

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

ANTICIPATORY BAIL APPLICATION NO. 743 OF 2021

1. Sow. Rukminbai W.O. Kondiba Vaykole .. Applicants
Age. 53 years, Occ. Sarpanch,
G.P. Digras.
2. Sow. Kaushalyabai w/o. Ambadas Pawar
Age. 56 years, Occ. Vice-Sarpanch,
G.P. Digras.
3. Ramdas s/o. Ambadas Pawar
Age. 38 years, Occ. Agri.,
4. Bhagwan s/o. Ambadas Pawar
Age. 34 years, Occ. Agri.,

Appl.No.1 to 4 R/o. Digras,
Tq. Kinwat, Dist. Nanded.
5. Ashok s/o. Baliram Kawle
Age. 52 years, Occ. Service (Gramsevak)
R/o. Bhavsar Chowk, Taroda,
Tq. & Dist. Nanded.
6. Sudhakar s/o. Malharrao Waghmare,
Age. 46 years, Occ. Gramsevak,
R/o. Mangalsangvi, Tq. Kandhar,
Dist. Nanded.
7. Kailas s/o. Vyankatrao Renewad,
Age. 37 years, Occ. Service (Extension
Officer), R/o. Umri, Tq. Umri,
Dist. Nanded.

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station Kinwat,
Tq. Kinwat, Dist. Nanded.

.. Respondent

Mrs.Rashmi Kulkarni h/f. Mr.G.R. Ingole, Advocate for the
applicants.

Mr.A.V. Deshmukh, APP for the respondent/State.

CORAM : SANDEEP K. SHINDE, J.
RESERVED ON : 28.07.2021
PRONOUNCED ON : 03.08.2021

O R D E R :-

01. Heard. The applicants in Crime No.0112 of 2021 registered at Kinwat Police Station, Dist. Nanded for the offences punishable under sections 420, 409 and 34 of the Indian Penal Code, are seeking pre-arrest bail.

02. Applicant No.1 is Sarpanch of Digras Gram Panchayat. Applicant No.2 is Upsarpanch. Applicant Nos.3 and 4 are sons of Upsarpanch. Applicant No.5 and 6 are Gramsevaks and Applicant No.7 is Extension Officer of Group Gram Panchayat.

03. Prabhakar Madhavrao Armalkar and Digambar Nagnath Armalkar, electors of village Digras sought

directions under sections 156(3) of the Cr.P.C. against the applicants, who allegedly in connivance with each other misappropriated property of the Gram Panchayat by committing breach of trust. The Judicial Magistrate, First Class, Kinwat, vide order dated 16th February, 2021 directed the Office In-charge of Police Station, Kinwat to register offence against the applicants. Pursuant to which, Crime No.0112 of 2021 was registered against the applicants under sections 420, 409, 34 of the Indian Penal Code.

04. The applicants' application for pre-arrest bail was not entertained by the learned Sessions Judge and therefore, the applicants are before this Court.

05. Before advertng to the accusations made against the applicants, it may be stated that the complainant herein had moved the District Collector, seeking disqualification of applicant Nos.1 and 2, to continue as a member of Panchayat under section 14(1)(g) read with

section 16 of the Maharashtra Village Panchayats Act. The ground urged therein was that the Sarpanch and Upsarpanch had repeatedly withdrawn amount from the bank account of Panchayat and projected it was utilized for development work through their near relatives. To verify the alleged irregularities, Collector sought a report from Extension Officer. It was submitted, on 6th February, 2019. Upon perusing the report, Collector disqualified Sarpanch and Upsarpanch to continue as member of the Panchayat. Collector's order dated 23rd August, 2019 was challenged in appeal before the Additional Divisional Commissioner; who vide order dated 29th June, 2020 set aside Collector's order and remanded the matter for reconsideration.

06. I have perused the report dated 6th February, 2019 submitted by the Extension Officer to Collector; inspection report dated 4th November, 2020 and report dated 20th April, 2021 submitted by Group Development Officer to the Sr. Inspector, Kinwat Police Station after

registration of the subject crime. Consideration of the reports would emerge following facts;

i] Applicant No.1-Sarpanch withdrew Rs.15,000/- [self withdrawal] on 15th April, 2017 to pay salary to Mahadeo Metkar.

ii] Husband of Sarpanch had withdrawn Rs.50,000/- on behalf Sarpanch on 17th February, 2018 for purchasing building material to construct toilet blocks.

iii] Applicant No.3-son of Upsarpanch had withdrawn Rs.50,000/- on behalf of Sarpanch and Upsarpanch to defray labour charges and to purchase equipments required in Panchayat school.

iv] Applicant No.3-son of Upsarpanch withdrawn Rs.65,000/- on 27th March, 2018, Rs.50,000/- on 24th April, 2018 and Rs.15,000/- on 15th May, 2018 on behalf of Sarpanch and Upsarpanch for laying pipe line, electric motors etc.

v] On 15th April, 2017, applicant No.3 had withdrawn Rs.30,000/- on behalf of Sarpanch and

Upsarpanch and expended for sundry repairs like electric motors, road repairs etc.

vi] On 2nd January, 2018 and 23rd January, 2018 son of Upsarpanch had withdrew Rs.90,000/- and Rs.30,000/- respectively from the Panchayat's account on behalf of Sarpanch and Upsarpanch to purchase material for Tanda Vasti Improvement [तांडा वस्ती सुधार योजना] scheme.

vii] On 16th August, 2017 Rs.1,90,000/- were allegedly received by the Gram Panchayat from applicant No.4 [son of Upsarpanch]. This amount was allegedly spent for constructing toilet blocks under Swachh Bharat Mission. Later, after receiving grants, this amount was repaid to applicant No.4 in four installments.

viii] On 29th January, 2017, Rs.12,000/- and Rs.24,000/- were withdrawn in the name of member of Panchat Shri Bhagwan Ganeshsingh Baman, to reimburse expenses incurred by him for constructing toilet blocks.

07. The Extension Officer enquired into alleged irregularities and submitted his report on 6th February,

2019. He justified all withdrawals and amount expended by the applicants. After registration of crime, Extension Officer submitted another report dated 20th April, 2021 to Sr. Inspector, Kinwat Police Station. The Extension Officer reported, although applicant Nos.1,2,3 & 4 had withdrawn cash from the bank account of Panchayat, the transaction was duly accounted and amount was expended either for paying salary to employee or for purchasing material to construct toilet blocks and/or for other development purposes. The Extension Officer, as it appears, has copied earlier report dated 6th February, 2019, which was submitted in disqualification proceedings. It is not known as to whether second report dated 21st April, 2021 was called for or submitted by the Extension Officer at the behest of the applicants.

08. Be that as it may, report reveals applicant No.4-son of Upsarpanch was awarded contract of constructing toilet blocks in accordance with Resolution No.7 dated 16th August, 2017. Pursuant thereto, Panchayat

received Rs.1,90,000/- from applicant No.4. Where-after from this amount, toilet blocks were constructed and later Rs.1,90,000/- were repaid to applicant No.4 in installments. So far as this gross irregularity is concerned, there are no particulars in report or otherwise, to know and understand as to who were beneficiaries of the toilet blocks constructed by applicant No.4 on behalf of Panchayat or whether blocks were constructed or not constructed. All reports on this aspect are not only vague but incomplete from which it is not possible to arrive at definite conclusion as to when, how and who constructed toilet blocks. In my view, reports relied on by Sarpanch and Upsarpanch and their sons to justify their action shall not further prosecution case unless in-depth investigation is carried out under the supervision of high rank officer.

09. As per Constitution 73rd Amendment Act, 1992, Sanitation is included in the 11th Schedule and accordingly Gram Panchayats have a pivotal role in the

implementation of Swachh Bharat Mission (Gramin). The reports before me clearly convey that the Sarpanch and Upsarpanch have not only caused irregularities in discharge of their statutory duty but sought to implement Swachh Bharat Scheme by awarding contracts to close relatives, in defiance of provisions of Gram Panchayat Act. The facts of the case, prima facie, show that the decision to award contract not only lacks transparency and bona fides but raises reasonable suspicion. The facts of the case also suggest applicant Nos.1 and 2 have misused their powers. It may be stated that the withdrawal of amount from the bank account of the Panchayat either by Sarpanch, Upsarpanch or on their behalf by their sons is not defensible. At first place, applicant Sarpanch and Upsarpanch ought not to have permitted their relatives to withdraw amount from the Panchayat bank account and expend it for the projects of the panchayat. Thus, to be stated the allegations of irregularities were not mere irregularities but more than irregularities. To say, Sarpanch and Upsarpanch withdrew

amount from Panchayat bank account on multiple times and expended for the development work through their near relatives, to which there is no justification. This act on the part of Sarpanch and Upsarpanch cannot be overlooked at all and calls for investigation or else affairs of Gram Panchayat would turn-out to be a "family business". It is surprising that Gram Panchayat accepted Rs.1,90,000/- from applicant No.4—son of Upsarpanch and later reimbursed him in installments. So far as this allegation is concerned, learned Counsel for the applicant tried to justify that Rs.1,90,000/- were accepted for constructing toilet blocks and after receiving grants, amount was returned to applicant No.4. I am not able to digest this explanation. First reason is that there are no particulars or details of toilet blocks allegedly constructed by applicant No.4 and another reason why Panchayat could not wait until receipt of grants.

10. These allegations on the face of it suggest

applicant Nos.1 and 2 in collusion with applicant Nos.3 and 4, in gross misuse of powers breached trust of electorals by misappropriating property of Panchayat.

11. In consideration of the facts stated above, in my view, to unearth true facts, custodial interrogation of applicant Nos.1,2,3 and 4 cannot be denied to the prosecution. Their application for pre-arrest protection is rejected.

12. Insofar as applicant Nos.5,6 and 7 are concerned, they being Government servants, their presence for the investigation and trial can be secured by imposing suitable conditions. Even otherwise, reports and material on record does not indicate their complicity in the alleged crime. For these reasons, their application for pre-arrest protection is granted on the following conditions.

13. In the event of arrest of applicant No.5-Ashok

s/o. Baliram Kawle, applicant No.6-Sudhakar s/o. Malharrao Waghmare and applicant No.7-Kailas s/o. Vyankatrao Renewad in connection with aforesaid crime, they shall be released on bail on executing bond in the sum of Rs.25,000/- [Rupees Twenty Five Thousand] each with one or more sureties in like amount. These applicants shall report to the Investigating Officer as and when called.

14. The application is accordingly partly allowed and disposed of.

[SANDEEP K. SHINDE,J.]