

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

ANTICIPATORY BAIL APPLICATION NO.347 OF 2020

SANJAY APPASAHEB PAWAR
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Mahesh S. Bhosale.
APP for Respondent-State : Ms. V. S. Choudhari.
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CORAM : S. G. MEHARE, J.

**RESERVED ON : 23.06.2022
PRONOUNCED ON : 04.07.2022**

ORDER :-

1. The applicant is a Tahsildar. He is seeking anticipatory bail for the offence registered under Section 409, read with Section 34 of the IPC and Section 9 of the Maharashtra Public Records Act.

2. It is alleged in the FIR that the Collectorate Office had supplied Fifteen Thousand ration cards to the Tahsil Office, Paithan, between 01.01.2015 to 31.08.2015. The concerned Clerk did not take entries of the said ration cards in a register. It was mandatory to maintain the record of distributing the ration cards, and the record was also required to be preserved. The ration card fee worth Rs.79,061/- was not deposited with

the Government. All the accused in the conspiracy misappropriated that amount. An inquiry was also made by the Committee appointed by the District Collector. In the said inquiry report, the other co-accused, along with the applicant, was held guilty of not maintaining the account properly, and recovery of Rs.79,061/- was ordered.

3. Learned counsel for the applicant has vehemently argued that the applicant's name was not in the FIR. However, he was subsequently arraigned as an accused. He was working as a Tahsildar at Paithan from 03.02.2014 to 16.11.2015. During his posting there, there was no fraud or misappropriation. The applicant was only the supervising authority, and the subordinates had the duty to maintain the record. The ration cards were distributed by the co-accused Naib Tahsildar (Supply), Mr. Deshatwad. Awwal Karkun was maintaining the record. The monthly record was sent to the District Supply Officer by Naib Tahsildar. At no point in time any illegality was noted by the District Supply Officer. The applicant followed the Government guidelines strictly. He would refer to the statement of one Mr. Ghuge, the Awwal Karkun, wherein he stated that the entire record of those ration cards was called upon by one Mr. Kishor Deshmukh, the Successor of the

applicant. He kept the said record with him. He did not return the record even Mr. Ghuge demanded him many times. Since the record was in his custody, the Investigating Officer Agency could not find it. He might have destructed the said record with an ulterior motive to implicate the accused in a false crime. The Inquiry Officer incorrectly considered incorrect as against the price determined by the Government. The applicant never fled away from the investigation. The inquiry is conducted in his absence. He had no opportunity to put forth his case. The departmental inquiry is going on. Since he has played no active role, his custodial interrogation is not required.

4. Learned APP has strongly opposed the application contending that the applicant has equal participation in misappropriating the public money. The inquiry report is against the applicant, and in an inquiry report, the applicant is held responsible for not maintaining the record and misappropriating the money. The numbers of ration cards were missing, and one was issued at two places on the same number. It is not in dispute that the applicant's name is added subsequently after the inquiry. Therefore, the custodial interrogation of the applicant is necessary.

5. The police papers placed on record by the prosecution revealed that the applicant was arraigned as an accused on 21.11.2019. Since then, the police have never tried to arrest the applicant. However, they are coming with reasons that the application for sanction is pending before the authority. On 25.12.2020, the Assistant Police Commissioner issued a notice to the applicant calling upon him to produce the documents and evidence in his support. Again, the same notice was issued on 30.01.2021. His statement was recorded on 30.01.2021 by the Assistant Commissioner of Police, Sub Division, Paithan. Investigation papers reveal that the police made a detailed inquiry with the applicant. But they never feel it necessary to take the applicant in custody. Be that as it may, the law does not require the sanction to arrest a public servant if the Police Officer requires him in a cognizable case. The District Collector, Aurangabad, held the enquiry as there were directions of this Court in Public Interest Litigation. The Collector has observed that the applicant and three others staff members failed to keep and protect the record. Therefore, Rule 3 of the Maharashtra Civil Services (Conduct) Rules, 1979, is violated. It has also been observed that the amount of Rs.79,061/- should be recovered from the applicant and three others.

Nothing was discovered in the inquiry that the ration cards were misused. Since the record was missing, the financial liability of Rs.79,061/- is imposed upon the applicant and three others. The entire investigation was based on the documents. After having gone through the inquiry report, the period of the applicant as Tahsildar at Paithan and the statement of the concerned Clerk who was maintaining the record as discussed above, this Court is of the view that no purpose will be served if the custodial interrogation is allowed.

6. In view of the facts of this case and the discussion made above, this Court is of the view that no prejudice will be caused to the prosecution if the applicant is released on anticipatory bail by imposing certain conditions. Hence, the following order:

ORDER

- (i) The application is allowed.
- (ii) In the event of arrest, the applicant **Sanjay Appasaheb Pawar**, shall be released **on bail** in Crime No.303 of 2019, registered with Police Station Paithan, District Aurangabad of the offences punishable under Section 409 read with Section 34 of the IPC and Section 9 of the Maharashtra Public Records Act, 2005, on

furnishing P.B. and S.B. of Rs.25,000/- (Rupees Twenty Five Thousand only) with one solvent surety in the like amount, on the conditions that he shall attend the Police Station as and when called by the Investigating Officer on written notice. He shall not interfere in the inquiries. He shall not tamper with the prosecution witnesses. He shall not intimidate the witnesses. If any condition is breached, the prosecution will be at liberty to apply for cancellation of bail.

(iii) *Humdast* allowed.

(S. G. MEHARE, J.)

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vmk/-