERVED ON : 11th August.2021.
ORDER PRONOUNCED ON : 20th August, 2021.

PER COURT:

1] This is an application under Section 438 of Cr.P.C. preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.0048 of 2021, registered with Police Station, Ghargaon, Dist. Ahmednagar for the offences punishable under Sections 420.409 r/w. 34 of IPC.

2] The informant is the Block Development Officer of Panchayat Samiti, Sangamner. On 25.1.2020, one Anil Phatangare made a complaint in respect of certain irregularities in respect of the affairs of the Gram Panchayat. Accordingly, the Block Development Officer, appointed a 3 member committee, who conducted an enquiry and found that the present applicant, who was the then Gram Sevak, and co-accused Prashant Gavram Phatangare are responsible for the financial irregularities and misappropriation of funds of the Gram Panchayat during the period 2014-15 to 2017-18. Pursuant to the notice, the

present applicant filed his detailed reply. Pursuant to the explanation offered by the applicant, the BDO, asked the informant to verify the record (Nasti) and accordingly, the informant submitted his Verification Report to the Block Development Officer on 10.11.2020. It is alleged that the present applicant and said accused had not taken permission of the Gram Sabha and without sanction of authority during 2014-15 to 2017-18, the co-accused had drawn a cheque in his name in the sum of Rs. 16,13,720/-, whereas, the present applicant had drawn a cheque in the sum of Rs. 4,66,626/-. Similarly, it was also alleged that the present applicant was responsible for misappropriation of 50% of the amount of Rs. 8,83,131/- i.e. Rs. 4,41,156/-. Thus, in all the present applicant had committed misappropriation to the tune of Rs. 9,81,091.50/-.

3] Mr. Shermale, learned counsel for the applicant submits that pursuant to the notice, the applicant submitted his detailed explanation in respect of the accusations raised against him by the Enquiry Committee. According to learned counsel, the applicant had obtained due permission from the BDO while disbursing the amount to the labourers and contractors. As such, the applicant did not commit any irregularity while performing his duty. Moreover, the Executive Engineer, Zilla Praishad had approved the work done in the said period, which is alleged in the FIR.

4] The learned counsel then submitted that even the Audit of Gram Panchayat, Sarole Pathar was conducted for the aforesaid alleged period, wherein, only minor discrepancies were pointed out by the auditor suggesting remedial measures for removing the same. The learned counsel then invited my attention to the chart filed pursuant to the direction of this court and would submit that the said chart would

make it clear that everything was done in accordance with law. Lastly, the learned counsel submits that even otherwise, the whole case is based on documentary evidence. The necessary documents have already been collected by the prosecuting agency and this being so, there is no question of custodial interrogation. The learned counsel also showed his readiness to cooperate with the investigating agency.

5] Mr. Ghayal, the learned APP, on the other hand, vehemently opposed the submissions and would submit that the amount which has been misappropriated is more than rupees 25 Lakhs. The 3 member Enquiry Committee has already found the present applicant and other co-accused responsible for the financial irregularities. The learned counsel invited my attention to the findings of the Enquiry Committee as also the explanation given by the applicant. However, the findings of the Enquiry Committee were upheld by the concerned authority. Thus, it is crystal clear from the documentary evidence that the present applicant is prima-facie involved in the financial irregularities. Having regard to the gravity of the offences, the applicant is not entitled to be given the benefit of anticipatory bail, argued learned APP.

6] First of all, it may be noted from the Enquiry Report and more particularly, from clauses (७) (८) and (९). Clause (७) pertains to the 13th Finance Commission for the period 2014-15, wherein, the irregularity/misappropriation is alleged. Similar is the case with clauses (८) and (९). If the status of works during the said period is seen, then, it appears that the entire work was completed. It is not the case of the prosecution that though payment was made in respect of completion of those works, but there were complaints from the concerned of not having received payment towards completion of said works.

7] Then, if one goes through the explanation given by the present applicant to the notice issued by the Enquiry Committee, then, it would appear that every allegation has been dealt with, with necessary explanation and in almost all cases, the amount spent was with the permission of the Gram Panchayat. Again, this would be a matter of record , as also recording of entries in the cash-book form No.18.

8] The final valuation under the head - 14th Finance Commission for the period 2017-18 would show that the work was carried out after receiving the administrative sanction and it is certified by the Deputy Engineer, PWD, Zilla Parishad, Sangamner. Similar is the case with 13th Finance commission and it is also certified by Team Engineer, PWD, Zilla Parishad, Sangamner. Then, there are Completion Certificates which certify that the works had been carried out as per sanctioned plans and estimates by the competent authority and BDO had permitted the Gram Panchayat to pay the necessary amount.

9] Even the audit reports on record do not reveal any major irregularity.

10] Lastly, coming to the tabular information given by the informant would reveal that various payments were made to the sweepers and other manual workers in cash, inasmuch as, they were not having the bank accounts. Nothing is brought on record that any of them had made any complaint in respect of non-payment of wages by the present applicant. So is the explanation in respect of the Rural Supply Fund and payment of Electricity Charges.

11] I have also gone through the investigation papers. What appears to me is that all the necessary documents are already seized and in the custody of the Investigating Officer. I have already pointed out from the finding of the Enquiry Committee as well as from the explanation submitted by the applicant to the concerned authority, as also relevant information given in tabular form, that prima-facie, the present applicant has carried out his duty after due sanction/permission from the concerned authority. It is also pertinent to note here that present enquiry was not initiated pursuant to the Audit Report or for that matter, under Section 140 of the Maharashtra Village Panchayat Act, 1959. I do not find the necessity of custodial interrogation having regard to the nature of the allegations and the fact that the whole case is based on documentary evidence.

12] In the aforesaid premise, I am inclined to allow the application with certain directions.

13] Hence, I pass the following order.

: O R D E R :

[I] In the event of arrest of the applicant in connection with Crime No.0048 of 2021, registered with Police Station, Ghargaon, Dist. Ahmednagar for the offences punishable under Sections 420.409 r/w. 34 of IPC, the applicant be enlarged on bail on his furnishing PR Bond in the sum of Rs. 25,000/-, with one or two sureties in the like amount.

[II] The applicant shall attend the concerned police station

as and when called and shall cooperate with the police in the investigation.

[III] He shall not tamper with the evidence or influence the witness/es connected with the matter.

14] The application stands disposed of in aforesaid terms.

**[V.G. BISHT]
JUDGE.**

grt/-