

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.199 OF 2022

APPASAHEB DATTATRAYA LOHAKARE

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. R.R. Karpe, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.204 OF 2022

SHIVAJI RAMRAO PAWAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. C.R. Thorat, Advocate for the applicant

Mrs. V.N. Patil-Jadhav, APP for the respondent

...

WITH

ANTICIPATORY BAIL APPLICATION NO.209 OF 2022

BIJLABAI RAMRAO DHANAD AND ANOTHER

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. V.P. Narwade, Advocate for applicants
Mrs. V.N. Patil-Jadhav, APP for the respondent

...

CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 22nd MARCH, 2022
PRONOUNCED ON : 28th APRIL, 2022

ORDER :

1 All the applicants are apprehending their arrest in connection with Crime No.12/2022 dated 12.01.2022 registered with Shillegaon Police Station, Tq. Gangapur, Dist. Aurangabad, for the offence punishable under Section 467, 468, 471, 420 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. R.R. Karpe for the applicant in Anticipatory Bail Application No.199 of 2022, learned Advocate Mr. C.R. Thorat for the applicant in Anticipatory Bail Application No.204 of 2022, learned Advocate Mr. V.P. Narwade for the applicants in Anticipatory Bail Application No.209 of 2022 and learned APP Mrs. V.N. Patil-Jadhav for the respondent.

3 Applicant in Anticipatory Bail Application No.199 of 2022 is a

Lawyer by profession and he was the Legal Adviser of Mahindra Rural Housing Finance Limited, Gangapur. Applicant in Anticipatory Bail Application No.204 of 2022 is the Gramsevak in village Akole-Wadgaon and Ranjangaon-Narhari, Tq. Gangapur, Dist. Aurangabad. Applicants in Anticipatory Bail Application No.209 of 2022 are those persons who had sought loan from the said Finance Company and had submitted property documents as security which turned out to be false/forged.

4 Learned Advocate Mr. R.R. Karpe representing the Legal Adviser/ applicant submits that those documents were provided to him by the company and in fact, perusal of the First Information Report would show that there are no allegations that the original record was never made available by the applicant. The applicant has given his opinion even if whatever has been done would be by the original borrower as he was the person who could have benefited by taking the loan. Perusal of the First Information Report would indicate that everything was moving around the basic document and the process of submission of search report is by this applicant. He was supposed to scrutinize the documents which were placed before him and nothing more than that. All the necessary documents having signature of the concerned Sarpanch as well as Gramsevak were supplied and on the basis of the same he has given the opinion. The custodial interrogation of the applicant is not

necessary. It would also reveal that the informant had gone to the office of Grampanchayat for actual verification of the documents as referred in the First Information Report. If that is to be done so then why there was necessity of search report by a legal expert. It will have to be presumed that the applicant being in legal practice since many years would have followed the necessary procedure i.e. required for submission of search report. The applicant is ready to abide by the terms of the bail.

5 Learned Advocate Mr. C.R. Thorat appearing for Gramsevak submitted that at the relevant time when he was the Gramsevak of village Kate Pimpalgaon he was having additional charge of four villages. Grampanchayat Kate Pimpalgaon has taken a resolution in its Executive Committee Meeting on 30.05.2018, wherein unanimously it was decided to take mutation entry in 8-A Extract as per the application given by Gotiram Ramrao Dhanad. On the basis of said resolution by the Committee the Gramsevak has to take entry, but in original register of 8-A Extract inadvertently entry was not taken in respect of the Committee resolution, but it is now available. There is no case of fabrication or preparation of a false document by the applicant. The Committee of the Grampanchayat has every right to pass such resolution. In fact, it was responsibility of the financial institution to verify the ownership of the property and 8-A Extract is not the

document of ownership and it is only for the fiscal purposes. When the informant's financial institution had failed to verify the said fact, Gramsevak cannot be blamed for the same. He is ready to abide by the terms of the bail.

6 Learned Advocate Mr. V.P. Narwade for the applicants in Anticipatory Bail Application No.209 of 2022 submits that the applicant No.2 had filed the application for seeking plot for residence on 25.04.2018 and it was submitted before the Gramsabha. On that basis Sarpanch and Gramsevak kept this issue in monthly meeting before all members of Grampanchayat and issue was unanimously passed. House property No.153 was given to applicant No.2 in the year 2018. The said property was then mortgaged to the financial institution and the loan has been obtained. It is then stated that thereafter the Grampanchayat body has changed and the political rival party is in power. On the basis of the political rivals false report has been filed. In fact, it is a civil dispute which does not require custodial interrogation. Applicants are ready to abide by the terms of the bail.

7 Per contra, the learned APP opposing all the applications submitted that the Legal Adviser as well as Gramsevak were duty bound to give correct information. In fact, the Legal Adviser was appointed by the Finance Company, therefore, his responsibility is more towards his company. In order to get the search report which documents will have to be considered

by him cannot be dictated by anybody else. But search report carries importance and it is usually taken in any loan matter by the banks and financial institutions. The word of a legal expert is on a better footing and then the amount is parted with. It appears that he had not called for the documents of title. He cannot simply rely on the 8-A Extract. Still he has certified the file to be fit case for disbursement of the loan amount. Now, it is transpired that there is no such property belonging to the applicant Gotiram. In order to create such documents the applicants in Anticipatory Bail Application No.209 of 2022 have taken help of the Gramsevak. It is also to be noted that the said Grampanchayat property appears to be from Gaothan area, that means, of the Government, as it is so reflected in some of the papers. Another fact to be noted as regards the applicants in Anticipatory Bail Application No.209 of 2022 are concerned, even the construction has been certified, when in fact, there was absolutely no construction on the spot. This situation arose when these two applicants failed to repay the loan amount and the informant went to see as to which course can be adopted for recovering the amount. It could be seen that there is no such property in existence. It is then required to be now investigated of which house under construction the photographs were submitted. None of the applicants therefore deserve extraordinary discretionary power under Section 438 of the Code of Criminal Procedure.

8 At the outset, as regards the applicants in Anticipatory Bail Application No.209 of 2022 are concerned, they are simply relying on the Grampanchayat application and the alleged resolution that was passed. Copy of the application dated 25.04.2018 is made available and it says that he should be allowed a space for temporary purpose for domestic use which is near Kate Pimpalgaon Gaothan. He then says that it would be appropriate if the land which they are using 33 x 33 sq.ft. which is near Loknete Sahebrao Patil Dongaonkar College would be convenient to them. His application is silent since when he is using that area and he does not say that it was numbered as Grampanchayat Property No.153 and suddenly it appears that on 30.05.2018 by passing a resolution certain plot was allotted. In Maharashtra Grampanchayat Act, there is a complete procedure provided for allotment of Gaothan property to anybody. It cannot be permanently given by the Grampanchayat to anybody. But depending upon the duration for which it is prayed it can be granted by Grampanchayat or the Grampanchayat can send it to Zilla Parishad or even to Collector, as the case may be. No such procedure is absolutely adopted. This is the back door entry by getting such resolution passed by such applicants to grab the Government property, in a way it amounts to regularization by the encroachment made by them. This cannot be allowed in such an illegal way. The record thereafter generated is definitely illegal and the said Mutation Entry cannot become a document of

title. The Gramsevak cannot say that he has merely carried out or implemented the resolution passed by the committee. When he says that he is a public servant, then, he has to protect the Government property and if anything is going wrong, then, it has to be brought to the notice of the higher authorities. Naturally, in this case the intentions are not clear and, therefore, everybody has done the said act.

9 Now, turning towards the role played by the Legal Adviser, it is rather surprising to note that the Advocate who is supposed to be an expert in the field will not differentiate between the document of title and 8-A Extract. He ought to have given a clear opinion in his search report and for the search report he has to trace the things back to 30 years, which he has absolutely not done. Definitely, when a person has not done his legal duty cannot seek legal protection. No case is made out by any of the applicants for the exercise of discretionary and extraordinary power of this Court under Section 438 of the Code of Criminal Procedure and, therefore, all the applications stand rejected.

(Smt. Vibha Kankanwadi, J.)