

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.911 OF 2022

Sandeep s/o. Chandrabhan Nikam,
Age 36 years, Occu. Service Gramsevak,
R/o. ITI Colony Jamner, Taluka Jamner,
District Jalgaon. .. Applicant

Versus

The State of Maharashtra
Through The Police Inspector,
Bodwad Police Station, Taluka Bodwad,
District Jalgaon. .. Respondent

Mr. Rajendra Deshmukkh, Senior Advocate with Mr. Vishal Chavan,
Advocate instructed by Mr. Ashok R. Tapse, Advocate

Mr. V. M. Kagne, A.P.P. for Respondent/State

CORAM : S. G. MEHARE, J.

DATE : 25-08-2022

PER COURT :-

1. By the present application, the applicant is seeking anticipatory bail in C.R.No.72 of 2022 registered with Police Station Bodwad, Taluka Bodwad, District Jalna, for the offences punishable under Sections 420, 419, 409, 467, 468, 469, 471 read with Section 34 of the Indian Penal Code.

2. Heard Mr. Rajendra Deshmukh, the learned senior counsel for the applicant and the learned APP for the respondent/State.

3. The applicant is a Gramsevak and was holding the charge of four Gram panchayats. The Block Development Officer, Panchayat Samiti, Bodwad, District Jalgaon, has made an inquiry about misappropriation during the tenure of the applicant as Gram Sevak. He has categorically examined the record and found that the applicant has transferred the money to his own account, which was to be paid to the Contractor. The scrolls were also examined. The Inquiring Officer observed that during the period, the applicant was, Gramsevak of Village Panchayat Bodwad, transferred the public money into his own account and spent it on other suspicious accounts. He has misappropriated the amount of Rs.39,36,122/-. The Inquiring Officer has held the applicant personally responsible. Therefore, the crime has been registered against the applicant for the offence punishable under the above Sections.

4. Mr. Deshmukh, the learned senior counsel for the applicant, has vehemently argued that the inquiry has been conducted *ex-parte*. The applicant was not called. He has vehemently argued that the applicant had obtained the technical and necessary permissions from the higher authorities for his work. The work for Rs. 1,02,000 was done by an illiterate contractor having no bank accounts. Hence, that amount was transferred to his own account

and then it was paid to the said Contractor. The receipt is on page No.114. The said receipt also mentions resolution No. 6, and accordingly, as per the said resolution, the amount has been paid in cash. He has also explained that all these village panchayats are in remote and very backward areas. So, the applicant couldn't wait until the Contractor opened the bank account and then paid the money through the bank. He has also referred to various photographs and argued that the allegations against the applicant that no work was done and payment made are absolutely false. He has also referred to a document regarding the ideal Gramsevak award awarded to the applicant for 2019-20. Referring to the certificate, the learned senior counsel has argued that the applicant was the best Gramsevak for the said period. He has also referred to the list of works done by the applicant on page No. 101. He has also referred to certain news items published in the newspapers, on page Nos. 102 to 105, and tried to convince the Court that the applicant was prompt and acting in completing the Government schemes. It has been specifically argued that the applicant has done every act on the instructions of the B.D.O., in the interest of the illiterate villagers and the Contractor. At the most, that may be irregularity or misconduct. Since the money has been paid to the concerned Contractor, it cannot be said that it is misappropriation. The applicant is facing a departmental inquiry also. The entire inquiry is based on the documents lying with the

office. When the applicant was transferred, he handed over the charge to his successor. Therefore, nothing is to be recovered from the applicant. The applicant has a strong case in rebuttal, but no opportunity was granted to him while the inquiry was made. Considering the excellent service record of the applicant in the past, he may be released on anticipatory bail.

5. The learned A.P.P. has strongly opposed the application. He would refer to the documents and point out that there are series of withdrawals of huge amounts and transfer the said amount to the personal account of the applicant. He has also referred to the report wherein it has been specifically mentioned that 27 toilets have been shown constructed in the name of deceased persons. No toilets are built, but the applicant has withdrawn the money, which has been misappropriated. Barely having the award of the best Gramsevak does not absolve him from the illegality that the inquiry officer has discovered. He has read the consecutive reports of the B.D.O. who has inquired. He has a single incident of making the payment of Rs.1,02,000/- to the painter, of which he has obtained the receipt. Though a few photographs have been placed on record to convince the Court that the toilets were constructed, there were 380 beneficiaries in the village who were entitled to toilet costs. Therefore, it cannot be said that the applicant has not committed the misappropriation of money. He would also point out that the applicant misappropriated a considerable amount of more

than Rs.39 Lakhs. He has spent the amount on such accounts, which was highly suspicious. Not only this, but he has also opened a new bank account in another bank without any permission from the higher authority, and the money has been disbursed from the said bank account. He did not respond to the higher authority to produce the relevant documents. The inquiry report is based on the document and the material available with the office, and thereafter, it has been concluded that the applicant has misappropriated a huge amount. The applicant has done all these acts deliberately and with knowledge; therefore, it cannot be said as that irregularity or misconduct. Those are the intentional acts. The applicant being a public servant, has no reason to transfer a single *pie* to his personal account. This may not be a prompt act of the applicant to fulfil the target of the 14th and 15th Finance Commission, and strong evidence is available against the applicant. A huge amount is to be recovered from the applicant. Therefore, the offer of the applicant to deposit the amount of Rs.9 Lakh to show his *bona fides* would serve no purpose.

6. Perused the papers. The responsible officer has made a detailed inquiry. After inquiring, the inquiry officer came to the conclusion that the amount of more than Rs.30 Lakh had been misappropriated during the tenure of the applicant in various village Panchayats. *Prima facie* evidence has been collected to prove that a huge amount has been transferred to the personal

account of the applicant. The method of payment has been determined by the Government. In no case the cash amount is allowed to be paid to any of the Contractors. The applicant has attempted to show his *bona fide* that to achieve the targets of the Finance Commission, he has paid the money to the various contractors in cash, as they are illiterate and poor does not appeal to the mind of the Court. Now, in almost all remote villages, there are bank accounts opened for the Government schemes. So, in this modern age, it is difficult to believe that contractors do not have bank accounts. The record reveals that the money has been withdrawn in the name of deceased persons. Some works have been done, and some works have not been done. Barely obtaining a technical and other sanction is not sufficient to believe that the applicant has not misappropriated the money. No doubt, irregularity or misappropriation of money are different terms. There is no iota of evidence to believe that the applicant has committed irregularity. A series of transactions show that the money has been transferred to the applicant's personal bank account, and the applicant has done these acts deliberately. Considering the gravity of the offence and material collected against the applicant, the Court is not inclined to grant anticipatory bail to the applicant. Hence, the application stands dismissed.

7. The learned senior counsel for the applicant prays to continue *interim* protection for four weeks. In the interest of justice, the *interim* protection granted by this Court by order dated 22nd July 2022 is extended for four weeks from today.

(S. G. MEHARE)
JUDGE

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