

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.364 OF 2020

GIRISH S/O NARENDRA SARODE
VERSUS
THE STATE OF MAHARASHTRA

.....

Senior Counsel for Applicant : Mr. R. S. Deshmukh i/b Advocate Mr. V.
P. Latange

APP for Respondent-State : Mr. V. M. Kagne
Advocate for Assist to APP : Mr. M. K. Bhosale

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**WITH
CRIMINAL APPLICATION NO.373 OF 2021
IN ABA/364/2020**

SHARAD DHARMA GAVIT
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr. M. K. Bhosale
APP for Respondent No.1-State : Mr. V. M. Kagne
Senior Counsel for Respondent No.2 : Mr. R. S. Deshmukh i/b
Advocate Mr. V. P. Latange

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**WITH
CRIMINAL APPLICATION NO.1346 OF 2020
IN ABA/364/2020**

SHAIKH HUSSAIN DADABHAI
VERSUS
THE STATE OF MAHARASHTRA AND ANR

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Advocate for Applicant : Mr. M. K. Bhosale
APP for Respondent No.1-State : Mr. V. M. Kagne
Senior Counsel for Respondent No.2 : Mr. R. S. Deshmukh i/b
Advocate Mr. V. P. Latange

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**WITH
ANTICIPATORY BAIL APPLICATION NO.635 OF 2020**

PRABHAVATI W/O DATTATREYA DHAMANGAONKAR @
PRABHAVATI D/O PUNDLIKRAO KHANAPURKAR
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. O. B. Boinwad
APP for Respondent-State : Mr. V. M. Kagne
.....

**WITH
ANTICIPATORY BAIL APPLICATION NO.454 OF 2020**

RAM S/O PRABHU DESHMUKH
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. S. S. Kulkarni
APP for Respondent-State : Mr. V. M. Kagne
.....

**WITH
ANTICIPATORY BAIL APPLICATION NO.500 OF 2020**

NITIN YASHWANT MORE
VERSUS
THE STATE OF MAHARASHTRA

.....
Advocate for Applicant : Mr. Girish Rane
APP for Respondent-State : Mr. V. M. Kagne
.....

**WITH
ANTICIPATORY BAIL APPLICATION NO.742 OF 2020**

AMRAPALI D/O DIGAMBAR RAMTEKE
VERSUS

THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. M. P. Gandle
APP for Respondent-State : Mr. V. M. Kagne

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**WITH
ANTICIPATORY BAIL APPLICATION NO.498 OF 2020**

VISHAL S/O GOVIND GORE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. M. R. Wagh
APP for Respondent-State : Mr. V. M. Kagne

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**WITH
ANTICIPATORY BAIL APPLICATION NO.366 OF 2020**

GANESH S/O BALAJI DUBE
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. N. S. Ghanekar
APP for Respondent-State : Mr. V. M. Kagne

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CORAM : SMT.VIBHA KANKANWADI, J.

**DATE OF RESERVING THE ORDER :
27-01-2022**

**DATE OF PRONOUNCING THE ORDER :
11-03-2022**

ORDER :

1. Criminal Applications No.373 of 2021 and 1346 of 2020 in ABA No.364 of 2020, have been filed for assist to learned APP.

Those applications are allowed and disposed of accordingly.

2. All the applicants in Anticipatory Bail Applications are apprehending their arrest in connection with Crime No.104 of 2020, registered with CIDCO Police Station, Aurangabad, for the offences punishable under Section 468, 471, 409, 120B r.w.34 of IPC.

3. It will not be out of place to mention here that all the applicants are government servants and the said FIR has been lodged in view of order passed by the Division Bench of this Court in Criminal Writ Petition No.1210 of 2019 on 14-02-2020. While disposing of the said writ petition, the Division Bench had given directions to register the crime in CIDCO Police Station, Aurangabad. It was clarified that it can be done on the basis of complaint which was sent to higher ups on 24-09-2018 by the petitioner and the copy of it can be supplied by him to police. However, it is open to CIDCO Police to record statement of petitioner for getting more particulars. The crime was directed to be registered for the offence punishable under Section 420, 468, 471, 409, 120B r.w.34 of IPC, however, liberty was given that if any section is to be added, then it can be by the police.

4. Heard learned Senior Counsel Mr. R. S. Deshmukh instructed by Mr. V. P. Latange, Mr. N. S. Ghanekar, Mr. M. R. Wagh, Mr. O. B. Boinwad, Mr. M. P. Gandle, Mr. S. S. Kulkarni, Mr. Girish Rane for applicants, also heard learned APP Mr. V. M. Kagne well assisted by learned Advocate Mr. M. K. Bhosale for respondents.

5. The learned Senior Counsel and almost of the other Advocates representing the respective applicants have stated that the present applicants tenure was short and they were not having appropriate authority or duration so that they could place the order for purchase of those articles in respect of which it is alleged that misappropriation has been done.

6. For applicant Girish Sarode, it is stated that he was the Additional Tribal Commissioner at Nashik, Division Nashik. He was working as Additional Tribal Commissioner at Amravati from 01-06-2016 to 22-10-2018. Taking into consideration the various government resolutions all the subject, in respect of purchase of books and other material required for the students, who are residing in the government hostels and they are from the tribal community, committees have been appointed and after the recommendation of the committee, the further acts are done. He says that there was no

role for him to play in purchasing those items as it was exclusive subject before the committee appointed under the government resolution.

7. Applicant Prabhavati was warden of Government Tribal Girls Hostel, Latur, and she is serving there since 2013. Her name is not mentioned in that complaint dated 24-09-2018 which was made the basis for lodging the FIR even under the orders of Division Bench of this Court.

8. Applicant Ram Deshmukh was the Assistant Project Officer (Education) between 28-07-2014 to 20-06-2015 i.e. for 11 months. He was having additional charge as House Master for that period, but there was no occasion for him to place an order. There was no question of forgery by him.

9. Applicant Nitin More was the Warden and he has given his service tenure which appear to be in breaks at difference places. From 14-05-2008 to 30-09-2012 he was at Jinsi Hostel. Then from 01-10-2012 to 30-06-2017 he was at Kannad, from 01-07-2017 to 02-08-2019 he was Warden at N-8, CIDCO (Bahadurpura), and from 01-08-2017 to October 2017 additional charge of Warden at Jinsi

Hostel was also with him. It has been specifically stated that during the period for which the complaint was made and the directions have been given by the Division Bench of this Court, he was serving as Warden at Kannad and the writ petition states about the actions taken at Aurangabad and Latur hostels.

10. Applicant Amrapali Ramteke was also Warden since 28-04-2015 and the additional charge she was holding in respect of Hostel at N-1, CIDCO, Aurangabad. She herself had filed an application to the Project Officer, Integrated Tribal Development Project, Aurangabad on 29-09-2016, that she does not have any experience, and therefore, she will not be able to handle both the posts, and therefore, she should be relieved of one post. However, her request was not considered, but she has not placed orders for purchase of the books.

11. Applicant Vishal Gore was the Superintendent in Tribal Department. In 2016 he was serving in that capacity with Government Secondary Hostel Nagad, Taluka Kannad District Aurangabad. He was deputed as Warden for the Government Boys Hostel at N-8, CIDCO and Jinsi Hostel Aurangabad. He says that by pressurizing him, the charge was handed over to him when it would

have been the charge at three places. However, his predecessor Mr.S. D. Gavit had not handed over charge to him nor any such document was left. He was forced to take the charge. Time and again he has made communication to the higher authorities stating that he has not received the charge. The bills in respect of purchase of books are concerned, were submitted to the Project Officer and to the higher authorities. However, that bill was rejected by the senior authority, and therefore, the amount was not paid till he was transferred.

12. Applicant Ganesh Balaji Dube was Warden with Governments Tribal Boys Hostel (Jinsi) at Aurangabad. He joined his services on 12-10-2017. By that time, the process of purchasing and placing orders in respect of books is concerned, was already over. The bill of Rs.3,00,974/- was in respect of the books ordered and supplied, of his predecessors period. Due to some technical defect, the said bill was returned, and therefore, by removing the objections, he had resubmitted the bill. There was no question of misappropriation by him in view of the fact that the books were already purchased.

13. All the applicants have contended that they were not heard by the Division Bench of this Court and the custody of the applicants is

not required for the purpose of investigation. They are ready to abide by the terms of the bail. Most of them have been released on interim protection and they have co-operated the investigating agency up till now.

14. Learned APP well assisted by learned Advocate Mr. M. K. Bhosale strongly opposed the application and submitted that the Division Bench of this Court has gone through all the documents those were produced in the writ petition and then a judicial order has been passed for registration of offence. The involvement of the applicants was *prima facie* seen by the Division Bench of this Court, therefore, that cannot be reconsidered now. The custodial interrogation of the applicants is necessary. As the government has been cheated to the extent of Rs.47,04,000/-, this amount has been arrived at in the writ petition itself after the Court Commissioner was appointed by this Court, Court Commissioner has taken stock of everything and placed the report before the Division Bench, therefore, the applications deserve to be rejected as the amount involved is public money.

15. At the outset, it is to be noted that the FIR is the outcome of the judicial directions, and therefore, this Court may not have

jurisdiction to say anything in respect of whether the applicants ought to have been heard by the Division Bench before giving any directions. As on today, the said order appears to be not set aside as no such documentary evidence has been produced on behalf of either side.

16. The main allegations by the informant were in respect of two activities, firstly in respect of purchase of books for hostels and for boys under the Tribal Development Department for the years 2016 to 2017 and 2017 to 2018. And the secondly, irregularities in respect of diet/food supply under the scheme of the Government for the tribal students. Though it appears that Court Commissioner was appointed by the Division Bench of this Court and a report was submitted, whether the Court Commissioner has dealt with all the necessary points, and whether had arrived at a proper conclusion, would be the subject of assessment of evidence by the Trial Court. However, from the order passed by the Division Bench of this Court it is clear that the Court Commissioner had not put up the report accused wise or the officer wise. That responsibilities could have been fixed only by the appropriate authority. Therefore, those applicants whose tenure is not covered or who were not at the place

where such purchases alleged to have been done in illegal manner, those applicants are directly required to be released on bail. The role of each of the applicants in the entire process, will have be considered. If that person was in position to take policy decision and had the authority to accord sanction for the purchase of those material, that person at the most can be said to be involved in the crime or there may be *prima facie* case against that person. The role of the applicants before this Court is stated above. Further, the investigation of the offence appears to be based mainly on the documents and those documents have already been seized. There is less likelihood of physical custody of the applicants for the purpose of investigation. Further, at the cost of repetition, it can be said that the applicants are government servants, and therefore, there is no question of they getting absconding. Up till now substantial part of the investigation might be over, and therefore, the interim protections granted earlier to the applicants deserve to be confirmed, accordingly it is confirmed. Hence, following order.

ORDER

- 1) All the applications stand allowed.
- 2) The ad-interim protections granted by this Court

earlier to the applicants are hereby confirmed and made absolute. In other words, if the applicants are not formally arrested, in the event of arrest of applicants namely, Girish s/o Narendra Sarode, Prabhavati w/o Dattatreya Dhamangaonkar @ Prabhavati d/o Pundlikrao Khanapurkar, Ram s/o Prabhu Deshmukh, Nitin Yashwant More, Amrapali d/o Digambar Ramteke, Vishal s/o Govind Gore and Ganesh s/o Balaji Dube, in connection with Crime No.104 of 2020, registered with CIDCO Police Station, Aurangabad, for the offences punishable under Section 420, 468, 471, 409, 120B r.w.34 of IPC, they be released on PR of Rs.50,000/- each (fifty thousand) and two sureties of Rs.25,000/- each (twenty five thousand).

3) The applicants shall co-operate with the investigation.

4) The applicants shall not tamper with the evidence of the prosecution in any manner.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-.