

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
ANTICIPATORY BAIL APPLICATION NO.1166 OF 2022**

Sheela Dinkar Pawar ...Applicant

Versus

The State of Maharashtra ...Respondent

...
Advocate for Applicant : Mr. Pawan K. Ippar a/w. Mr. Santosh B. Pathak
APP for Respondent/State : Mr. K.S. Patil

...
CORAM : S.G. MEHARE, J.

DATED : 13th SEPTEMBER, 2022

ORDER :-

1. The applicant has apprehension of her arrest. Hence she is seeking anticipatory bail under section 438 of the Code of Criminal Procedure for the offences registered under sections 408, 409, 420 r/w Section 34 of the Indian Penal Code.

2. Heard learned counsel for the applicant and learned APP for the State.

3. The applicant was the Village Sarpanch from 2015-2016 to 2018-2019 of Village Nipani Wadgaon, Taluka Shrirampur. The auditor did an audit of the accounts of the village panchayat. The auditor found that an amount of Rs.26,48,115/- was misappropriated by the present applicant and the then Gramsevak. The Assistant Accounts Officer, Legal Fund, Audit Department, Ahmednagar, placed a special report to the Chief Executive Officer, Zilla Parishad, Ahmednagar, pointing out the misappropriation under different heads. Thereafter, the Chief Executive Officer issued the show cause

notice under Section 140 (5) of the Maharashtra Village Panchayat Act to the applicant on various dates and 30.06.2022. He held the present applicant responsible for misappropriating Rs.10,40,185/-. The final notice dated 23.06.2022 was served upon the applicant calling upon her to deposit the misappropriated money. In response, she denied the audit report and her responsibility. She deposited Rs.1,91,191/- under protest. However, she did not challenge the order of the Chief Executive Officer directing her to pay the above amount before the District Court to modify or set it aside as provided under Section 140 (6) of the Maharashtra Village Panchayat Act. Thereafter, the Block Development Officer, Panchayat Samiti, Shrirampur, lodged the F.I.R. against her. Police Station Shrirampur has registered the crime for the above offences.

4. The applicant approached the learned Additional Sessions Judge, Shrirampur, District Ahmednagar, for anticipatory bail vide Criminal Bail Application No.196 of 2022. The learned Additional Sessions Judge was pleased to allow the application on a condition to deposit the amount of Rs.10,40,185/- within seven days before the Court under protest with a further condition that if the applicant breaches any condition, the bail would be cancelled automatically. The applicant could not comply with the directions of depositing the amount within a given time. Therefore, she moved an application before the learned Sessions Judge to extend the time to

deposit the money. However, the learned Sessions Judge was pleased to reject the application on 11.08.2022. Hence, the applicant approached this Court for anticipatory bail.

5. Learned counsel for the applicant has vehemently argued that there is a catena of the judgments of the High Courts and the Hon'ble Supreme Court that imposing such condition of depositing the money while granting the bail is an inhumane approach and amounts to a denial of the bail. He has referred to the following cases :

(1) Keshab N. Banarjee Vs. State of Bihar, 1984 DGLS (SC) 161.

(2) Avinash Arora and others Vs. State of U. T. Chandigarh and another, A.I.R. 2000 (SC) 3563 (1).

(3) Shyam Singh Vs. State, (2005 DGLS(SC) 491.

(4) Munish Bhasin and Ors. Vs. State (Govt. of N.C.T. of Delhi) and Anr., (A.I.R. 2009 S.C.C. 2072.

(5) Sumit Mehta Vs. State (N.C.T. of Delhi), (2013) 15 SCC 570.

(6) Dataram Singh Vs. State of Uttar Pradesh and Another, (2018) 3 S.C.C. 22.

(7) Kunal Kumar Tiwari Alias Kunal Kumar Vs. State of Bihar and Another, (2018) 16 S.C.C. 74.

(8) Parvez Noordin Lokhandwalla Vs. State of Maharashtra and Another, Criminal Appeal No.648 of 2020 (Arising out of SLP (Crl) No.3420 of 2020).

(9) Kaleem alias Kaleem Pasha Vs. State by Central Police Station, Bangalore, 2003 (1) R.C.R. (Criminal) 524 :: 2003 CriLJ 353.

(10) Vipin Mehra and Another Vs. State, 2003 V.A.D. Delhi 501.

(11) Makhan Kant Sharma Vs. Union of India, 2011(4) ALL. L.J. 80.

(12) Amaldoss and others Vs. State, Rep. By the Inspector of Police, Patteeswaram Police Station, Thanjavur, 2015(1) M.L.J. (Criminal) 471.

(13) Bharatkumar Madanbhai Chikani Vs. The State of Maharashtra, (Criminal Application No.5821 of 2015 with companion matters) decided by this Court on 30-10-2015.

(14) Runa Pasricha Rajpoot Vs. State of Haryana, 2019(2) R.C.R. (Criminal) 873.

6. In most of the above cases, the Hon'ble Supreme Court and the High Courts took the view that harsh, onerous, excessive, irrelevant or freakish conditions cannot be imposed while granting bail. The term "any condition" used in Section 438 of the Code of Criminal Procedure contemplates that the condition should be reasonable and should effectuate the object of imposing conditions, having regard to the facts and circumstances of the case. Any condition which departs from this object is not permissible, but Court should exercise its discretion with utmost caution. It has also been observed that the Courts should take a humane approach while dealing with applications for remanding the matter to police or

judicial custody. The grant or refusal of bail is entirely upon the discretion of the Judge; however, it must be exercised judiciously. Such conditions cannot be arbitrary, fanciful or extend beyond the ends of the provision. This is the consistent view in many cases.

7. Relying on the above judgments, he has vehemently argued that imposing conditions to deposit such a heavy amount which was beyond the capacity of the applicant, was nothing but denial of the bail and the approach of the learned Sessions Judge is inhumane and departs from the object granting anticipatory bail.

8. The learned counsel for the applicant has also argued that Section 140 (5) of the Maharashtra Village Panchayat Act provides that, the Chief Executive Officer may after considering the report of the Panchayat Samiti, and making such further inquiry as he considers it necessary disallow any item which appears to him contrary to the law and surcharge the same on the person making of the illegal payment and may charge against any person responsible therefore the amount of any deficiency or loss caused by gross negligence, or misconduct of that person that such amount of any deficiency or loss caused by the gross negligence or misconduct of the person concerned, may after taking such explanation, direct by order in writing that person shall pay such amount to the Panchayat. The person to whom the directions are issued fails to pay such amount; the Chief Executive Officer shall recover such amount as arrears of

land revenue through the District Collector. He added that the person whom such order is served may challenge the order of the Chief Executive Officer before the District Court. In short he would suggest that once the Chief Executive Officer proceeds to recover the alleged misappropriated amount under Section 140 (5) of the said Act, the investigation officer cannot seek the custody of such person for the recovery of such amount. Taking shelter from these law provisions, he added that the learned Sessions Court should not have imposed the conditions depositing the money. He also vehemently argued that the audit report pertains to the irregularities committed by Gramsevak, who was responsible for maintaining the accounts. The applicant has no role to play at all in maintaining the accounts. The payments have been made through cheques or RTGS. Gramsevak and other officers also had to maintain a record of the progress of the construction, measurement book, valuation books etc. The applicant being a Sarpanch, was to get the schemes executed by the public servants. The prosecution has no evidence that she has siphoned the so-called amount, but being a Sarpanch at the relevant time, she has been illegally held responsible. The special report of the auditor does not disclose the role played by the applicant. On the contrary, it reveals that it was the gross negligence of Gramsevak. The entire inquiry is based upon the papers which have been inspected and audited by the auditor. Therefore, nothing is to be recovered from the

applicant. In the facts of the case, she may be released on anticipatory bail.

9. Learned APP has strongly opposed the application. He has vehemently argued that the bail was granted to the applicant as the prosecution wanted to have the custodial interrogation of the applicant to recover the so-called amount misappropriated by her. He has referred to paragraph no.8 of the order passed by the learned Sessions Court and argued that the learned Sessions Court has observed that there is prima facie involvement of the applicant/accused and Gramsevak in the misappropriation and embezzlement. Being public money is involved, if the protection is granted will be a wrong message in the society that a person engaged in misappropriation of Government amount got Scot free. Considering this fact, the Court has imposed a condition to deposit the amount of Rs.10,40,185/- as shown due towards her within seven days to suffice the purpose. He has also added that the applicant has played an active role in misappropriating a huge amount. She being a Sarpanch, is equally responsible for the financial activities of the Village Panchayat. She has siphoned the huge amount in conspiracy with the Gramsevak. The offence is serious; hence, the application deserves to be dismissed.

10. The question that arises for consideration, in this case, is whether anticipatory bail has been granted to the applicant on merit.

Suppose it is not granted on merit and only on the condition to deposit the money, whether this Court can entertain such bail application as if the Sessions Judge rejected the application. The second question that the learned counsel for the applicant has raised is that the investigation officer cannot seek custody of the accused to recover the alleged misappropriated amount where the Chief Executive Officer proceeded to recover it under section 140 (5) of the Maharashtra Village Panchayat Act.

11. It is not in dispute that the applicant was a Sarpanch at the relevant time. In the audit report, it was found that during her tenure, there was misappropriation of a huge amount. Notice under Section 140 (5) of the Maharashtra Village Panchayat Act was served upon her, but she did not comply. Section 140 (5) of the Act takes care to recover the money. If it is not deposited as per the notice issued by the Chief Executive Officer, Zilla Parishad, that is recovered as arrears of land revenue. In the case at hand, the Chief Executive Officer has exercised the powers under section 140 (5) of the Maharashtra Village Panchayat Act. Admittedly the applicant did not prefer an application, as provided under section 140(6) of the said Act, before the District Court. Hence, the recovery order of the Chief Executive Officer has attained finality. The powers to recover such misappropriated amount are conferred on the Chief Executive Officer, and the mode of recovery has also been provided in the Act. Reading

these provisions, the Court is of the opinion that the police cannot seek custody of the applicant to recover the alleged misappropriated amount where the action under section 140(5) of the Maharashtra Village Panchayat Act is initiated.

12. As far as imposing conditions to deposit the heavy amount within a short period, the law is well settled by a catena of judgments of the Higher Courts; therefore, it can safely be said the imposing the condition to deposit the money with the Court though under protest is apparently harsh and inhumane and against the principles laid down by the Hon'ble Supreme Court in the cases cited supra. Granting bail imposing such a harsh condition amounts to refusing the bail. Since imposing such inhumane conditions amounts to refusal of bail, the High Court can entertain the applications for anticipatory bail under section 438 of Cr.P.C., treating the application as rejected. The action against the applicant is based on the special audit report on failure to maintain various accounts, books, and bills. The entire record is with the office. In view of the facts of the case and the investigation to be made in this case by the Investigating Officer, this Court is of the view that in any case, the custodial interrogation of the applicant would serve no purpose. If required, the Investigating Officer may recover such account books and other documents from the office of the Chief Executive Officer or Village Panchayat. In view of the facts in entirety, this Court is of the view

that the applicant has a good case for anticipatory bail on merit. In view of the above discussions, the following order is passed:

ORDER

(A) The Application is allowed.

(B) Interim protection granted to the applicant by order dated 30.08.2022 is confirmed on the same terms and conditions with an additional condition to attend the police station as and when called by the Investigating Officer on written notice and shall not tamper with the prosecution witnesses.

(S.G. MEHARE, J.)

Mujaheed//