

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

ANTICIPATORY BAIL APPLICATION NO.633 OF 2022

1. Suryakant @ Suresh Rajaram Pathare
2. Machhindra Shantaram Lanke
3. Dadabhau Laxman Pathare
4. Nitin Ramesh Adsul
5. Abhay Bansi Auti
6. Vitthal Dyandeo Gajare
7. Vitthal Prabhu Pawar ...Applicants

Versus

The State of Maharashtra ...Respondent

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Mr. Niteen V. Gaware, Advocate for the applicants.

Mr. V.S. Badakh, APP for the respondent-State.

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CORAM : S.G. MEHARE, J.

DATED : 05th JULY, 2022.

PER COURT:-

1. Heard learned counsel for the applicants and learned APP for the State at length.

2. The registration of the crime is the outcome of the Public Interest Litigation. It has been alleged against the applicants that in the year 2019, the register of Village Jambhali dated 11.06.2019 was inspected by the complainant, and he found that there was no entry of tanker No. MH-04-C-4241 at filling centre. Therefore, the committee has concluded that the water was not supplied. The

applicants ought to have supplied the water as per the agreement, but they have violated the terms of the contract and misled the government and thereby cheated the government.

3. Learned counsel for the applicants has vehemently argued that the company had employed the individual contractor/owner to supply the water from filling centres in various villages. Since the complaints were lodged, an inquiry was made thrice. The first inquiry was conducted by the Village Development Officer, Panchayat Samiti, Parner. He submitted his report on 20.07.2022, recording the finding that the then Development Officer of the supply company i.e. the applicants and other officers, had not misappropriated the money while paying the bills for the water supply from 01.01.2019 to 31.07.2019. He would refer to the inquiry report dated 27.08.2020. It is a letter addressed to the President and Secretary Lokjagruti, Shodh Pratisthan, Nighoj, Taluka Parner, District Ahmednagar, signed by the Chief Executive Officer, Zilla Parishad, Ahmednagar. The Chief Executive Officer, Zilla Parishad, Ahmednagar, has recorded its finding after verifying the report by the Village Development Officer and the supplying agency that the complaint is not consistent with the facts. Thereafter, the District Collector, Ahmednagar, again wrote a letter to the Private Secretary of the learned Minister for Village Development dated 26.03.2021. The Collector has opened the inquiry on the letter of the Hon'ble Minister

on the complaint of Lokjagruti, Shodh Pratishthan, Nighoj, Taluka Parner, District Ahmednagar. After a detailed inquiry, the District Collector, Ahmednagar has referred to the letter addressed by the CEO, Zilla Parishad, Ahmednagar and informed the Private Secretary of the Hon'ble Minister that after having gone through the report of the Executive Engineer dated 27.08.2020 and 06.01.2021, the complainant has been informed that their complaint is not consistent with the facts. The inquiry did not stop here. One more committee of three members was constituted, and again inquiry was made.

4. As per the FIR, there are allegations of only two trips, and the bill may not be more than Rs.30,000/-. He would point out that in his bail application before the Sessions Court, he has given the details of the costs of the alleged two trips of the tanker. The bills of Rs.1.20 lacs are still pending with the State Government. Besides this, a bank guarantee of Rs. 15 lacs is also lying with the State Government. Such a huge amount is lying with the State Government, then why the applicants will deceive the State for a meagre amount of Rs.12,488/-. He would also refer to the contract with the District Collector, Ahmednagar. Referring to Clause 28, wherein it has been agreed that the responsibility to get the work done was imposed on the Village Development Officer, he argued that the complete in-built supervisory mechanism was in existence. The route of the trip, the capacity of the tanker and the number of trips were under the powers

and control of the Village Development Officer. The orders issued by the Village Development Officer would be binding on the tenderer. However, under the signature of the Collector, the Tahsildar and Sub Divisional Officer had the powers to inspect such records. As per Clause 35, the responsibility of maintaining the entries of the logbook was on the driver of the tanker. As per Clause 36, two women appointed by the Water Supply and Cleanliness Committee shall have to sign the logbook for each trip, and it was the responsibility of the tanker driver to obtain their signatures. It was also the responsibility of the tenderer to submit the report daily to the Village Development Officer and Tahsildar or the persons appointed by them about the tanker trips daily. It was also pointed out that it is specifically agreed in Clause 25 of the agreement that if the tenderer has any complaint about the logbook, he may complain to the Sub Divisional Officer. The Sub Divisional Officer has to make an inquiry and submit his report to the District Collector, and the decision of the District Collector shall be final. He has fairly conceded that the GPS system was used for recording how many trips had been done by the tractors, and the responsibility of applying the GPS system on each tanker was on the applicants. He has sincerely and honestly applied the GPS system to all the vehicles which he has engaged from the private and individual contracts.

5. He has vehemently argued that the government has a

complete mechanism to control and supervise the water supply through the tankers, and every detailed report was verified by the Tahsildar and the Village Development Officer. However, with an ill motive, some antisocial elements approached the Court and obtained certain orders. Till the FIR is not lodged the complainant did not stop, they persuaded the PIL. The report of three members committee has barely concluded as regards the case of Parner that in a GPS report, the information about timing of leaving the tanker from the filling centre, reaching the tanker to the village, the time of making the tanker empty and the timing of returning of the tanker towards filling centre and the distance of each trip, is not available. In the logbook of many tankers, the timing of leaving and reaching is not mentioned. In some places, there was overwriting, and the said information was written in another ink. It was also observed that the speedometers of the vehicles were not in order. Referring to the facts of the case and the documents which are referred to above, the applicant's counsel would submit that the GPS system was not under his direct control. The responsibility to verify the trips and the logbook was with the Village Development Officer. The daily report is subject to verification by the Village Development Officer and Deputy Engineer, Zilla Parishad, Rural Water Supply. The responsibility to supervise the GPS system was upon the Executive Engineer, Rural Water Supply Department. It was also specifically agreed in the agreement that if

the GPS was not installed on the tanker and the tenderer claims the trip, then such trips would not be considered for payment of the bill. It was also agreed that the bills would not be certified for the reason that the GPS system was not recording the entries. He has vehemently argued that nothing was under the control of the applicants. The entire system was under the control of the government, and even GPS was installed by the government by a contract given to Dynamic Sales and Services Company. Therefore, the custodial interrogation of the applicants is not required at all.

6. The learned APP has vehemently argued that the three members committee report is apparently against the applicants. The online track reports were collected, and it was discovered that without supplying the water to the village, it was shown that the water was supplied, and the applicants claimed bills for the supply of such water tankers. He would refer to a bill dated 11.06.2019 and vehemently argued that the tanker bearing No. MH04-C-4241 had never gone to Village Karjule Harya. He has also referred to the track report dated 11.06.2019 and pointed out that the vehicle bearing No. MH04-C-4241 did not show the start location and stop location. The distance was shown 0.01 km; therefore, that day, the said vehicle was not on the trip, but the applicants claimed a false bill for the said trip. Many such instances happened, and those are required to be investigated by the Investigating Officer. He also placed on record the

track play report. It has an icon of Dynamic Sales and Services. Referring to these documents, in a nutshell, he tried to point out that the tractors/tankers were shown used for supplying water, but no water was supplied, and the applicants fraudulently submitted the bills to the government and thereby cheated the government. He also referred to the panchnama dated 18.04.2021. That panchnama was about the seizure of the laptop. A witness Ramdas claimed that the username and password of the GPS installed on the offending tractor were made public, and he downloaded the GPS track report and took the screenshot. Therefore, his laptop was seized. He has referred to the statements of various witnesses complaining about the non-supply of water through the tankers. He has also referred to the statement of a person who was appointed at the filling centre to sign every register of the tanker. He has denied that he had signed the register of tanker bearing No. MH04-C-4241 from 01.06.2019 to 30.06.2019. He has also pointed out that though the duty was on the applicants to maintain the logbook, it was not maintained. There are thousands of trips. The entire GPS record is in the custody of the applicants, and after the contract was over, the applicants blocked access to the GPS. Therefore, custodial interrogation is required to recover the GPS record from the applicants.

7. The agreement with the Collector is not denied by the prosecution. The terms of the agreement clearly reveal that the

responsibility was on the applicants to install the GPS on every tractor. The responsibility to supervise the GPS system was cast upon the Executive Engineer, Rural Water Supply Department, Zilla Parishad and the practice of submitting the daily report of daily trips of the tankers was also followed. A specific agreement was there that if the GPS is not working, then the bills would not be accepted, and if the GPS is not installed on the tankers and it was not in order, then also the contractor/tenderer would not be entitled to claim the bills. The responsibility of maintaining the tankers logbook was on the tanker driver, and it was also the responsibility of the tanker driver to get the signature of two women appointed by the Committee of Water Supply and Cleanliness. The applicants were sincerely submitting the report of daily trips to the Village Development Officer and Tahsildar. The record also reveals that the responsibility of GPS was on the government officers. The record further shows that the GPS was under the control of one Dynamic Sales and Services Company which was an independent agency. Since it was an independent agency, every record of GPS must be lying with the said agency. The applicants were also using the Dynamic Sales and Services system to collect the Geofence report. The practice to get it verified by the Village Development Officer and Deputy Engineer, Zilla Parishad, Rural Water Supply Department, was also followed. Consecutive reports were in favour of the applicants and the last report of the

three-member committee has raised some doubts. It is also not in dispute that the bills worth more than 1 Crore are still due to the State Government. *Prima facie*, it appears that there was a complaint about a single trip. Besides the bills due, a huge amount of Rs.15 lacs is also lying with the State Government. The terms of the contracts were very clear that every bill submitted by the contractors/applicants was subject to cross verification by the officers appointed by the government. Unless they approve the bills to their satisfaction, the contractors/applicants were not entitled to get the payment. The maintenance of the logbook was apparently beyond the control of the applicants.

8. The record reveals that the responsibility to install the GPS on the tanker was complied with by the applicants. If the GPS were not installed on the tanker, no one would be able to take the track reports of the tankers. Besides this, it is a civil contract. A huge amount of bills have been withheld by the government. As far as the custodial interrogation of the applicants is concerned, the learned APP has argued that the GPS under the control of the applicants is to be recovered. However, the record shows otherwise. The GPS was under the control of Dynamic Sales and Services Company, the agency appointed by the government and the responsibility to supervise the GPS was on the Executive Engineer, Rural Water Supply Department. There is no material with the prosecution to prove that the applicants

had direct control over the GPS from which the track reports were obtained. The public interest litigants have collected various GPS track reports means access to the GPS was open for all. The recovery panchnama of the laptop proves this fact.

9. Considering the terms of the contract, the responsibility of the applicants, the public servants, the tanker drivers and open access to the GPS and the control of Dynamic Sales and Services over the GPS system, this Court is of the view that the prosecution has absolutely no case for custodial interrogation of the applicants. It may be stated here that a parallel cross-verification mechanism about the bills produced and the water tanker used was under the government itself. Considering the dispute in totality, this Court is not convinced that the applicants' custodial interrogation will throw a different light on the investigation. Therefore, the application deserves to be allowed. Hence, the following order :

ORDER

- I) The application is allowed.
- II) The interim protection granted to the applicants by order dated 19.05.2022 is confirmed on the same terms and conditions.

(S.G. MEHARE, J.)