

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 1212 OF 2021

Barindrakumar s/o Chaggan Gavit

Applicant

Versus

The State of Maharashtra

Respondent

Ms. Pradnya Talekar, Advocate for the applicant.

Mr. S.D. Ghayal, APP for respondent/State.

CORAM : M.G. SEWLIKAR, J.

DATE : 2nd December, 2021.

PER COURT :

1. By this application under Section 439 of the Code of Criminal Procedure, applicant is seeking bail in connection with Crime No. 0345/2019 registered with Majalgaon City Police Station, Dist. Beed, for the offence punishable under Sections 420, 409, 467, 468, 471, 109, 201 read with Section 34 of the Indian Penal Code.

3. Facts in brief are that one Krushna Shriram Jogdand, working as Civil Engineer on the establishment of Municipal Council, Majalgaon registered First Information Report on 24th December, 2019, alleging therein that he was authorised by Chief Officer Mr. Vivek Johnson, vide order dated 23rd December, 2019, to lodge complaint. The said order was with respect to mis-appropriation of Government funds under various schemes introduced by the

Government in the 14th Finance Commission allocated to the Municipal Council, Majlagaon, Dist. Beed.

4. It is alleged in the First Information Report that pursuant to the directions of the State Government vide letter dated 3rd August, 2015, the Municipal Council was supposed to disburse 50% of the total amount received under 14th Finance Commission on the amenities such as waste management, sanitary blocks, toilets and urban tree plantation. Remaining 50% fund was to be utilised for various essential works under the scheme of 'Swach Bharat Abhiyan'. After completion of this work, NOC was to be obtained from the Government. It is alleged in the First Information Report that the budget allotted to the Municipal Council under 14th Finance Commission for utilization under the scheme of 'Swach Bharat Abhiyan' was not utilized for the purpose for which the funds were allocated. The budget was utilized for the work not sanctioned under the scheme of 'Swach Bharat Abhiyan'. The Chief Officers during the years 2016-2017 and 2017-2018 being the Head of Administration, ought to have obtained prior permission from the Collector/State Government for utilization of funds for other works or under other scheme. Accountants are equally responsible for mis-utilization of the funds. Lists are annexed with the First Information Report

showing details of funds and mis-utilization. Applicant/accused with the aid of co-accused has mis-appropriated Government funds to the tune of Rs.4,13,97,942/-. Enquiry Committee was set up which has submitted the report. It has suggested appropriate action. On these allegations First Information Report was lodged pursuant to which offences under aforesaid sections came to be registered. Applicant was working as Chief Officer in the Municipal Council, Majalgaon.

5. Heard Ms. Talekar, learned counsel for the applicant and Shri S.D. Ghayal, learned APP for the State.

6. Learned counsel Ms. Talekar submitted that First Information Report has been lodged after a considerable delay. These transactions were done by the applicant in his capacity as Chief Officer in good faith. The allegations in the First Information Report clearly indicate that there was dereliction of duty which calls for departmental enquiry and not prosecution. She further submitted that neither the First Information Report nor the charge-sheet states as to how much amount has been mis-appropriated by the applicant. She submitted that First Information Report was lodged out of political rivalry. She further submitted that other accused i.e. Sahal s/o Amer Chaus, Kailas s/o Vasantrao Ranjwan and Anand s/o

Limbaji Hajare have been released on bail by this Court.

7. Learned APP Shri Ghayal submitted that the funds were allocated under 14th Finance Commission. They were to be utilized for specified purpose mentioned in the scheme. Applicant did not verify whether the funds were utilised for the purpose for which they were sanctioned. He submitted that there is ample evidence to show that applicant has mis-appropriated the amount.

8. I have considered the submissions of both the learned counsel. I have gone through the record. On going through the First Information Report in Crime No. 329/2019 and 345/2019, it is evident that in both the crimes, the first informant is Krishna Jogdand. In both the First Information Reports, allegations are that e-tendering process of work of Rs. 3,00,000/- is not done and it is serious financial illegality. The procedure prescribed by the Government for utilization of Government funds is not followed. Accused Sahal s/o Amer Chaus has also been released on bail in Crime No. 329/2019. Role of the applicant is not different from the role of accused who are released on bail in Bail Applications No. 1502/2020, 1535/2020 and 954/2021. Despite filing charge-sheet, it is not clear as to how much amount is alleged to be mis-appropriated

by the applicant. The main allegation is that applicant did not obtain prior permission from the competent authority before utilizing the funds for different works than specified in the scheme. This appears to be an irregularity. Unless the amount mis-appropriated is specified, it cannot be said that the applicant is guilty of mis-appropriation. A vague statement is made that an amount of Rs.4,13,97,942/- is mis-appropriated. No details of mis-appropriation are given. Applicant is behind bars for more than six months. In this view of the matter, I am inclined to release the applicant on bail. Hence the following order :-

ORDER

- i) Application is allowed.
- ii) Applicant be released on PR Bond of Rs.30,000/- (Rs. Thirty Thousand) with one solvent surety in the like amount in connection with CrimeNo. 0345/2019 registered at Majalgaon City Police Station, Dist. Beed, for the offences punishable under Sections 420, 409, 467, 468, 471, 109, 201 read with Section 34 of the Indian Penal Code.
- iii) Applicant shall not make any attempt to influence the prosecution witnesses in any manner.

iv) Applicant shall not put any obstacle in the trial and remain present on the dates fixed by the Trial Court and co-operate the Trial Court.

v) Applicant shall deposit his passport, if any, with the Judicial Magistrate First Class, Majalgaon.

vi) Applicant shall not travel abroad without prior permission of the Judicial Magistrate First Class, Majalgaon.

vii) Applicant shall furnish his address in detail and mobile phone number with the J.M.F.C., Majalgaon and City Police Station, Majalgaon, and Police Inspector, Majalgaon City Police Station to verify the same.

viii) Bail before the Judicial Magistrate First Class, Majalgaon, Dist. Beed.

(M. G. SEWLIKAR)
Judge