

(1)

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

909 ANTICIPATORY BAIL APPLICATION NO.992 OF 2022

Smt. Renuka Dattatraya Darekar,
Age 40 years, Occ. Household
R/o Dhondewadi, Tq. Kopargaon,
District Ahmednagar

..APPLICANT

VERSUS

The State of Maharashtra
Through the Police Inspector,
Shirdi Police Station,
Tq. Kopargaon and District
Ahmednagar

..RESPONDENT

Mr V.D. Hon, Senior Advocate, instructed by Mr A.V. Hon, Advocate
for applicant;
Mr V.M. Kagne, A.P.P. for respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.996 OF 2022**

Shivaji S/o Bhausahab Magar,
Age : 45 years, Occu. Service,
R/o Sanvatsar, Tq. Kopergaon,
Dist. Ahmednagar

..APPLICANT

VERSUS

1. The State of Maharashtra,
Through Shirdi Police Station,
Tq. Rahata, Dist. Ahmednagar
2. The Superintendent of Police,
Shirdi, Tq. Rahata, Dist. Ahmednagar..RESPONDENT

Mr Amol S. Gandhi, Advocate for applicant;
Mr V.M. Kagne, A.P.P. for respondents

CORAM : S. G. MEHARE, J.

DATE : 21st September, 2022

PC.

1. Heard Mr. Hon, the learned Senior Counsel for the applicant Renuka Dattatraya Darekar, Mr Gandhi, the learned counsel for the applicant Shivaji Bhausahab Magar and the learned A.P.P. for the respondents, at length.

2. The applicant, Renuka, was the Sarpanch of the village panchayat, Dhondewadi, Taluka Kopargaon, and the applicant, Shivaji, was the Gramsevak. It has been alleged against the applicants that there were a number of complaints against applicant Shivaji that he used to remain absent in the village panchayat office. Hence, the Block Development Officer examined the available record and found that there were no accounts in Forms nos.1 to 33 and the record of the financial transactions of the village panchayat for the year 2020-2021, 2021-2022 and 2022-2023. The notices were issued to applicant Shivaji to produce the record available with him. However, he did not respond. Hence, the order was drawn in the name of Shri P.B. Barbade, Village Development Officer, to take the additional charge. The applicant Shivaji remained absent to hand over the charge. Therefore, a panchnama of the cupboard was drawn, and the seal was broken. Thereafter, the charge was given to Shri Barbade. Since, the applicant Shivaji used to remain absent from duties, the complainant got suspicious. Hence, he also examined the bank

(3)

account scroll/statement of the IDBI Bank, Branch Kopargaon. He found that from 14.10.2021 to 04.02.2022, the amount of Rs.15,35,750/- was spent, but the estimate, measurement book, tender file and completion certificate of the said works were not in the record. Therefore, he formed an opinion that the said expenses were suspicious. On examining the bank statement, he found that from 15.02.2022 to 06.04.2022, Rs. 10,60,200/- was spent. However, he did not find on which work the said amount was spent. On making the inquiry, he learnt that no work was done in the village from the fund of the 15th Finance Commission. The applicant, Shivaji, was directed to spend the money through PFMS. However, both the applicants did not follow those directions. They have unauthorisedly spent Rs.15,35,750/- from 14th Finance Commission and Rs.10,60,200/- from the 15th Finance Commission. They withdrew the said amount for their benefit. They have misappropriated a huge amount. It was also transpired that the cheques were issued in the name of Babasaheb Rambhau Shinde, who did no work for the village panchayat nor the village panchayat contractor. He also accepted the huge amount for his benefit.

3. On the basis of the above report, a crime bearing no.0272 of 2022 for the offences punishable under Sections 420, 409 read with Section 34 of the Indian Penal Code was registered with Shirdi Police Station, District Ahmednagar.

4. Mr. Hon, the learned Senior Counsel for the applicant Renuka, has vehemently argued that she was consistently complaining against applicant Shivaji that he did not attend the village panchayat office. Therefore, the work of the village panchayat was hampered. The allegations that the work was not done and the sanction was not obtained are false. He referred to page no.32, a resolution of Gramsabha dated 24.8.2020 and argued that the road from the National Highway to the house of Kakade was done for Rs.3 Lakh out of the fund from the 14th Finance Commission. A technical sanction was also obtained as per page no.34. The commencement of the work order was also issued. The Sub-Divisional Water Conservation Officer, Zilla Parishad, Sub Division, (M.I.), Kopargaon, had also issued the completion certificate for the said work. Similar documents have also been placed on record to show that the road work was done and the completion certificate was obtained. He has referred to the number of complaints made by applicant Renuka against the applicant Shivaji that he used to remain absent from his duties. The learned Senior Counsel has vehemently argued that it was the Covid-19 period. Hence, urgent purchases of sanitary items and medicines were made. Therefore, she signed the blank cheques. Not a single pie has been transferred to her bank account. He would submit that the police have recorded her statement. It was the sole responsibility of Gramsevak to maintain the accounts and used to be in the custody of the record.

(5)

The allegations levelled against the applicant Renuka are false. She is an elected village Sarpanch. If she would not released on bail, she may lose her political position. She is ready to cooperate with the investigation. The police never called her after the *interim* protection granted by this Court. The first information report is mainly against Gramsevak Shivaji. Therefore, she may be granted anticipatory bail.

5. *The* learned counsel Shri. Gandhi for applicant Shivaji has vehemently argued that the villagers had filed one public interest litigation for removal of encroachment. In the said public interest litigation, the applicant drew the panchnama and reported to the committee. Therefore, the villagers had a grievance against him. They were not allowing him to work and continuously threatened him. At no point in time, a memo for his absence was issued to him. The next day after the visit of the Village Development Officer, he was suspended. He has been made a scapegoat. The audit of the village panchayat as prescribed under Section 140 of the Maharashtra Village Panchayats Act is yet not done. Hence, no crime would be registered against him. He referred to the Government circular dated 03.03.2006. That pertains to the departmental enquiry against the servant of Zilla Parishad. He also referred to another circular dated 18.09.2019 and vehemently argued that unless a clear conclusion is drawn in the departmental enquiry that the village panchayat property or fund is misappropriated and the original record has been

(6)

forged, no criminal case would be registered against the Sarpanch and the Gramsevak. He has vehemently argued that the departmental enquiry against the applicant is going on. The authority making the enquiry has yet not concluded that the so-called amount has been misappropriated. Therefore, the first information report would not have been registered against him. The payments were made under the signature of the Sarpanch and him. No misappropriation as alleged has been done. Since the villagers did not allow him to enter the village, he could not attend to his duties due to fear. The entire record is lying with the higher officers. Nothing is to be recovered from him. Hence, he may be granted anticipatory bail.

6. Per contra, the learned A.P.P. has strongly opposed the application. He would argue that the entire record was lying with applicant Shivaji. He was called upon to hand over the charge, but he did not attend. Therefore, the charge was taken by breaking the seal of the cupboard. From the available record, it has been transpired that a huge amount of more than Rs. 25 Lakh has been misappropriated. The remaining record is in the custody of the applicant Shivaji. That needs to be inspected to find out the exact misappropriation of public money. *Prima facie* evidence is available with the prosecution that the money was transferred to the account of one Babasaheb Rambhau Shinde, who was neither the village panchayat contractor nor any work allotted to him. Both the

(7)

applicants have played tactics to transfer the said amount to the account of Babasaheb Rambhau Shinde. He withdrew the said amount and paid the applicants. The prosecution also has evidence that the money has been transferred by Babasaheb Rambhau Shinde to the account of the applicant Shivaji s/o Bhausaheb Magar. Therefore, the defence of the applicants that not a single pie has been transferred to their accounts has no meaning. If no work was done in the village panchayat, it was incumbent upon the Sarpanch Renuka to refuse to sign or return the cheque. Her defence that due to Covid-19, there was an emergency to purchase sanitary items and medicines; hence, she signed the blank cheque does not appeal to the mind of a prudent man. The Investigating Officer has collected the prima facie evidence that both the applicants have misappropriated a huge amount in collusion. The offence is serious. The *modus operandi* of transferring the amount is to be investigated, and the village panchayat record is also to be recovered from the applicants. Hence, their custodial interrogation is essential.

7. It is not in dispute that the applicant Sarpanch Renuka was consistently complaining against applicant Shivaji for his absence. She also requested the Block Development Officer to appoint another Gramsevak. It also complained that the development work of the village was hampered due to the consistent absence of Gramsevak. The record also indicates that the applicant Shivaji used to remain

(8)

absent from his duties. He did not heed the notices issued to him and handed over the charge. He did not keep the entire record with the office of the village panchayat. It was transpired from the record available in the cupboard of the office of the Village Panchayat that the money was misappropriated from the fund of the 14th and 15th Finance Commission. Regarding the documents relied upon by applicant Renuka regarding the resolution dated 16.08.2016, it was a resolution passed in the meeting of Gramsabha approving a sanction to the development works. However, out of it, there are technical sanctions and completion certificates for two works only worth Rs.3 Lakh each. The Block Development Officer did not find a record of purchasing sanitary items and medicines during Covid-19. A huge amount has been apparently misappropriated. The applicant, Sarpanch, a public servant, was equally responsible for the business of the village panchayat and the financial transaction.

8. As far as the circular of the Maharashtra Government, dated 03.03.2006, is concerned, it is a guideline about the departmental enquiry to be held against Sarpanch and Gramsevak. It has been mentioned in the said circular that Sarpanch and Gramsevak have joint responsibilities. As far as the Government resolution dated 18.09.2019 is concerned, the learned A.PP has correctly pointed out that it is not mandatory to wait till the departmental enquiry is concluded. The first part of the said resolution is clear that if any

(9)

misappropriation of the public fund, and the village panchayat property is discovered, then the criminal case shall be filed.

9. There also appears no force in the argument of the learned counsel Mr. Gandhi for the applicant Shivaji that the audit of the accounts of the village panchayat has not been done. Therefore, the Block Development Officer cannot arrive at the conclusion that the public fund has been misappropriated. Those are the powers of the competent authority to make an audit of the accounts of the village panchayat.

10. The prosecution has a specific case that a huge amount has been transferred to the account of Babasaheb Rambhau Shinde, who was neither the contractor nor any work allotted to him. How the money was transferred to his account was a serious question to be investigated. The possibility of transferring the amount to the account of Babasaheb Rambhau Shinde and then sharing it with the applicants cannot be ruled out. Applicant Renuka being the Sarpanch, was a responsible public officer, and she was not supposed to sign the blank cheques. She is equally responsible for the business of the village panchayat.

11. The investigation papers reveal that prima facie material is available against the applicants for misappropriating a huge amount of Rs.25,95,950/-.Considering the allegations levelled against the

applicants and the way of misappropriating a huge amount, the custodial interrogation of the applicants is essential. The applicant Renuka has a political background. Hence, the possibility of tampering with the prosecution witnesses cannot be ruled out. The offence is serious and grave. Therefore, the applicants have no case for anticipatory bail. Hence, both the applications stand dismissed. Needless to state that the observations of this order are restricted to the present bail applications only.

12. The learned senior counsel for applicant Renuka requests to extend the *interim* protection for four weeks. In the interest of justice, the *interim* protection granted to the applicant Renuka is extended for four weeks from today.

(S. G. MEHARE, J.)

amj