

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

CRIMINAL APPLICATION (ABA) NO.96 OF 2021

(Sandip Ramchandra Kotkar Vs. State of Maharashtra thr. PSO PS Malegaon, Dist.
Washim)

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

Court's or Judge's orders.

Mr. Rohan Chandurkar, Advocate for Applicant.
Mr. S.S. Doifode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.

DATE: 26th FEBRUARY, 2021.

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

2. The crime is registered on the basis of report dated 31.12.2020 lodged by Mr. Madhavrao Sakhre the Extension Officer of Panchayat Samiti, Malegaon.

3. As many as sixteen accused are arraigned. The applicants, who was working as Block Development Officer, Panchayat Samiti, Malegaon is arraigned as accused

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4. The report is lodged in connection with the alleged financial irregularities in work executed under the

Mahatma Gandhi National Rural Employment Scheme, Bramhanwada (the scheme).

5. It is alleged that irregularities are noticed, at least in respect of 100 works causing loss of Rs.69.85 lakhs to the state exchequer. The works can be broadly categorized as (i) construction of toilets, (ii) soak pits, (iii) ponds, (iv) plantation, (v) the desilting and ancillary works of the public water canal system.

6. It is alleged that except the construction of toilets, the applicant herein is involved in fraudulent misappropriation of funds in every other category of works.

7. I have already rejected the pre-arrest protection application preferred by co-accused Sanjay Mahagaonkar. Like the applicant, he was also working as the Block Development Officer, Panchayat Samiti, Malegaon. The *modus operandi* which is alleged, is similar, that is disbursement of payments to fictitious persons as labour charges, payment to contractor for a consideration, on account of works not executed.

8. The report is lodged after a fact finding Inquiry Committee held the applicant and others co-accused responsible for the misappropriation.

9. Mr. Rohan Chandurkar would submit that the fact finding committee did not conduct a participative inquiry and that the applicant had no opportunity to

put-forth his version or defence.

10. In my considered view, it was not necessary for the fact finding inquiry, which obviously was meant to be a preliminary inquiry, to involve every employee in the process. As and when the applicant is departmentally proceeded against, he is bound to be given an opportunity to show cause against the proposed departmental action, if at all. The material collected by the fact finding inquiry committee cannot be brushed under the carpet on the spacious ground that the accused were not involved in the process. That apart, the material in the case diary is not restricted to the material collected in the fact finding inquiry.

11. The material in the case diary, even *de hors* the fact finding committee report, is more than sufficient to link the applicant with the crime. Statements are recorded which show that for sanctioning each work the applicant used to demand and charge Rs.50,000/- or thereabout and he used to be paid the said amount. This is only an illustrative reference to the ample and *prima facie* cogent material on record as would make it imperative that the Investigating Agency be given an opportunity to arrest and custodially interrogate the applicant.

12. The material in the charge-sheet reveals that money is paid to persons as labour charges, who did not work at all.

13. The statements of contractor show that substantial bribes were paid to the applicant, at his insistence. It would not be necessary to further deal with or minutely examine the material lest the accused is prejudice when, and if, there is an occasion to seek regular bail.

14. In my considered view, the allegations are extremely serious and in the absence of custodial interrogation, it would be extremely difficult for the Investigating Agency to unearth the entire truth. The investigation may be rendered directionless if the Investigating Agency is deprived of the opportunity to custodially interrogate the applicant.

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

16. The application is dismissed.

JUDGE