

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 216/2022

(Shubhash Kashiram Bhute Vs State of Maha., thr. P.S.O., Umarkhed, Tq. Umarkhed, dist. Yavatmal.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Anil S. Mardikar, Sr. Counsel a/b Shri A.M.Patil, counsel for applicant.
Shri S.A.Ashirgade, APP for the Non-applicant/State.
Shri Chavhan, counsel for Assist to Prosecution.

CORAM : ANIL S. KILOR, J.
DATED : 25/04/2022.

1. An Accountant of Umarkhed Municipal Council has approached to this Court by filing this application under Section 438 of the Code of Criminal Procedure for seeking pre-arrest bail in Crime No. 54/2022, dated 07/02/2022 registered with the Police Station Umarkhed, Dist. Yavatmal, for the offences punishable under Sections 409, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. The above referred crime was registered upon the directions of the Hon'ble Minister, in pursuance to the inquiry made in the allegation that without following due procedure and by committing numerous irregularities and illegalities in the work of development of waste dumping ground conducted under Swaccha Sarvekshan-2018, huge amount has been misappropriated by the accused persons.

3. Shri Anil S. Mardikar, learned Senior Counsel submits that the applicant was initially appointed as Peon in the handicapped category, and subsequently he was assigned the work of accountant, and his role in the alleged offence was limited to sign the cheque for the amount towards the work done by the contractor.

4. It is submitted that the applicant used to issue cheque on the instructions of the Higher Authority and in none of the matter, the decision was taken by the applicant independently without any instructions from the Higher Authority. As far as the irregularities regarding the procedure to be followed while issuing tenders and while accepting the tender, the applicant is no way connected with the same. Therefore, if any irregularities were committed, there is no role of the applicant in the said matter.

5. It is lastly argued that the President of Municipal Counsel has already been released on anticipatory bail. He accordingly, prays for grant of pre-arrest bail.

6. On the other hand, learned APP strongly opposes the bail application and submits that this is a case of misappropriation of fund and not only the case of irregularities in following the procedure while releasing the amount of issuing work order.

7. Shri Chavhan, learned counsel appearing for the complainant and seeking permission to assist the prosecution has reiterated the submissions of the learned APP and submits that in view of the fact that there is an inquiry report, no pre-arrest bail may be granted.

8. I have perused the case diary and the contents of the FIR.

9. The allegations made in the FIR are about the various illegalities and irregularities committed by the accused persons and thereby, they have misappropriated the huge public amount.

10. However, looking to the role of the applicant as an accountant, nothing has been brought on record to show that being accountant, he is responsible for any illegality and irregularities as alleged. He has issued the cheques on the directions of the Higher Authorities. *Prima-facie*, there is nothing to show that he had played any active role in the alleged illegalities, irregularities or misappropriation of funds. In that view of the matter, I am of the opinion that the applicant is entitled for grant of pre-arrest bail. Accordingly, I pass the following order:

a] Criminal Application is allowed.

b] The order passed by this Court on 01.04.2022, granting *ad interim* anticipatory bail, is confirmed with modification that the applicant shall attend the concerned Police Station as and when his presence is required.

c] The criminal application is disposed of accordingly.

[JUDGE]

rkn

Signed By: RAJESH K
NANDURKAR

Signing Date: 26.04.2022 10:53