

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.868 OF 2022

Suyog S/o. Vikram Jawale,
Age 35 years, Occu. Service,
R/o. Jijamata Nagar, Hingoli,
Taluka and District Hingoli .. Applicant

Versus

The State of Maharashtra
Through Aundha Nagnath Police Station,
District Hingoli .. Respondent

...

Mr. Dhananjay M. Shinde, Advocate for applicant
Mr. S. B. Narwade, A.P.P. for Respondent/State

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WITH

ANTICIPATORY BAIL APPLICATION NO.880 OF 2022

Jagdish Madhukar Sahu,
Age 55 years, Occu. Government Service
as Block Development Officer,
Panchayat Samiti, Kalamnuri,
R/o. Kalamnuri, District Hingoli

Versus

The State of Maharashtra
Through Aundha Nagnath Police Station
District Hingoli .. Respondent

...

Mr. Sachin S. Deshmukh, Advocate holding for Mr. Ashish P.
Deshmukh, Advocate for applicant
Mr. S. B. Narwade, A.P.P. for Respondent/State

...

WITH

ANTICIPATORY BAIL APPLICATION NO.895 OF 2022

Sayed Saleem s/o. Sayed Dagdu,
Age 58 years, Occu. Pensioner,
R/o. Zilla Parishad Quarters, Hingoli,
Taluka and District Hingoli .. Applicant

Versus

The State of Maharashtra,
Through Police Station Aundha (Nag.),
District Hingoli

.. Respondent

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Mr. Hamzakhan I. Pathan, Advocate for applicant
Mr. S. B. Narwade, A.P.P. for Respondent/State

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**WITH
ANTICIPATORY BAIL APPLICATION NO.924 OF 2022**

Laxman s/o. Khandoji Kurude,
Age 50 years, Occu. Service as Auditor,
Panchayat Samiti, Aundha Nagnath,
District Hingoli,
R/o. Aundha Nagnath, Tal. Aundha Nagnath,
District Hingoli

.. Applicant

Versus

The State of Maharashtra,
Through Police Inspector,
Police Station, Aundha Nagnath,
Taluka Aundha Nagnath, District Hingoli

.. Respondent

...

Mr. Shrikant G. Kawade, Advocate for applicant
Mr. S. B. Narwade, A.P.P. for Respondent/State

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CORAM : S. G. MEHARE, J.

DATE : 12-09-2022

PER COURT :-

1. Heard the learned counsel for the applicants and learned A.P.P. for the respondent/State.
2. The applicants are seeking bail in the event of their arrest in Crime No. 0165 of 2022 registered with Aundha Nagnath Police

Station, District Hingoli, for the offence punishable under Sections 420, 409, 465, 467, 468, 474, 477A read with Section 34 of the Indian Penal Code.

3. In sum and substance, the allegations have been levelled against the applicants that they were employees of the Zilla Parishad and had different responsibilities upon them in constructing the *Gabian* embankment (*Bandhara*) under the Government scheme. The applicant Suyog S/o. Vikram Jawale, in A.B.A.No. 868 of 2022, was a Technical Assistant in the office of Panchayat Samiti Aundha Nagnath. The applicant Jagdish Madhukar Sahu, in A.B.A.No.880 of 2022, was the then In-charge Block Development Officer of Panchayat Samiti, Aundha Nagnath, Distt, Hingoli. Applicant Sayed Saleem s/o. Sayed Dagdu, in A.B.A. No. 895 of 2022 was Junior Engineer with Zilla Parishad in Irrigation Department and the applicant Laxman s/o. Khandoji Kurude, in A.B.A.No. 924 of 2022, was Assistant Accounts Officer (Auditor).

4. It has been alleged against the applicants that in the year 2021-22, an administrative sanction was given to nine contractual works. In the year 2022-23, the sanction was granted for 41 *Gabian* embankments. In conspiracy, the applicants and the contractual employees have misappropriated the public money. The resolutions to construct the *Gabian embankments* were not

obtained from the village Panchayat; direct sanction was given, and the work was started. For the said purpose, the applicants and other co-accused have opened the accounts of bogus job card holders. The inquiry committee found that all the accused have misappropriated the amount of Rs.26,37,990/-.

5. Mr. D. M. Shinde, the learned counsel for the applicant Suyog Jawale, has vehemently argued that the applicant was a Technical Officer. He referred to page No. 56 of the inquiry report and vehemently argued that the applicant's name was not reflected in the chart. He is an officer; hence, he is arraigned as an accused. One Rahul Suryawanshi was the responsible person. The inquiry report is totally silent against the applicant – Suyog Jawale, except his name therein. He is ready to submit his phone used for Geotagging. His duty was to submit Geotagging. The other officers had to sanction the bills as per the percentage of the work done. He referred to page No. 44D of the application, particularly the Marathi word '*Durupyog*' and vehemently argued that the word '*Durupyog*' is not synonymous and similar to the word '*misappropriation*'. Therefore, the allegations are baseless. He is not the beneficiary of a single Pie. His role was very limited to supplying the Geotagging of the construction site. He has done his job sincerely. He has taken photographs of whatever construction was done on the site on the mobile handset and transmitted them to the concerned officer. The concerned officer was to release the

payment considering the percentage of the work. He has no concern with the sanction, technical sanction, approval, etc. Nothing is to be recovered from him. Hence, he may be released on anticipatory bail.

6. Mr. Sachin S. Deshmukh, the learned counsel holding for Mr. Ashish P. Deshmukh, the learned counsel for the applicant Jagdish Sahu, has vehemently argued that the applicant was posted for the period from 21.03.2022 to 31.05.2022 only. He has referred to page No. 32 of his application i.e. the Government Circular dated 23.08.2013. Referring to the said Circular, vehemently argued that the role of the Block Development Officer is limited, and the Government has determined the duties of each officer. He would point out that the duty to note down entries of the work was cast on the Gram Rojgar Sevak with the counter signature of the Technical Officer, and the counter signature of the Gramsevak is not required. He has referred to another Government Resolution dated 28.01.2020 and vehemently argued that the said Government Resolution has directed explicitly that the Village Development Officer shall be responsible for administrative decisions only. The Village Development Officer could not be held responsible for valuation, revaluation difference, suspension of the funds, etc. It was purely technical work. He has also referred to the inquiry report on page No. 53 of his application and tried to argue that the works were not approved for the period in which he was in

charge. He has also argued that the inquiring officer recorded the findings on the basis of the statements of the staff from the employment guarantee scheme, namely, Assistant Programme Officer, Clerk-cum-Data Entry Operator, Technical Assistant, Assistant Accounts Officer and Sectional Engineer. He has tried to argue that the inquiring officer did not apply his mind. Therefore, his conclusions are illegal. He relied on the common order passed by the learned Additional Sessions Judge, Basmat, in *Criminal Bail Applications No. 147, 148, 150, 154 and 160 of 2022 dated 28.06.2022* and claimed the parity.

7. The common argument of the learned counsel for the applicants was that the inquiry was based on the documents. The documents are lying with the Zilla Parishad. Therefore, nothing is to be recovered from the applicants.

8. Mr. H. I. Pathan, the learned counsel for the applicant Sayed Saleem s/o. Sayed Dagdu has vehemently argued that the applicant has been retired on superannuation. He has approved the technical sanction as per the directions issued by accused No.1 by his written order dated 10.03.2022. He is not concerned with measuring the works and maintaining the record of the labourers. He discharged his duty promptly and is not concerned with the alleged misappropriation. He is ready to co-operate with the Investigating Officer. Therefore, the applicant may be released on

anticipatory bail.

9. Mr. Shrikant G. Kawade, the learned counsel for the applicant - Laxman s/o. Khandoji Kurude has vehemently argued that the applicant was the Assistant Accounts Officer (Auditor). His role was very limited. The bills are sent to his office after completing the entire process. He had no reason to disbelieve the bills submitted by the responsible officers. He had no concern at all with the technical sanction and measurement of the work done by the workers. He has no concern with the Village Panchayat's sanction for the work. Referring to point No.5 on page 62 of the inquiry report, he has vehemently argued that the findings do not relate to the accounts department. He has vehemently argued that soon after the discovery of fraud/misappropriation of the money, he along with the Block Development Officer, immediately instructed the Bank to stop payment. He has also argued that there is nothing against him in the inquiry report. The police report is contrary to the inquiry report. He has been suspended, and his headquarters has also been changed. Thus, there are no chances of tampering with the prosecution witnesses. Therefore, the applicant may be released on anticipatory bail.

10. The learned A.P.P. for the respondent/State has strongly opposed all the applications contending that it is a systematic conspiracy of all the accused in misappropriating the public funds.

He has placed on record a bunch of papers. He has vehemently argued that the inquiry has been made by the Economic Offence Wing. The inquiring officer has *prima facie* expressed opinion that all the applicants were involved in misappropriating the public money. The Marathi word '*Gairfayada*' is similar to the word 'misappropriation'. The detailed inquiry report dated 19.08.2022 is placed on record. He referred to that report and vehemently argued that every applicant was involved in the crime. He further referred to a report of the Economic Office Wing dated 02.08.2022 and pointed out that the Investigating Officer has categorically placed before the Court the roles played by the respective applicants. He has also referred to the statements of the witnesses. So far as the applicant Jagdish Madhukar Sahu is concerned, he has vehemently argued that he was the responsible officer, and the alleged Government Circular would not help him. Though he is administratively responsible, here in the case, his role is active in committing fraud and misappropriating public money. Serious allegations have been levelled against the applicants that they, in conspiracy with each other, have created the false record of the labourers. The complainant has specifically alleged against the applicant Jagdish, Block Development Officer, how he demanded money and directed him to collect the job cards of the labourers. He has also referred to the bank accounts and vehemently argued that the amount has been misappropriated by

depositing in the name of some labourers who actually had no job cards. In a nutshell, he has vehemently argued that a detailed report made by the Economic Office Wing is based upon the documents. *Prima facie* material against all the applicants is available. Hence, the applications may be dismissed.

11. The facts have been discussed as regards the allegations and material collected by the Investigating Officer against the applicants. Every applicant has allegedly played a role in misappropriating public funds. The papers reveal that the Government has framed the entire scheme. The scheme has been placed on record on page No. 77. The scheme shows how it works. No doubt; the Zilla Parishad was the implementing Agency for the various works done through the various schemes.

12. I have considered the arguments advanced by each of the lawyers. They have tried to shift the burden on the shoulders of each other. Be that as it may, examining the role of each and every accused, the Government Circular dated 28.01.2020 referred to by Mr. Deshmukh, the learned counsel for the applicant - Jagdish, refers to the responsibility of the Village Development Officer. In the said Circular, it has been directed that the Block Development Officer would only be responsible for the administrative responsibilities. However, they should not be held responsible for technical issues like valuation, revaluation

differences, suspension of the funds, etc. The investigation papers reveal that the applicant Jagdish Sahu called the complainant and promised to give him another contract, and against that, he had to collect the job cards from the labourers. His detailed report shows how the job cards of the labourers were collected through him. The bank account statement referred to by the learned A.P.P. further reveals that the money has been fraudulently transferred to the account of the fake labourers. It also appears that he directed the applicant in A.B.A. No. 895 of 2022 to approve the technical sanction.

13. After having gone through the papers and inquiry report, it is apparent that the applicant Shahu has played an active role in implementing the scheme. There is ample material against him showing his involvement. There are many documents against him. Therefore, he cannot take the benefit of the Government Circular as discussed above.

14. As far as applicant Suyog Vikram Jawale is concerned, it has been transpired in the investigation that there was no measurement of the spot or whether the work was done. Therefore, he has not sent the correct Geo-tag. It has also been transpired that when the inquiry committee was coming to the Village Vadchuna, no work was done. However, when the applicant Suyog Jawale learnt that the committee was visiting the Village

and inspecting the work, the work was done at seven places within a day from the unknown labourers s brought from out of the Village. He did not correctly certify 29 measurement books without obtaining the signatures of the Village Development Officer and Assistant Accounts Officer. It has been transpired against him that he transmitted the false measurement book.

15. As far as the allegations against the applicant Jagdish Sahu is concerned, the Investigating Officer found that he has transferred the money by applying false D.S.C. on the accounts of the labourers. The said D.S.C. is to be recovered from him. The manual muster of the labourers is not available, and that record is lying with him. The D.S.C. was the personal property of the officer. It is not transferable. But, it was misused. The work was done without demand from the Village Panchayat, and incriminating material was found against him.

16. As far as the applicant Laxman S/o. Khandoji Kurude is concerned; it has been investigated against him that he did not pass the bills without verifying the same. But, the bills were passed though there were no passing orders on the bill books.

17. As far as applicant Sayed Saleem s/o. Sayed Dagdu is concerned, it is investigated against him that the technical sanction was expected from the Minor Irrigation and Agricultural Department, but he has misused his powers and approved one line

technical sanction.

18. The investigation papers reveal the role of the applicant Laxman S/o. Khandoji Kurude was very limited in sanctioning the bills. He was the Assistant Accountant Officer. It has been alleged against him that he has sanctioned the bills without verifying the facts. There appears a substance in the arguments of the learned counsel for the applicant Laxman Kurade that his job was limited, and he has concern for approval and measurement of the works and job cards of the labourers. Therefore, he is entitled to protection.

19. So far as the applicant Sayed Saleem s/o. Sayed Dagdu is concerned; the record reveals that the applicant Jagdish Sahu, Village Development Officer directed him to approve the technical sanction. The Village Development Officer was the principal officer in getting the sanctions. Except for this, there are no allegations against him. Therefore, his custodial interrogation may not be required.

20. As far as the role attributed to the applicant Jagdish Sahu, Village Development Officer, is concerned, there is ample evidence against him. He seems the key person behind the misappropriation of the funds. The role of applicant Suyog Vikram Jawale also appears active in doing all these things. Therefore, their custodial interrogation is required.

21. After considering the facts and the material discussed above, the A.B.A.No. 868 of 2022 of applicant Suyog Vikram Jawale and A.B.A.No. 880 of 2022 filed by Jagdish Sahu stand dismissed.

22. A.B.A.No. 895 of 2022 filed by Sayed Saleem s/o. Sayed Dagdu and A.B.A.No. 924 of 2022 filed by Laxman S/o. Khandoji Kurude are allowed.

23. The interim protection granted to the applicants Sayed Saleem s/o. Sayed and Laxman S/o. Khandoji Kurude, as per the order dated 15.07.2022, is confirmed on the same terms and conditions, with the additional condition to attend the police station as and when called by the Investigating Officer on written notice.

24. The learned counsel appearing for the applicant Suyog S/o. Vikram Jawale in A.B.A.No. 868 of 2022 and applicant Jagdish Madhukar Sahu in A.B.A.No. 880 of 2022 pray to continue the *interim* protection granted by order dated 15.07.2022 for four weeks. *Interim* protection that was granted to them will continue for four weeks from today.

(S. G. MEHARE)
JUDGE

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