

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (ABA) NO. 62 OF 2021

(Sanjay s/o Namdrorao Mahagaonkar ..vs.. State of Maharashtra, through PSO, PS Malegaon)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. Anil Mardikar, Senior Counsel assisted by Mr. S.G. Joshi, Counsel for
the applicant,
Mr. S.S. Doifode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 16-02-2021

The applicant is apprehending arrest in Crime 578/2020 registered with Malegaon Police Station, District Washim for offences punishable under Sections 406, 409, 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Mr. Madhavrao Sakhare-the Extension Officer, Panchayat and Authorised Officer, Mahatma Gandhi National Rural Employment Scheme, Bramhanwada (Scheme).

3. On the basis of the report, as many as fifteen employees, contractors and elected officials are arraigned as accused.

4. The applicant was then working as In-Charge Block Development Officer, Panchayat Samiti, Malegaon.

The allegation is that the applicant and co-accused entered into a criminal conspiracy and misappropriated amount of Rs.69.85 Lakhs. The *modus operandi* alleged is, *inter alia*, disbursement of payments to fictitious persons as labour charges, payment to contractors for works not executed and in certain cases making repeated payments to contractors for the same work. The report is lodged after a fact finding enquiry committee indicted the applicant and others as the persons responsible for misappropriation. Mr. S.S. Doifode, learned Additional Public Prosecutor, who is assisted by the Investigating Officer, invited my attention to the material in the case diary and certain documents particularly registers and bills to substantiate the prosecution version that the involvement of the applicant in the crime is crystal clear. I am consciously not referring to the material with particularity. It is not necessary to do so. A minute examination and observations may prejudice the accused if and when there is an occasion for the competent Court to consider his application for regular bail.

5. I am satisfied that custodial interrogation is a must. Unless the applicant is custodially interrogated, it would be difficult for the Investigating Officer to unearth all the facets of the crime. Further, the antecedents of the applicant are not flattering. The applicant is facing as many as eight prosecutions. One of them is under the Prevention of Corruption Act and one is in respect of

similar offence registered at Police Station Shirpur.

6. No case is made out for exercise of discretion.

7. I have noted and considered the submissions of the learned Senior Counsel Mr. Anil Mardikar on the basis of the Circular dated 28-1-2020. In my considered view, the said Circular is of no avail in the facts of the case. The allegation is not that there was some discrepancy or irregularity in the valuation done by the technical person. The allegation is far more serious. In any view of the matter, if a cognizable offence is disclosed in the teeth of the complaint, it is extremely doubtful whether the administrative circular can restrict or curtail the discretion of the Investigating Officer.

8. The application is dismissed.

JUDGE

adgokar