

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO. 1240 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. 329/2021 registered with Majalgaon City Police Station, Tq. Majalgaon, Dist. Beed, for the offences punishable under Sections 420, 409, 467, 468, 471, 120(B) read with Section 34 of the Indian Penal Code.

2. Prosecution case in brief is that informant is working as Engineer (Group-B) in the Municipal Council, Majalgaon, and he is authorised by the Chief Officer by the name of Shri Vivek Johnson to file the present First Information Report.

3. As per narration in the First Information Report, an

enquiry was conducted by the Directorate of Municipal Administration, Mumbai, in respect of various works undertaken by the Municipal Council, Majalgaon. The Directorate of Municipal Administration, Mumbai, concluded its enquiry and noted in its report dated 15th June, 2019 that there is difference between the actual readings and the readings recorded by the Municipal Council, Majalgaon in its measurement book for the 22 works undertaken by it. It is further alleged that the office of the Collector had disbursed amount of Rs. 1,61,10,130/- under the special grants for road scheme and had accorded administrative sanction to use the said funds for 22 works. It is necessary to seek technical approval before obtaining administrative approval as there is distinction between the technical approval sought from the Engineer and the administrative approval sought from the Collector, Beed for the said 22 works undertaken by the Municipal Council, Majalgaon.

4. First Information Report further narrates that an amount of Rs. 1,44,28,958/- was disbursed during the tenure of the present applicant and the then accountant Ashok Kulkarni for the alleged 22 works. Said payment was made between 22nd March, 2017 and 17th May, 2017.

5. It is further alleged that the administrative sanction accorded by the Collector, Beed for undertaking the work of “Nagarik Dalit Itar Vsti Sudharna Yojana’ shows that technical approval No. 193 dated 14th August, 2012 and technical approval No. 195 dated 14th August, 2012 were used in getting administrative approval for the work to be undertaken in the year 2017. On the basis of the same technical approval, applicant and one more person got the fund sanctioned twice. In terms of Government Resolution dated 26th November, 2014, it was incumbent on the applicant to invite tenders for undertaking works with an estimated cost of Rs. 3,00,000/- and above. But these 22 works with an estimated cost of Rs.1,61,10,130/- were executed without following tender process. The then Chief Officer and the President, Municipal Council, Majalgaon had published a public notice in local newspaper ‘Majalgaon Parisar’ and did not take any effort to invite tender through e-tendering process. It is further alleged that in terms of Government Resolution dated March, 2009, the Municipal Council ought to have done a third party audit since the amount exceeded Rs. 20 Lacs. But this procedure was not followed. One Mahesh Kulkarni, the Consulting Engineer of Municipal Council, Majalgaon, who had executed an agreement with

Municipal Council, Majalgaon, for inspecting development work, did not stick to the said terms and conditions. He facilitated release of payment for alleged 22 works without ascertaining the fact as to whether e-tendering process was followed or whether third party audit was conducted. On these allegations, First Information Report came to be registered against the applicant, the then Accountant Mr. Ashok Kulkarni and the then Consulting Engineer, Mr. Mahesh Kulkarni.

6. Applicant worked as Chief Officer of Municipal Council, Majalgaon during the period from 10th September, 2014 to 10th September, 2017.

7. I have heard Ms. Talekar, learned counsel for the applicant and Mr. Ghayal, learned APP for the State.

8. Learned counsel Ms. Talekar submitted that the action taken by the applicant in the capacity of Chief Officer was for the welfare of the public and, therefore, his action was in good faith. Non-issuance of tender or default in conducting third party audit cannot invite registration of criminal offence. She submits that the

tenor of the First Information Report shows that the applicant has not followed some instructions while discharging his duties. It will amount to dereliction of duty but cannot attract prosecution under Sections 420, 409, 467, 468, 471, 120(B) of the Indian Penal Code. She submitted that accused Sahal s/o Amer Chaus has been released on bail by the Honourable Apex Court in this crime. She, therefore, seeks release of applicant on bail on the ground of parity also.

9. Learned APP Shri Ghayal submitted that tenders were not invited though it was mandatory if estimated cost exceeds Rs.3,00,000/-. Third party audit was also not done. He submitted that this was done with full knowledge and with ulterior motive. Therefore, applicant cannot be released on bail.

10. The Honourable Supreme Court in Criminal Appeal No. 119/2021 has granted bail to the Chief Officer, an accused in the present crime. Similarly, in SPL (Cri.) No. 4806/2021, accused Ashok Kulkarni has also been released on bail by the Honourable Supreme Court. On perusal of First Information Report, it is seen that the main allegations are that applicant did not take prior sanction before

executing 22 works. From First Information Report, it further appears that technical audit is required to be done in case of works exceeding Rs. 20 Lacs. Therefore, the main allegation against the applicant is that he did not follow the instructions contained in the Government Resolution. Moreover, it is not alleged in the First Information Report as to how much amount has been mis-appropriated by the applicant. Unless the amount mis-appropriated is specified, prima facie, it cannot be said that offence under Section 406 of the Indian Penal Code is attracted. A vague statement is made that an amount of Rs. 1,61,10,130/- has been mis-appropriated by the applicant and other accused.

11. In this view of the matter, especially when the Honourable Supreme Court has released the other accused on bail, on the ground of parity, 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. 0329/2019 registered at Majalgaon City Police Station, Dist. Beed, for the offences

punishable under Sections 420, 409, 467, 468, 471, 120(B) 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