IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1005 OF 2021
WITH
ANTICIPATORY BAIL APPLICATION NO. 1007 OF 2021

Abhay s/o Devidas Maske ... Applicant
Age 43 years, Occu: Service
R/o Govt. Qurters, P.W.D.,
Anand Nagar, Osmanabad,
Tq. & Dist. Osmanabad

VERSUS

The State of Maharashtra, ... Respondent
Through the Police Station Officer,
Anandnagar Police Station, Osmanabad,
Taluka & District Osmanabad.

Mr.Suvindh S. Kulkarni & Mr.Vashal P.Kadam Advocates for the applicant
Mr. V. M. Kagne, A.P.P. for the State.

CORAM : V. G. BISHT, J.
RESERVED ON : 23rd September, 2021
PRONOUNCED ON : 29th September, 2021

ORDER:

1. Present applications under section 438 of the Code of Criminal Procedure, 1973 are preferred by the applicant seeking grant of pre-arrest bail in connection with Crime No.180/2020 and Crime No. 179/2020 respectively, both registered with Anandnagar Police Station, District Osmanabad for the offences punishable under Sections 409, 420, 467, 468,471, 34 of the Indian Penal Code, 1860.

2. Prosecution case in respect of First Information Report No. 180/2020 (ABA No.1005/2021) is that District Administrative Officer, Municipal Council, Administration Division, Collector Office, Osmanabad had published a tender on 10.07.2019 for installing compactors for storing record of the Municipal Councils, Paranda, Omerga, Naldurg and Nagar Panchayat, Lohara (Bk.) of Osmanabad District. The said tender worth Rs.1,99,29,000/- was allotted to A-1 Enterprises, Mumbai through GeM Portal. It was incumbent on the part of the applicant, who was then District Administrative Officer, to accept the said material, verify the standard and quality of goods and thereafter to pay bill amount to A-1 Enterprises. The prosecution alleges that during the enquiry conducted by the Collector, Osmanabad, it transpired that the applicant, without following rules, had opened Saving Account of the Municipal Council Department in Equitas Bank, Branch Osmanabad in collusion with a private person by name Manoj Audambar More and without verifying the standard and quality of compactors and without following rules, accepted material and thereafter without handing over the said material to the Municipal Councils/Nagar Panchayat, unauthorizedly kept the said material in his own custody. It is further alleged that some material has been unauthorizedly given by the A-1 Enterprises to Municipal Council, Paranda and got the bill amount worth Rs.1,99,29,000/- released in collusion with said Manoj More via Internet Banking. It is further alleged that the said A-1 Enterprises

prepared forged challan with the help of applicant and received the amount of bill.

3. Similarly, it is the case of the prosecution in respect of First Information Report No. 179/2020 (ABA No.1007/2021) that Applicant-District Administrative Officer, Municipal Council, Administration Division, Collector Office, Osmanabad had published a tender worth Rs.4 crore on 23.07.2019 by generating it on GeM Portal for installation of solar lights in the cremation grounds within the limits of Municipal Councils/Nagar Panchayats of Osmanabad District. The tender was allotted to A-1 Enterprises. The prosecution alleges that similar modus operendi was adopted by A-1 Enterprises/applicant as per details given in First Information Report No. 180/2020. In this factual background, two different first information reports as noted above came to be registered against the present applicant.

4. Mr. Suvidh S. Kulkarni, learned Counsel for the applicant, submits that as far as allegation of opening saving account in Equitas Bank, Branch Osmanabad is concerned, the same was opened upon the instructions given by the then Guardian Minister of Osmanabad in the year 2019. Co-accused was maker and applicant was the checker of internet banking. According to the learned counsel, it is necessary to consider that the amount involved in question is disbursed and same is credited to the account of co-accused A-1 Enterprises to whom the bid

was allotted. Thus, it is not the case of prosecution that the amount was used or was credited in the account of the applicant. This being so, there is no question of misappropriation of the Government funds. The learned counsel then next submitted that once the goods are supplied as per the terms and conditions mentioned in the Bid documents, going by Government Resolution, payment has to be transferred in the account of supplier through internet banking. It is also not the case that no goods at all were delivered. To substantiate his submission, the learned counsel invited my attention to various documentary evidence filed by him on record and then would submit that since the whole case is based on documentary evidence and all the relevant documents are in the custody of the investigating officer, there is no necessity of custodial interrogation.

5. Learned counsel also placed reliance on the the case of Md. Ibrahim & ors. Vs. State of Bihar and another(Criminal Appeal No.1695/2009), decided on 4th September, 2021.

6. Mr. V. M. Kagne, learned A.P.P., on the other hand, vehemently opposed the submissions by submitting that applicant was the implementing authority of the tender. According to learned A.P.P., the applicant, in collusion with other accused, only completed the paper work and nothing was supplied and this was done with an intention to cheat the Government.

7. The learned A.P.P. also took me through various documents of the compilation and would submit that many important documents are yet to be recovered and the present applicant being mastermind behind the whole episode, his custody is necessary for the purpose of effective investigation.

8. I have carefully perused the record. To begin with, it appears that pursuant to the show cause notice in respect of alleged irregularities, the applicant gave explanation on 15.06.2020 and denied of having committed any irregularity. Regarding installation of solar equipment, the applicant explained that before installation of the said solar equipment, it was necessary to have permission of net-metering from Mahavitrarn and as there was code of conduct on account of assembly election, the permission could not be obtained and therefore, the concerned company had given all the material in his possession. As there was no space in the store room of the Collector Office, he kept the said material with him under his observation and made necessary payment to the concerned company after receiving consignee receipt and acceptance certificate.

9. Apparently, this explanation itself shows that there was no verification of the articles- solar equipment so received by the applicant from the concerned company. It is also surprising that despite there was no instruction from the Collector office, he still kept these solar

equipment with him and accordingly made payment to the concerned company. Why so much of hurry was shown in making payment is nowhere explained. His explanation further shows that although various solar equipments were given to different municipal councils but five municipal councils refused to accept the supply and again, as there was no space in the store room of the Collector office, he kept those solar equipments with him. I have already commented upon regarding this aspect. It is also not made clear as to why remaining municipal councils refused to accept the supply of solar equipments.

10. Regarding compactors, it is the explanation of the applicant that everything was done as per centralized online procedure and rules and regulations in that behalf issued by the Government.

11. As far as opening of account with Equitas Bank of which maker and checker are both in his name and under his authority is concerned, the learned counsel for the applicant, during the course of argument, submitted that the said account was opened on the instructions given by the then Guardian Minister, Osmanabad in the year 2019. Whereas, as per complaint, the said account was opened without following rules in collusion with a private person by name Manjoj Audambar More. Admittedly, no such instructions are produced by the applicant on record to substantiate that the account was opened with due written

permission given by the then Guardian Minister, Osmanabad in the year 2019.

12. Having regard to the explanation so offered by the applicant, learned Collector has put his observations. Those observations are at page 15 of the compilation. It has been observed that opening of the account with Equitas Bank, Osmanabad was a serious matter and there are administrative irregularities in opening the account. Similarly the said account was opened with a view to carry out transactions online with the help of private person by name Manoj More who was also an account maker which is again a serious matter.

13. I have considered the explanation of applicant and observation of learned Collector. As far as the compactors and solar equipment are concerned, those were obtained without verifying their quality and standard and came to be delivered. So also, it was not desirable to keep those solar equipment and compactors in his private custody. It is also nowhere made clear as to when the said material was delivered to the concerned. Those materials were accepted without there being administrative approval and kept unauthorizedly in his custody. This is quite apparent from the above discussion.

14. It was also one of the argument of learned A.P.P. that contract document contains name of buyer as Bibhishan Shamrao More with address given thereon but according to learned A.P.P. the present applicant misused the GeM portal of buyer namely Bibhishan More. The applicant had pressurized said Bibhishan More to open GeM portal in his name and later on it was misused by the applicant. Learned A.P.P. also invited my attention to the statement of said Bibhishan More. Reading of the statement of Bibhishan More would indicate that whatever had been submitted by learned A.P.P. appears to be correct. According to statement of Bibhishan More not only his Adhar Card was taken by the applicant but OTP was also generated on his mobile. Serious allegation made by this witness in his statement is that the applicant forged his signature on GeM portal and used it.

15. Then there is a statement of Tai Baban Kande, a clerk, who states that she was concerned with accounts work which consists of submitting bills to the treasury for approval as per the instructions of the District Administrative Officer in accordance with the fund distribution order received from the concerned office and after approval, to distribute the funds to municipal councils as per instructions of the District Administrative officer and also to update the accounts record. According to her, in respect of the present scheme nothing was done through her and it was the applicant- District Administrative Officer, who

on his own issued cheques and released online payment on the GeM Portal.

16. Above noted two statements of witnesses namely Bibhishan More and Tai Baban Kande go a long way in prima facie exposing the method of working of the applicant. While the statement of Bibhishan More clearly shows how not only his Adhar Card was misused for obtaining OTP number but even the applicant forged his signature on GeM Portal purportedly presenting it to be signature of said witnesses on his GeM portal.

17. Equally important is the statement of Tai Baban Kande who, in unequivocal terms, states that it was her duty to submit bills to the treasury for approval as per the instructions of District Administrative Officer in accordance with the fund distribution order received from the concerned office and after approval, to distribute the funds to municipal councils as per instructions of the District Administrative officer but in the present matter/scheme nothing was done through her and it was the applicant- District Administrative Officer on his own issued cheques and released online payment on the GeM Portal.

18. This brings me to the justification given by the learned counsel for the applicant. I am not here to dispute that no payment was disbursed to the concerned Agency who supplied materials namely

Compactors and solar equipment. I am also not on the point that whole amount was misappropriated by the applicant in connivance with others. What is emerging from the above discussion is the highly questionable way of working of the applicant. There was no necessity for him to use GeM portal of said Bibhishan More by keeping him in dark totally. There was also no reason for the applicant to enter into Online transaction and as also through GeM portal as is claimed by the prosecution witness Tai Baban Kande.

19. The whole method of working of the applicant is marred by suspicious circumstance. One fail to understand when there was no space to store the said materials in the Collector office what was at all necessity to keep those material in his custody, over all supervised personally to the exclusion of others and without following appropriate procedure, hurriedly made payment to the concerned. This generates lot of questionable bits and in order to achieve obvious ends acted contrary to procedure prescribed.

20. Similarly, it was equally serious on his part to have opened Bank account in Equitas Bank and in that regard, I have already given my opinion. It appears that the applicant simply took advantage of being implementing authority of the scheme and designed his own way of accepting materials in question without following appropriate procedure.

21. In view of above discussion, in my considered opinion, looking to the role played by the applicant who is a responsible District Administrative Officer and in view of his conduct reflected as above, the matter needs to be investigated thoroughly.

22. For the aforesaid reason, I am not in favour of granting benefit of pre-arrest bail in favour of the applicant. Hence, the following order.

O R D E R

The application is rejected.

(V. G. BISHT, J.)

JPC