IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.130 OF 2022

PRALHAD S/O KISHANRAO DONE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. K. B. Jadhav
APP for Respondent-State : Mr. N. T. Bhagat

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CORAM : SMT.VIBHA KANKANWADI, J.
DATE : 03-02-2022.

ORDER :

1. Applicant is apprehending his arrest in connection with Crime No.676 of 2021, registered at Nanalpeth Police Station, District Parbhani, for the offences punishable under Section 409, 420 of the Indian Penal Code.

2. Heard learned Advocate Mr. K. B. Jadhav for applicant and learned APP Mr. N. T. Bhagat for respondent-State.

3. It has been vehemently submitted on behalf of the applicant that the applicant was serving as daily wage employee with Municipal Corporation, Parbhani. In fact, he was eligible and qualified candidate and as per the order of learned Labour Court dated 26-04-1993, he

was so appointed, and thereafter, he was allotted the work as a Gardener (Mali). Taking into consideration the qualification and eligibility, he has been allotted the work of tax collection from November 2016. The applicant was doing the said work as directed and in connection to the same he was given total 68 receipt books for the work of collection of property tax. He has collected the taxes and deposited the amount with the Municipal Corporation. FIR came to be lodged by the in-charge Assistant Commissioner against the present applicant and two other employees contending that they have cheated and misappropriated the amount collected towards the tax. The misappropriated amount is to the extent of Rs.2,01,179/-. The custodial interrogation of the applicant is not necessary as the allegations are depending upon the documents those are already with the Municipal Corporation. When the inquiry was earlier conducted, he had submitted his explanation on 31-03-2021 and had requested that he should be allowed time to deposit amount of Rs.1,39,975/-. Thereafter, he has deposited that amount, and thereafter also time and again he has given his explanations. He has not attempted to flee away from the law. The applicant is ready to co-operate with the investigation. The learned Advocate appearing for the applicant has taken this Court through the documentary evidence in the form of notices issued to the applicant and his reply.

4. The learned APP submitted that he has not received the papers as the matter is coming for the first time. However, the contents of the FIR would clearly show that there are specific allegations that the applicant has misappropriated the amount which he had collected towards tax. The collection has been done since 2014 and the amount has not been deposited. Even the documents those have been produced by the applicant would show that neither he had deposited the tax receipts/ receipt books and had not taken the data entry after the collection. This fact has been almost admitted by the applicant and he in a way admitted that he had misappropriated amount of Rs.1,39,975/-, he deposited that amount to the corporation. Taking into consideration his said explanation, further final notice was given to him on 02-11-2021 which shows that still there are discrepancies and certain amount has not been deposited. Again to the said notice reply has been given and applicant has stated that he is ready to deposit amount of Rs.11,603/-, but then disputed that there is difference of amount of Rs.2,01,179/-. On 15-12-2021 also he says that he possess two

'*Irsalnama*' with him and he had not produced the same at the time of audit, so also he has four receipt books with him. Definitely this is in a way admitted that he is involved in the said misappropriation, and therefore, his custody is required for the purpose of investigation.

5. At the outset, it can be said that if this Court consider some *prima facie* case in favour of applicant, then only there would be the question of granting ad-interim protection. When it can be seen from the contents of the FIR and the other documents that the custodial interrogation is necessary, then this Court may reject the application at the threshold. This is such kind of case. In the FIR it can be seen that preliminary inquiry was made at the departmental level in the Municipal Corporation. Opportunity was given to the applicant to put forth his say and accordingly when the preliminary notice was given, applicant accepted the difference amount of Rs.1,39,975/- which he had deposited though collected towards the tax, accordingly he has deposited that amount. Thereafter, the final notice has been given which clearly show that there are certain documents which are still in possession of the applicant and there is difference of amount of Rs.2,01,179/- in the amount that was

collected and deposited in the office. The applicant could have gone to the office and search for as to how this difference has come, but then in his explanation he says that he is unable to get that difference. It is further clear from the communication that certain documents are still in possession of the applicant. Applicant has not explained as to why he should keep those documents with him in spite of the inquiry that was initiated against him. Definitely custodial interrogation is required, and taking into consideration the conduct of the applicant, this cannot be the fit case where the extraordinary powers of this Court under Section 438 of the Cr.P.C. can be exercised. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-