

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

ANTICIPATORY BAIL APPLICATION NO. 470 OF 2021

Avinash s/o Mahadeo Shingate, ... **Applicant**
Age: 37 Years, Occu: Service,
R/o at Present Near Modern English School,
Gangapur District Aurangabad
Permanent resident of at post Dahifal, Post
Pimpalgaon Tq. Washi, Dist. Osmanabad

VERSUS

The State of Maharashtra ... **Respondent**

Mr. R. N. Dhorde, Senior Advocate i/by Mr. Vikram R. Dhorde, Advocate
for the applicant,
Mr. D. R. Kale, P. P. for the State.

CORAM : V. G. BISHT, J.
DATE : 11th August, 2021.

ORDER:

1. This is an application under section 438 of the Code of Criminal Procedure, 1973 preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No. 0135/2021, registered with Gangapur Police Station, District Aurangabad for the offences punishable under Sections 7 of the Prevention of Corruption Act, 1988.

2. Present applicant, at the relevant time, was serving as Tahsildar, Gangapur Tahsil. The 7/12 extract in respect of the ancestral land of the informant mentions names of his parents. There is remark in the other right column which states that "Transaction illegal as per the Tenancy Act". Accordingly, the father of informant made an

application to the Tahsildar for removal of the said remark from the 7/12 extract. It is alleged that the informant visited the applicant at Tahsil Office at Gangapur in pursuance of the application made by his father, upon which the applicant allegedly sent him to accused Ashok Markad, the concerned Revenue Assistant officer. Accused Ashok Markad, on his part, allegedly told the informant that instead of paying 50% amount of the valuation of the said land, he should pay Rs.4.50 lakhs to the applicant and his work will be done. Upon negotiation, the accused Ashok Markad asked the informant at least Rs.1.25 lakh will have to be paid for the work to be done. Later on, the informant lodged complaint with Anti Corruption Bureau, Aurangabad and after necessary formalities, a trap was laid and the said accused Ashok Markad came to be apprehended.

3. Mr. R. N. Dhorde, learned Senior Advocate for the applicant, submits that the first information report is totally silent as to the specific role played by the applicant. There is no allegation that it was the present applicant who had consented Ashok Markad to accept the bribe amount from the informant so as to make any favour to him in respect of the entries in the 7/12 extract. Learned Senior Advocate invited my attention to certain portion of the say of the Deputy Superintendent of Anti Corruption Bureau, Aurangabad filed in response to the bail application of the main accused and the present applicant. It is mentioned in the say that the complainant/informant had offered Rs. 70,000/- to the present applicant, to which the latter refused and

allegedly stated that he would tell after seeing the file. It is then that the complainant approached the accused Ashok Markad who accepted Rs.70,000/- in presence of Panch witnesses. Thus, learned Senior Advocate intended to point out that the applicant was not interested in taking bribe and in fact had not taken anything from the informant. Learned Senior Advocate then contended that even otherwise the custodial interrogation is not necessary inasmuch as, except the alleged demand, there is neither recovery to be carried out nor such other material to be recovered so as to suggest that custodial interrogation is necessary.

4. Mr. D. R. Kale, learned Public Prosecutor, on the other hand, would submit that it was the accused Ashok Markad, who, at the instance of the present applicant only accepted the bribe and in such circumstance, the application need not be considered.

5. Admittedly, there is no material on record to prove direct or indirect involvement of the present applicant in the alleged offence. There is absolutely nothing to even suggest remotely that the present applicant had asked the accused Ashok Markad to accept the illegal amount of Rs.70,000/- on his behalf so as to extend favour to the informant. Even otherwise, the accused Ashok Markad, who allegedly accepted the bribe amount of Rs.70,000/- has been arrested. By no stretch of imagination it can be said that custodial interrogation of the present applicant is required. Not to be missed is the fact that the

applicant is a public servant and if he is not admitted to the anticipatory bail, then his being remanded to the police custody can't be ruled out which would have far reaching effect. This Court is therefore inclined to allow the application.

6. In view of above, the application is allowed.

7. Interim relief granted by this Court on 11th May, 2021 is made absolute and is confirmed.

(V. G. BISHT, J.)

JPC