

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

926 BAIL APPLICATION NO.72 OF 2023

NILESH SHANTARAM MALI
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicant : Mr. Harshal Prakash Randhir.
APP for Respondent-State : Mr. K. S. Patil.
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CORAM : S. G. MEHARE, J.
DATE : 07.02.2023

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.
2. The applicant was the in-charge *Sarpanch* at the relevant time. It has been alleged against the applicant that he in conspiracy with Gram Sevak misappropriated the huge amount from 14th and 15th Finance Commission.
3. Learned counsel for the applicant would submit that the Village Development Officer has served a notice upon him under Section 140(5) of the Maharashtra Village Panchayat Act. The said provisions protect the elected office bearers of the Village Panchayat. The so called amount of

misappropriation may be recovered after the notice from Chief Executive Officer demanding the so called misappropriated amount. Therefore, only for want of recovery of the amount the applicant may not be kept behind bar. He has referred to the case of ***Sheela Dinkiar Pawar Vs. State of Maharashtra 2022 SCC OnLine Bom 2645*** delivered by this Court on 13.09.2022.

4. Learned APP has opposed the application. He would argue that in these peculiar circumstances, Section 140(5) of the Maharashtra Village Panchayat Act would not protect the applicant. The huge amount has been misappropriated and fraud has been played. The applicant is not entitled to bail.

5. The applicant is languishing in jail since 13.09.2022. The investigation has been completed. In the case of *Sheela Pawar (supra)*, this Court, has taken the view that the Chief Executive Officer, Zilla Parishad may recover the amount allegedly misappropriated under Section 140(5) of the Maharashtra Village Panchayat Act. The notice is served upon the applicant under the powers of Chief Executive Officer. The quantum determined may be recovered as arrears of land revenue. The order of Chief Executive Officer under Section

140(5) of the said Act may be disputed by an application under Section 140(6) of the said Act before the District Court.

6. In nutshell, it appears that peculiar provision has been laid down in the Maharashtra Village Panchayat Act to recover any such amount from the office bearers of the Village Panchayat. In due course, such amount may be recovered as provided under the said Act. Except the recovery of amount, the investigation has been completed. The applicant's detention would not help the prosecution to collect further evidence. In the set of facts and the provisions of law, the application deserves to be allowed. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) Applicant **NILESH SHANTARAM MALI** be released on bail on furnishing P.B. and S.B. of Rs.50,000/- (Rupees Fifty Thousand only) with one solvent surety of the like amount, in Crime No.72 of 2022, registered by Police Station Bodwad, District Jalgaon, for the offences punishable under Sections 420, 419, 409, 467, 468, 469, 471 read

with Section 34 of the IPC, on the condition not to tamper with the prosecution witnesses.

(S. G. MEHARE, J.)

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vmk/-