

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

BAIL APPLICATION NO.745 OF 2021

Sandip s/o Raosaheb Palve ... **Applicant**
Age 41 years, Occu: Agri.
R/o Mohota, Tq. Pathardi,
District Ahmednagar

VERSUS

The State of Maharashtra, ... **Respondent**
Through Pathardi Police Station,
Tq. Pathardi, District Ahmednagar.

Mr. R. S. Deshmukh, Senior Advocate a/w Mr. Vishal Chavan & Mr. Ketan Pote, Mr. Devang Deshmukh and Mr. Govind A. Kulkarni, Advocates i/by Mr. A. P. Avhad, Advocate for the applicant,
Mr. S. B. Narwade, A.P.P. for the State.

WITH

BAIL APPLICATION NO.1021 OF 2021

Purushottam Shashikant Rodi ... **Applicant**
Age 63 years, Occu: Service (Retired)
R/o Ganesh Peth, Pathardi
Tq. Pathardi, District Ahmednagar

VERSUS

The State of Maharashtra, ... **Respondent**
Through Pathardi Police Station,
Tq. Pathardi, District Ahmednagar.

Ms. Rakhi V. Sundale, Advocate for the applicant
Mr. S. B. Narwade, A.P. P. for the State

WITH

BAIL APPLICATION NO. 795 OF 2021

Pradip Martandrao Jadhav ... **Applicant**
Age 58 years, Occu: Astrologist and Priest
R/o Plot No.32, Jyotish Bhaskar Building,
Block No.79, New Rangraj Nagar,
Solapur, District Solapur.

VERSUS

The State of Maharashtra,
Through Pathardi Police Station,
Tq. Pathardi, District Ahmednagar.

... **Respondent**

Mr. M. V. Ghadge h/for Mr. S. S.Tope, Advocate for the applicant
Mr. S. B. Narwade, A.P. P. for the State

CORAM : V. G. BISHT, J.
RESERVED ON : 22nd September, 2021
PRONOUNCED ON : 1st October, 2021.

ORDER:

1. These are applications preferred by the presents applicants under section 439 of the Code of Criminal Procedure, 1973 to enlarge them on bail in connection with Crime No.0062/2021 registered with Pathardi Police Station, District Ahmednagar for the offences punishable under Sections 406, 409, 420, 120(B), 468 471, 34 of the Indian Penal Code, 1860.

2. Prosecution case, in short, is that in the year 2010-11, the chairman and Trustees of Jagdamba Public Trust, Mohota, Tq. Pathardi, District Ahmednagar ('the Trust' for short) resolved to install Gold Chips known as Yogini Yantra in the basement of Mohota Devi Temple. It was thereby aimed to create positive energy in the premises of the temple. The work was allotted to Pandit Pradip Martandrao Jadhav (applicant in B.A.No.795/20210) to prepare 91 Yantras and accordingly he was given labour charges to the tune of Rs.24,85,000/-. It is alleged that no

tender was issued. Only with a view that the devotees coming to the temple should be benefited by way of spiritual benefits due to Yohini Yantras, these Yantras were installed by spending lot of money instead of using the money for social causes. The issue was raised by Dainik Lokmat newspaper and some people from Mohota locality filed writ petition before this Court. In the said writ petition, this Court, vide order dated 03.02.2021 directed to register First Information Report against the person(s) involved and accordingly the present first information report came to be registered.

BAIL APPLICATION NO. 745/2021

3. Mr. Deshmukh, learned senior counsel, submits that the Trust had passed a resolution on 12.09.2010, wherein it was decided to install Yogini Yantras. The work of installation was given to Architect Ravindra Shinde. Later on, Architect Shinde appointed Pandit Pradip Martandrao Jadhav to install the said Yogini Yantras. Accordingly, gold and payment were given to said Pandit Pradip Martandrao Jadhav on 18.10.2020. According to the learned senior counsel, the applicant came to be appointed as Trustee on 13.11.2010 that is to say, at the time of passing of resolution dated 12.09.2010 and as also at the time of payment to the contractor, the applicant was not trustee of the said Trust. Although the applicant came to be appointed as trustee on 01.11.2010, his term started from 13.11.2010 and ended on 1

2.11.2013. Needless to say, the said Yogini Yantras were installed after expiry of the terms of the applicant.

4. The learned senior counsel then next submitted that as there was allegation and also voiced by some trustees including the applicant, a Sub committee came to be appointed by the Trust to investigate the allegation and accordingly sub committee, of which the applicant was a member, submitted its report (Exhibit G). Learned senior counsel further submitted that Pandit Pradip Martandrao Jadhav in his statement has nowhere attributed any kind of involvement of the present applicant. Charge sheet has already been filed and the applicant undertakes to abide by any conditions that may be imposed on him by this Court.

5. Mr. S. B. Narwade, learned A.P.P., on the other hand, opposed the submissions by contending that not only the applicant was trustee but was also signatory to the resolution. Even the applicant was member of the enquiry committee but deliberately he did not give proper report. No case is made out for bail and therefore, the application is liable to be rejected, argued learned A.P.P.

6. I have carefully gone through the first information report and the statements of witnesses. First of all I may like to point out that name of the applicant is not mentioned in the first formation report. Of course, the first information report shows the involvement of trustees and

probably since the applicant was trustee of the said Trust, he has been arraigned as accused in the charge sheet.

7. The very first submission of the learned senior counsel for the applicant is that the said resolution of the trustee came to be passed on 12.09.2010, wherein it was decided that Yogini Yantras should be installed in the basement of Mohota Devi Temple. It is clear so from the said resolution (Exhibit D) dated 12.09.2010 filed on record by the applicant. I find substance in the submission of learned senior counsel for the applicant that vide order dated 01.11.2020 (Exh.F), the present applicant came to be appointed as trustee of the said Trust for the period from 13.11.2010 to 12.11.2013. Till 12.09.2010, the applicant was nowhere in picture.

8. It is also apparent from the investigation papers that Architect Ravindra Shinde appointed Pandit Pradip Martandrao Jadhav on 15.09.2010. Again on the date of appointment of said Pandit Pradip Martandrao Jadhav, the present applicant was nowhere in picture i.e. before he became trustee, said Pandit Pradip Martandrao Jadhav came to be appointed. It is also apparent from the investigation paper and more particularly Architect's Certificate at page No. 193 of the compilation filed by the learned counsel for the applicant that on 18.10.2010 i.e. again prior to the present applicant becoming trustee, the said Pandit Pradip Martandrao Jadhav was given 600 grams of gold

in pure form as raw material for 40 Yogini Yantras and again he was given labour charges on the very day which is apparent from page No. 292 of the compilation in the sum of Rs.11.74 lakh. It also recites that Devashthan should deliver 720 grams of Gold in pure form as raw material for 44 Yogiani Yantras. This time also the applicant was nowhere in picture. Needless to say, major quantity of gold was given to Pandit Pradip Martandrao Jadhav before the applicant became trustee.

9. It is then seen that in Grampanchayat meeting dated 21.04.2011, the applicant raised objection in respect of the transaction pertaining to installation of Yogini Yantra and demanded an enquiry. It is further seen that pursuant thereto, vide Resolution dated 24.04.2011 (Exh.G of compilation), a special sub committee of three persons came to be appointed to look into the matter of which the present applicant was one of the member. The sub committee accordingly submitted a report (page 345 of compilation) and noticing irregularities/illegalities, gave finding that responsibility of the concerned person(s) be fixed.

10. Lastly, I come to the statement of Pandit Pradip Martandrao Jadhav at page No.1412 of the compilation and I find substance in the submission of learned senior counsel that said Pandit Pradip Martandrao Jadhav nowhere utters a single word in respect of the present applicant although he has given the name of others.

11. In the light of above discussion, I find merit in the submission of learned counsel that merely because the applicant was trustee and signatory to some resolutions, he cannot be held responsible in any manner for the alleged offence, if the nature of resolution which learned APP is referring is anything to go by.

12. I have already discussed in detail as to when and how the applicant came in picture. By the time he arrived in picture, everything had been done right from awarding the work of installation of Yogini Yantras, Gold and labour charges to Pandit Pradip Martandrao Jadhav and thus, he had no say in the above affairs. Rather it was the applicant who raised objection in the Grampanchayat meeting as to the manner of transaction being carried out or done in respect of installation of Yogini Yantries and demanded an enquiry. Later on, he himself became part of sub committee to look in to the affairs and submitted report suggesting fixing of responsibility in the light of irregularities and illegalities committed by the concerned.

13. In view of above, in my considered opinion, the applicant has made out a case for bail.

BAIL APPLICATION NO. 1021 OF 2021.

14. Ms. Rakhi V. Sundale, learned counsel for the applicant, submits that name of the applicant is nowhere revealed in the first information

report. According to the learned counsel, it is only on the basis of alleged confessional statement of accused namely Pandit Pradip Martandrao Jadhav that he had given 190 gm. gold as commission to the applicant, he has been made an accused. In law, according to the learned counsel, the so called statement given by co-accused against the applicant is not admissible under the provisions of Indian Evidence Act.

15. The learned counsel then next submitted that the applicant was an accountant and had no concern with the decision making process of the Trust. He is already retired from the service. Now, he is 64 years old and is suffering from various ailments and has already lost 75 to 80% vision. Since he is permanent resident of Pathardi District Ahmednagr and having movable and immovable property within the jurisdiction of the court, question of his fleeing from justice does not rise. According to the learned counsel, the applicant is ready to abide by any of the terms and conditions that may be imposed upon by him.

16. Mr. S. B. Narwade, learned A.P.P., on the other hand, would oppose the submissions by contending that original resolution was over written by the applicant and thereby he made changes in the resolution. The learned APP also invited my attention to the investigation papers and more particularly to the statement of Dilip Baburao Pote. According to him, the minutes of meeting of the Trust dated 12.09.2010 was

dictated on computer by the present applicant and thereafter, he was called to record the same in the proceeding book. According to him, certain sentences were added in the proceeding book at the say of the present applicant. Similar is the statement of prosecution witness Sandip Rohidas Ghuge. According to learned A.P.P., investigation is yet to be completed in respect of other accused and therefore, the present application deserves to be rejected.

17. On going through the investigation papers, although it is alleged that minutes of resolution dated 12.09.2010 were written by this applicant firstly on computer and later on in the handwriting of prosecution witness Dilip Baburao Pote and certain sentences were added but one cannot be oblivious of the fact that ultimately those minutes came to be signed by the Chairman, who is a Judicial Officer and the Chief Executive Officer of the Trust. Even if it is assumed for the sake of argument that certain sentences were introduced by this witness, the fact remains that the same were approved by the Chairman and Chief Executive Officer of the said Trust. Even otherwise the same has come on record and for that purpose alone there is no necessity of custodial interrogation.

18. Coming to the next important aspect of this witness having received Gold, I find disclosure statement of applicant Pandit Pradip Jadhav recorded under section 27 of the Indian Evidence Act, wherein

he purportedly told that he had returned 190 gram of gold to the then accountant namely Purushottam Rodi i.e the present applicant. In my considered opinion, this disclosure statement shall not be admissible for two reasons, firstly it does not satisfy the ingredients of section 27 of the Evidence Act and secondly, the so called confessional statement of one accused cannot be used against the co accused.

19. However, there is sharp contradiction between this disclosure statement and his statement recorded by the Investigation officer during the course of investigation. The statement recorded by the investigation officer clearly shows that the present applicant on his own had taken away 190 gram Gold towards commission, whereas the disclosure statement recorded under section 27 of the Indian Evidence Act shows that he (Pandit Pradip Martandrao Jadhav) was given 1890 gram Gold out of which he returned 190 gram of Gold to the applicant but this fact was not informed by him to the Trust. This disclosure statement nowhere shows that the present applicant had taken away of his own 190 gram Gold towards his commission. Apparently this is a serious infirmity and for this reason also, I am not prepared to accept the so called statement of Pandit Pradip Martandrao Jadhav, apart from that the same is hit by Section 162 of Code of Criminal Procedure.

20. Except above nothing is there to show that this applicant was also one of the prime accused in the alleged offence. In view of

this, I find merit in the application and I am of the opinion that this applicant has also made out a case for bail.

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21. Mr. M. V. Ghadge, learned counsel for the applicant, submits that applicant was neither a member nor a trustee of the Trust and therefore, there was no question of his attending the meetings. The applicant was nowhere concerned with the process of decision making and resolutions passed from time to time by the Trust. The learned counsel next submits that by virtue of resolution dated 12.09.2010, Architect Ravindra Shinde was given work who in turn, in consultation with the Trust, appointed the applicant to prepare and install said Yogini Yantras. Accordingly, appointment letter of the applicant came to be issued for preparation and installation of 91 Yogini Yantras. Agreement was accordingly executed between the applicant and the Trust and according to the terms and conditions of the agreement, the applicant completed the said work and received Rs.24.85 lakhs by way of cheque. The entire transaction was online. Charge sheet has already been filed. The offences are triable by Judicial Magistrate, First Class and there are no antecedents. Moreover, nothing is to be recovered from the applicant.

22. Per contra, Mr. S. B. Narwade, learned A.P.P., opposed the submissions by contending that no permission was obtained from the

Charity Commissioner before disposal of the Gold of the Trust by the trustees. According to earned A.P.P., the applicant is one of the co-conspirator alongwith other accused in committing offence of forgery and cheating. In such circumstance, there being no merit in the application, the same is liable to be rejected.

23. Admitted position on record is that the work of installation of Yogini Yantra was given to Architect Ravindra Shinde who in consultation with the Trust, appointed the applicant to prepare and install the said Yantras. Although it is alleged that the permission of the Charity Commissioner was not taken before using the Gold of the Trust but for the fault of trustees or the Chairman and Chief Executive Officer of the Trust, the applicant cannot be held responsible. Ultimately, it was for the management and trustees to seek prior permission, if any, of the Charity Commissioner. I do not understand as to how the applicant is concerned with that.

24. It is also not disputed that the work of installation of Yantras is completed by the applicant. Later on, during the course of investigation, those Yantras came to be seized by the investigating officer. Even assuming for the sake of argument that there were some fraudulent activities, in that event, they are the trustees and other officers who are responsible for that. The applicant was no way involved either in decision taking or for that matter he induced trustees to part with the Gold ornaments or any amount belonging to the Trust.

25. Moreover, charge sheet has been filed. Everything is based on document. One more fact which is to be kept in mind is that all the offences are triable by the Magistrate and are neither punishable with death or life imprisonment. In the circumstances, I am of the opinion that the applicant has made out a case for bail.

26. For the aforesaid reasons, all the three applications deserve to be allowed. Hence following order.g

ORDER

- i. Bail Application Nos.745 of 2021, 1021 of 2021 and 795 of 2021 are allowed.
- ii. Applicants Sandip s/o Raosaheb Palve, Purushottam Shashikant Rodi and Pradip Martandrao More be released on bail in connection with Crime No.0062/2021 registered with Pathardi Police Station, District Ahmednagar for the offences punishable under Sections 406, 409, 420, 120(B), 468 471, 34 of the Indian Penal Code, 1860, on their furnishing P.R. Bond of Rs. 25,000/- [Rs. Twenty five thousand only] each, with one or two solvent sureties in the like amount, on following conditions.
 - (a) The applicants shall attend the concerned police station if required by the investigating officer.

- (b) The applicants shall not tamper with the prosecution evidence in any manner.
 - (c) The applicants shall appear before the trial Court on each date to which the case would be posted for trial.
 - iii. Violation of any of the conditions would entail cancellation of Bail.
 - iv. Bail before the trial court.
27. Bail applications stand disposed of in the aforesaid terms.

(V. G. BISHT, J.)

JPC