IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.999 OF 2020

Pratap s/o Rajendra Gaikwad
Age: 33 years, Occu.: Business,
(Proprietor of Adhya Enterprises -
407, Manas Building, Sayali Apartment,
Sinhgad Road, Pune)
R/o Samarthnagar, Osmanabad
Taluka and District Osmanabad ... **Applicant**

Versus

1 The State of Maharashtra
Through the Incharge
Police Station Officer,
Anandnagar Police Station,
Osmanabad, Taluka and
District Osmanabad

2 The Superintendent of Police,
Osmanabad. ... **Respondents**

WITH

ANTICIPATORY BAIL APPLICATION NO.1003 OF 2020

Manoj s/o Audumbar More
Age: 32 years, Occu.: Business,
R/o Ramnagar, Osmanabad,
Taluka and District Osmanabad ... **Applicant**

Versus

1 The State of Maharashtra
Through the Incharge
Police Station Officer,
Anandnagar Police Station,
Osmanabad, Taluka and
District Osmanabad

2 The Superintendent of Police,

Osmanabad. **... Respondents**

WITH
ANTICIPATORY BAIL APPLICATION NO.1004 OF 2020

Manoj s/o Audumbar More
Age: 32 years, Occu.: Business,
R/o Ramnagar, Osmanabad,
Taluka and District Osmanabad **... Applicant**

Versus

1 The State of Maharashtra
Through the Incharge
Police Station Officer,
Anandnagar Police Station,
Osmanabad, Taluka and
District Osmanabad

2 The Superintendent of Police,
Osmanabad. **... Respondents**

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Mr. R. S. Deshmukh, Senior Counsel i/b Mr. D. R. Deshmukh, Advocate for applicants in all the cases.
Mr. V. M. Kagne, APP for respondents – State.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 7th January, 2021
Pronounced on : 16th February, 2021

COMMON ORDER :-

. Both the applicants are apprehending their arrest at the hands of Anandnagar Police Station, Osmanabad for the offences punishable under Sections 420, 409, 467, 468, 471 read with 34 of Indian Penal Code and, therefore, they have filed present applications under Section 438 of the Code of Criminal Procedure.

2. The applicant in Bail Application No.999 of 2020 is apprehending his arrest in connection with Crime No.178 of 2020 dated 27-06-2020. The applicant in Bail Application Nos.1003 of 2020 and 1004 of 2020, who is the same person, is apprehending his arrest in connection with Crime Nos.179 of 2020 and 180 of 2020 dated 27-06-2020. Since the basic facts leading to all the three first information reports are almost same, these applications are proposed to be disposed of by this common order. Hereinafter, the applicants would be referred by their names for the sake of convenience.

3. All the first information reports have been lodged by Santosh Suresh Patil, who is serving as Naib Tahsildar at Osmanabad. In all the reports, he has stated that Divisional Commissioner had ordered inquiry in respect of irregularities that had taken place in the implementation of scheme by name Lokshahir Annabhau Sathe Nagari Wasti Sudhar Yojna and Navinyapurna Yojna at Osmanabad. After the report was submitted by the Committee, Collector, Osmanabad has passed order on 26-06-2020 to file FIR. It has been stated that a tender was published on behalf of the District Administration Division, Osmanabad on 02-03-2019, 23-07-2019 and 10-07-2019 for various

equipment for open gym Rs.2,48,69,100/-, for electrification in cremation field Rs.4,00,00,000/- and for installation of compactors Rs.1,99,29,000/- at various Taluka's or Nagar Parishad areas in Osmanabad district. It has been contended that the tenders were published through Gem Portal. In case of Crime No.178 of 2020 (Anticipatory Bail Application No.999 of 2020), the tender was taken by Adhya Enterprises, proprietor Pratap Gaikwad i.e. the applicant therein and he was supposed to fix the various equipment for the open gym at Lohara (Budruk), Omerga and Kallam Nagarpalika area. The then District Administrative Officer – Abhay Mhaske was supposed to receive the delivery of the material, get the quality inspected and then disburse the amount, however, the entire material is kept by said Pratap Gaikwad in his possession, and by conspiring with the District Administrative Officer – Abhay Mhaske, he has obtained cheque for the entire amount i.e. Rs.2,48,69,100/-. It is shown that the delivery of those articles have been given to Abhay Mhaske and thereby, there is misappropriation of the Government amount as well as cheating by preparing false documents.

4. Further, in Crime No.179 of 2020 (Anticipatory Bail Application No.1003 of 2020) it is stated that the tender for electrification in the cremation field was published through Gem Portal

and it was given to A to Z Enterprises, Mumbai. The said company was supposed to fit the solar lights in cremation field by providing the necessary equipment. In this case also, District Administrative Officer – Abhay Mhaske had opened a bank account against the procedure with the help of Manoj More i.e. present applicant and by using internet banking without getting the articles and by forging delivery challan by Abhay Mhaske, the said amount has been distributed to A to Z Enterprises, Mumbai.

5. In the third FIR i.e. Crime No.180 of 2020 (Anticipatory Bail Application No.1004 of 2020), it has been contended that the tender to fix compactors for Paranda, Omerga, Naldurg, Nagar Panchayat Lohara (Budruk) of district Osmanabad was to be fixed for storage of their record. The tender was floated through Gem Portal and it was given to A-1 Enterprises, Balewadi, Pune. The material that was supplied was supposed to have been checked for its quality before the amount is disbursed. In this case also, the said account was opened by District Administrative Officer – Abhay Mhaske without adopting proper procedure and it was with the help of present applicant – Manoj More. With the help of internet banking, amount of Rs.1,99,29,000/- was disbursed to the said company. In all the three cases, it is stated that the government has been cheated.

6. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by learned Advocate Mr. D. R. Deshmukh for the applicants and learned APP Mr. V. M. Kagne for respondent – State.

7. It has been vehemently submitted by learned Senior Counsel that the applicant – Pratap Gaikwad had responded to the tender that was floated. He was not even knowing the District Administrative Officer – Abhay Mhaske. The applicant is operating from Pune. The details of the products to be supplied was 30 quantities each of twister - outdoor gym equipment and other gym articles, chest press of outdoor gym equipment, parallel bar of outdoor gym equipment, leg press double of outdoor gym equipment, air walker - air stroller of outdoor gym equipment, surf board of outdoor gym equipment, shoulder builder/arm wheel of outdoor gym equipment etc. After the tender was accepted, as he was the lowest bidder; he purchased all the equipment and when he tried to deliver the articles, it was told to him that there is code of conduct for the Assembly Elections of 2019. The rest of the formalities to be completed after the code of conduct. Thereafter, he had issued letter to the Chief Officer, Municipal Council Administration, Collector office, Osmanabad for acceptance of goods as per contract on 15-04-2019. Again a notice was issued by him to the District Collector, Osmanabad for acceptance of the goods as per

contract on 13-02-2020. However, complaint was filed by MLA Sujitsingh Thakur to the Divisional Commissioner, Aurangabad on 27-01-2020. Thereafter, the Divisional Commissioner has passed the order for appointment of inquiry committee on 03-02-2020. Report was submitted by the inquiry committee to the Divisional Commissioner, Aurangabad on 24-03-2020 and thereafter, the first information reports have been filed. During the inquiry, notice was issued to the present applicant and he has submitted his reply along with the requisite documents before the Committee. The present applicant is absolutely not at fault. He has responded to the tender. After the equipment were purchased, he has tried to give delivery of those articles to the concerned authorities and in fact now, the articles are kept in a godown at plot No.16 MIDC, Osmanabad. After he had attempted to give delivery and it was given in writing to him that he should wait till the code of conduct to come to an end, when he made request to Abhay Mhaske, the amount has been disbursed to him. He cannot be held responsible for any lapses on the part of Abhay Mhaske. In fact, as per the terms and conditions of the contract, the material was to be supplied prior to 17-04-2019 and accordingly, he has supplied it on 20-03-2019, but receipt of acknowledgment has not been given by the government authorities due to their own administrative difficulties. The applicant is not responsible for those administrative difficulties. The applicant was ready to get the quality of the equipment tested and was ready to install it at the place where the government authorities wanted, however, those authorities have not finalized the place of installation. Even the Collector has not taken any action to finalize the place. There is no breach of any term of the contract by him, rather the breach has been committed by the Collector, Osmanabad and his subordinates. Physical custody of the applicant is not necessary for the purpose of investigation. The applicant is ready to abide by any terms of bail.

8. It has been further submitted by the learned Senior Counsel in respect of the applications filed by applicant - Manoj More that the applicant had nothing to do with the tender or supply of the articles. The applicant is having a bank account with Equitas Small Finance Bank, Branch at Osmanabad. It is contended by the prosecution that with the help of the present applicant, said District Administrative Officer – Abhay Mhaske has got a bank account opened and had made banking transactions through internet. It appears that on 26-03-2019, an account came to be opened in the name of Abhay Mhaske with Equitas Small Finance Bank, Branch at Osmanabad. It required authorization by any account holder of that Bank and it is stated that the present applicant had identified said Abhay Mhaske. In other words, the

name of the present applicant has been shown as maker and name of Abhay Mhaske has shown as checker. The present applicant had got details from the bank and it is to be noted that the UCIC Code is handwritten and the E-mail that was given is not related to Manoj More. The authorization or consent letter is also not signed by him. It is stated that corporate internet banking was enabled on the said account on 21-06-2019. Thereafter, there were four transactions. On 08-07-2019 amount of Rs.1,74,75,000/- was transferred to Nagar Parishad, Omerga by R.T.G.S. Further, amount of Rs.4,36,93,400/- was transferred to the same Nagar Parishad on 18-07-2019 by R.T.G.S. These two transactions have not been disputed by Government, but what is disputed is the transaction dated 25-07-2019 for Rs.1,99,29,000/-, which was in respect of amount transferred to Government E-market place and another amount of Rs.4,00,00,000/- which was transferred to the same market place on 03-08-2019. Those amounts have not been received by the present applicant – Manoj More. In fact, the applicant himself is a victim here. He had not signed the said consent letter or authorization letter, which Abhay Mhaske used for opening the account. Applicant - Manoj More had not even authorized the bank to use his UCIC Code. He has given his say before the inquiry committee. No doubt, the applicant has filed a complaint with the police after lapse of 13 months, but that can occur only when he came to know about such fraud that is played upon him. The applicant - Manoj More is not beneficiary of any of the amounts. Merely because he is having a savings account with Equitas Small Finance Bank, he cannot be held responsible for any of the acts which have been committed behind his back.

9. Learned Senior Counsel prayed for anticipatory bail to both the applicants in all the three matters.

10. Per contra, learned APP strongly opposed the application and submitted that huge amount, which is in crores of rupees that too belonging to the government, has been misappropriated. The said Administrative Officer – Abhay Mhaske is still absconding and his whereabouts are not known. He appears to be the mastermind, but the involvement of both the applicants in all the three cases is apparent. Applicant – Pratap Gaikwad never tried to act within the time. In fact, the inquiry committee had come to the conclusion that he has not delivered the articles to the Nagar Parishad Administration and kept those articles with him, still he received amount of Rs.2,48,69,100/-. He is admitting the receipt of the huge amount and when he has not yet given the possession of those articles, it will have to be said that he has cheated the government and misappropriated the said amount.

Applicant – Manoj More had given authorization to Abhay Mhaske, who had then opened an account with Equitas Small Finance Bank, Branch at Osmanabad. In fact, the said opening of account by Abhay Mhaske with Equitas Small Finance Bank, itself was beyond rules. His name has been mentioned by Abhay Mhaske as account maker. Internet banking facility was given to that account. The inquiry committee has also come to the conclusion that the mobile, which was used for transferring huge amount by internet facility, was belonging to the applicant – Manoj More. The One Time Password (OTP) was sent to his mobile number. Physical custody of both the applicants is necessary as the investigation is still incomplete. It has been further submitted by learned APP that the bank has clarified that it was not necessary for it to have a complete authorization document, but UCIC Code was sufficient to get his particulars. Therefore, he prayed for rejection of the applications.

11. As regards the applicant – Pratap Gaikwad is concerned, the prosecution story is that he had accepted the bid to supply the gym equipment pursuant to the tender that was floated. Government appears to be not denying that such tender was floated from their side. For the alleged irregularities in floating tender etc., he could not have come in picture also. Therefore, that part in the FIR would be attributed to the alleged acts of Maske. It is further stated that Pratap Gaikwad has not

yet supplied the material, though he has accepted the amount which is to the tune of Rs.2,48,69,100/- and thereby misappropriated the amount. The investigation papers produced also contains the inquiry Committee report. It shows that the say of the applicant – Pratap Gaikwad was called by the Committee. According to him, in his say, he had purchased the equipment and tried to give delivery of the same to the concerned department, but the concerned department put inability to accept the same on the ground of code of conduct in view of assembly elections. This appears to be not denied in the inquiry committee report, but then he has also stated that the equipment has been now dumped at plot No.16, MIDC, Osmanabad in a godown. He had issued notices to the concerned department of the government, Collector as well as the Commissioner that they should accept the delivery of the articles, however, none of the authority has responded to him. According to the informant and the committee, those equipment could be installed and delivery can be accepted only after its certification in respect of its quality. It was at the expense of the applicant Pratap Gaikwad as per the contract. It appears that the applicant has not denied to pay the requisite amount which would be incurred for the quality testing, but then he states that the concerned authority has not earmarked the places where those equipment were to be installed. The investigation papers do not show any such communication either by the concerned department of the government or the Collector, Osmanabad indicating to the applicant that those sites have been identified and accordingly he should do the installation. The question, therefore, remains as to who is at fault for not taking further steps in respect of installation of those equipment. The scope of this application is limited and this question can not be gone into. Now, as regards the amount is concerned, it appears that accused - Abhay Mhaske gave cheque to the applicant and then he has encashed it.

12. It will not be out of place to mention here that during the course of the hearing of the applications, when the above-said point cropped up that now the equipment is dumped in a godown and the government money has been already parted with, learned APP was directed to make inquiry as to whether the concerned department of the government is ready to accept the delivery after the testing for the quality which they want. Communication has been made and it appears that the concerned authority of the Government is not ready to accept the delivery of the equipment. In fact, the Government is at loss now, in a way that, the applicant is contending that the Government has committed breach of contract and he is not at fault since the contractual acts were not adhered to by the Government authorities. Public fund is

wasted in such a way; as the applicant has received the amount but the Government has not received the material, though the material is lying in a godown in MIDC area. Section 420 of the Indian Penal Code could only be arrayed against the applicant amongst the other Sections those have been mentioned, because at present the investigation authority has not invoked Section 406 of Indian Penal Code. Section 409 of Indian Penal Code would be attracted against accused – Abhay Mhaske and not against the present applicant. For Section 420 of Indian Penal Code, there should be misrepresentation since beginning and there should be dishonest intention. Taking into consideration the abovesaid facts, which had come on record even through the inquiry committee report, whether those ingredients get attracted is a question, but then taking into consideration those facts, definitely, case is made out to grant anticipatory bail as the facts do not contemplate necessity of physical custody of the applicant. The applicant had even submitted his say before the committee constituted by the Commissioner and has placed on record all the necessary documents before this Court. He has permanent place of abode. The investigation in the matter is almost on the basis of the Government record, which would definitely be available with the concerned office and almost all the documents would have been considered by the inquiry Committee. Bail is rule and jail is exception. When the physical custody of the applicant is not required, he deserves to be released on bail.

13. Now, turning towards the other two cases; applicant – Manoj More is apprehending his arrest. As aforesaid, the role attributed to him is that he has been shown as a maker and Abhay Mhaske is shown as checker in the savings account that was opened with Equitas Small Finance Bank, Branch at Osmanabad by accused – Abhay Mhaske. In this respect, it is necessary to mention the letter that was issued by Equitas Small Finance Bank to District Collector, wherein it is stated that the authorization letter provided by the office of District Administration is available and then they had provided the copy to Collector. The copy would show that certain part is handwritten and other is typewritten. Why it is so is required to be considered. Further, the said letter dated 04-06-2020 issued by the bank cast doubt on its own Manager – Mr. Sandeep Saraf, wherein it is stated that in the inquiry conducted by the bank, he confessed that he had removed six entries in total from the statement provided to the account holder and it was done at the behest of erstwhile authorized signatory – Abhay Mhaske. The letter also says that the regional head of the bank with cluster head and branch Manager got suspicious about the statement, when they saw that the statement was not generated from the bank's core banking system. It

gives the details of the transactions which do not appear in the statement. It is stated that applicant - Manoj More was the maker and by the maker, the amount has been transferred through internet banking which was based on One Time Password (OTP) basis and the amount of Rs.30,09,565/- was credited to Yeshada Multistate Co. Credit Society Ltd.'s account with ICICI bank on 01-07-2019. Thereafter, again one more transaction is initiated by maker Manoj More and authorized by Abhay Mhaske through internet banking based on OTP and amount of Rs.4,71,967/- was again credited to the same society's account with ICICI bank on 01-10-2019. Thus, there appears to be some evidence against applicant – Manoj More, as there is possibility of the fact that he would have received OTP on his mobile. Though now he is coming with the case that he has not authorized the bank to use his UCIC number, it is for him to prove it at the time of trial. The transaction has taken place when he has been shown as maker and, therefore, his connection with Yeshada Multistate Co. Credit Society Ltd. is required to be established. Further, in another matter, it appears that there are disputed entries which have taken place through R.T.G.S. to the tune of Rs.4,00,00,000/- dated 25-07-2019, Rs.1,99,29,000/- dated 25-07-2019, and Rs.4,00,00,000/- dated 03-08-2019. Further, the account states that certain amounts have been given to Yeshda Multi State Urban

Cooperative on 23-01-2020. As regards those disputed entries, the applicant as a maker is said to be responsible along with Abhay Mhaske. Further, at the cost of repetition it can be noted that, as per the system at the bank, it is stated that, the applicant would have definitely received OTP, therefore, when some evidence will have to be collected from the applicant, his application for enlarging him on anticipatory bail cannot be considered. His applications deserve to be rejected. Hence, the following order :-

ORDER

1. Anticipatory Bail Application No.999 of 2020 stands allowed.

2. Anticipatory Bail Application Nos.1003 of 2020 and 1004 of 2020 stand rejected.

3. In the event of arrest of applicant – Pratap Rajendra Gaikwad in connection with Crime No.178 of 2020 registered with Anandnagar Police Station, District Osmanabad for the offences punishable under Sections 420, 409, 467, 468, 471 read with 34 of Indian Penal Code, he be released on P. R. Bond of Rs.50,00,000/- (Rupees Fifty Lakhs) with two solvent sureties in the like amount.

4. He shall remain present before the Investigating Officer on every Saturday and Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

5. He should provide his mobile number and other address details to the Investigating Officer on the first day of attendance. He should hand over his passport, if any, to the Investigating Officer.

6. He shall not tamper with the evidence of the prosecution in any manner. He should cooperate with the investigation.

7. He should not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm