

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1488 OF 2021

AARUN @ ARUN S/O LAXMAN MUNDHE
VERSUS
THE STATE OF MAHARASHTRA

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WITH
ANTICIPATORY BAIL APPLICATION NO.1493 OF 2021

RUPESH RAMESHCHANDRA DAGDIYA
VERSUS
THE STATE OF MAHARASHTRA

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Mr. S. S. Thombre, Advocate for applicant in ABA/1488/2021.
Mr. D. R. Jethliya, Advocate for applicant in ABA/1493/2021
Mr. A. M. Phule, APP for the respondent – State in both the cases.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 25.02.2022

Pronounced on : 05.04.2022

ORDER :-

. The applicants are apprehending their arrest in connection with Crime No.24 of 2020 registered with Pimpaldari Police Station, Dist. Parbhani for the offences punishable under Sections 420, 417, 465, 468, 470, 471 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. S. S. Thombre for the applicant in ABA/1488/2021, learned Advocate Mr. D. R. Jethliya for the applicant

in ABA/1493/2021 and learned APP Mr. A. M. Phule for the respondent – State in both the cases.

3. The prosecution case is that the informant is the Block Development Officer at Panchayat Samiti, Gangakhed. The Panchayat Samiti had undertaken various development work in accordance with directions of the Government. Complaint was forwarded by the MLA on 10.01.2018 and on that basis of said complaint, inquiry committee was appointed on 13.02.2019. It was headed by Shivaji Kamble, Block Development Officer. Report was submitted by the inquiry committee on 14.05.2019. The show-cause notice has been issued to the Gramsevak A. B. Patange, D. P. Patil, Pushpadevi Mundhe and Arun Mundhe on 27.08.2019. They have submitted explanation. The informant was instructed to give his opinion on the enquiry report. Opinion was given on 07.02.2020. The informant was instructed to initiate action against S. S. Birajdar, Guardian Technical Officer, Rupesh Dagdiya, Panel Technical Officer, Bharat Ghuge, Panel Technical Officer, Syed Parvez Rahim, Data Officer and Arun Mundhe, Gram Rojgar Sevak. It was alleged that as per National Rural Employment Guarantee Scheme, directions were given for construction of 62 Wells. In 2016-2017 without completing the work, the accused acted in connivance with each other and misappropriated amount of

Rs.5,15,791/-. First Information Report was registered on 09.02.2020.

4. The learned Advocates appearing for the applicants have submitted that the Government of Maharashtra by Government Resolution dated 16.12.2020 had given guidelines for implementation of Mahatma Gandhi Rashtriya Gramin Rojgar Hami Yojna. The applicant in ABA No.1488/2021 was working as Gram Rojgar Sevak for the year 2016-2017 in Aarbujwadi, Tq. Gangakhed, Dist. Parbhani for volunteering the work which was under the said scheme, though basic scheme was introduced by the Central Government of India. In fact, the applicant has done all his duties as per the terms and conditions of the scheme. The FIR has been lodged after lapse of about 3 years of the work only just to satisfy the complaint that was raised by local MLA. The investigation of the offence depends on the documents which are already seized by the police. It was also pointed out that one Syed Parvez Syed Raheem has been granted bail by this Court in ABA No.1038 of 2021 on 27.09.2021 and one Bharat Marutrao Ghuge and Shivaji Sopanrao Birajdar was granted bail in ABA Nos.1023/2021 and 1094/2021 on 21.10.2021. He also points out that one Aarun @ Arun Laxman Mundhe's bail application i.e. ABA No.354/2020 was rejected by this Court on 22.02.2021, however, his role was different. His role was to provide labour and maintain their muster while undertaking the

work under the said scheme. The learned Advocate appearing for the applicant in ABA No.1493 of 2021 submits that the applicant herein was a Technical Service Provider and his role was limited. Syed Parvez Syed Raheem was also the Data Operator under the category of technical staff and, therefore, on the ground of parity, they be released on bail.

5. It will not be out of place to mention here that explanation was called from the Investigating Officer that the applicants being public servants how they could not have been arrested by him, when they had not approached learned Additional Sessions Judge or this Court at earlier point of time i.e. prior to 24.02.2020 and 17.03.2020 respectively. The Investigating Officer Shri. Rajkumar Padmakar Pujari, Assistant Police Inspector, Pimpaldari Police Station, Tq. Gangakhed, Dist. Parbhani has filed affidavit and produced on record the case diary entries showing that he had made efforts to arrest the accused, however, they could not be found. These documents would show that he has tried to search the accused persons from 12.02.2020 and case diary of each day reflects that he had made efforts, but he says that none of them were found. It is to be noted that he has not taken any documentary evidence from the office of the applicants as to whether they were on leave during the said period i.e. prior to their anticipatory bail or after the rejection thereof. Mere entry in the case diary that he had visited

the house of the accused will not be sufficient. Serious efforts to arrest the accused from all those possible places where accused could be found was the fact required in this case. We may not go further, but the thing remains that there was no serious efforts to arrest the present applicants and it cannot be said that the applicants were absconding. The Investigating Officer has not explained as to why he had not taken the proceedings under Section 82 of the Code of Criminal Procedure against both the applicants, if he wanted to say that they are absconding.

6. As aforesaid, three of the co-accused have been granted bail and bail has been refused to one of the co-accused. Role of applicant Rupesh Dagdiya is similar to Syed Parvez Syed Raheem. Syed Parvez was Data Operator, whereas Rupesh Dagdiya is the Technical Service Provider. How and in what manner he could have been involved is not contemplated by the Investigating Officer and for what purpose exactly he need custody of these accused has not been made clear by him. Further, as regards applicant in ABA No.1488 of 2021 is concerned, he was the Gram Rojgar Sevak. The FIR states the work assigned to this applicant as to collect the demand of work by the labour and forward it to Panchayat Samiti Office, register the labours, supervise and see that the work is being done as per the guidelines. This Court in ***Syed Parvez Syed Raheem*** (ABA No.1038/2021) has observed that except the

opinion of the involvement, no material was come on record to show the involvement of that accused. However, in other applications, which have been allowed, it has been observed by this Court that the FIR has been lodged after three years of the work carried out. Statements of witnesses have been recorded and they do not attribute any specific role to the applicant having committed irregular activities. It is to be noted from those statements that those persons have not stated that who has got their documents fill from them, but according to them they had never done the work and some of them have stated that their account number itself is different. According to them they have not withdrawn the amount nor they have signed and, therefore, the delay in lodging the FIR will have to be considered in favour of the applicants. The investigation is mainly depending on the documents which are already seized. No doubt, this appears to be an economic offence and in general the accused persons involved in economic offence need not be protected, but at the same time, we are required to consider the role attributed to the applicants. Though certain inquiry appears to have been initiated and the conclusion has led to the FIR, it appears that no further action has been taken. Under such circumstance application deserves to be allowed. The interim protection granted by this Court vide order dated 13.12.2021 deserves to be confirmed. Hence, the following order :-

ORDER

- I) Applications stand allowed.
- II) The interim protection granted by this Court to the applicants in both the applications vide order dated 13.12.2021 stands confirmed and made absolute. In other words, in the event of arrest of applicant in ABA No.1488/2021 i.e. Aarun @ Arun Laxman Mundhe and applicant in ABA No.1493/2021 i.e. Rupesh Rameshchandra Dagdiya in connection with Crime No.24 of 2020 registered with Pimpaldari Police Station, Dist. Parbhani for the offences punishable under Sections 420, 417, 465, 468, 470, 471 read with Section 34 of Indian Penal Code, they be released on P. R. Bond of Rs.50,000/- with two solvent sureties of Rs.25,000/- each.
- III) They should remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 12.00 p.m. till filing of charge-sheet and cooperate with the investigation.
- IV) They shall not tamper with the evidence of the prosecution in any manner.
- V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]