

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
BAIL APPLICATION NO.1531 OF 2023**

HARIKALYAN JANARDHAN YELGATTE
VERSUS
THE STATE OF MAHARASHTRA

...

Mr. Sanjay A. Wakure, Advocate for the Applicant.

Mrs. P. V. Diggikar, APP for Respondents-State.

...

CORAM : S. G. CHAPALGAONKAR, J.

DATE : 12th SEPTEMBER, 2023.

PER COURT:-

1. By this application, the applicant seeks regular bail in connection with Crime No.292/2023 registered with Anandnagar Police Station, Dist. Osmanabad for the offence punishable under Sections 420, 409 r/w 34 of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by Mr. Ashok Fartade, who is Auditor. It is stated that the Chief Executive Officer has authorized him to file complaint. It is stated that the funds were received from the District Collector to the Municipal Council towards scheme namely "Lok Shahir Annabhau Sathe Nagari Wasti Sudhar Yojna". However, the cheque received to the Municipal Council has been deposited in the account of the different scheme and from there an amount of Rs.21,64,922/- has been spent for purpose other than assigned. Based on the aforesaid information, Crime No.292/2023 is registered. The applicant, who was Chief Officer of the Municipal Council for the relevant period has been arrested on 01.08.2023. Since then, he is behind the bar. His application for grant of regular bail has been rejected by the Sessions Court vide order dated 16.08.2023.

3. Mr. Wakure, learned Advocate appearing for the applicant would submit that the applicant has been falsely implicated. He would submit that the amount received from the office of the Collector has been utilized for the development works of the Municipal Council. He would point out that there is no allegation that the applicant has misappropriated the amount or gained some advantage or financial benefit out of making deposits of the amount in the account of the different scheme or making expenditure for that purpose. Therefore, he submits that the offence punishable under Sections 420, 409 can not be invoked in the facts of the case.

4. The learned APP vehemently opposes the application. She would point out that there are clear instructions under the Government Resolution dated 27.05.2016 that the amount which is assigned for particular purpose has to be utilized for that only. The diversion of the funds from one scheme to another would be looked seriously. She would further point out that there are criminal antecedents against the applicant. As may as four offences are registered against him. All the offences are pertaining to the discharge of his duties as a Chief Officer in the Municipal Council. She would, therefore, submit that the applicant is habitual offender. She would further submit that investigation is still in progress and many such irregularities may be unearthed during the course of investigation.

5. Having considered the submissions advanced, apparently from the allegations in the FIR, it can be gathered that the funds were allocated to Municipal Council from the Collectorate towards specific scheme i.e. Lok Shahir Annabhau

Sathe Nagari Wasti Sudhar Yojna. The cheque of Rs.3,14,79,000/- received for that purpose, has been diverted in the account of “Ramai Awas Yojna”. It is also apparent that after deposit of the said amount, it was expected that the funds be utilized for the assigned purpose as per the Administrative sanction given by the District Collector. Perusal of the record would show that after deposit of the amount, it has been utilized for certain works in relation to the “Ramai Awas Yojna”. The amount is released from said account through various cheques, which are part of the investigation paper. Those cheques are signed by the applicant and Auditor. The FIR as well as investigation papers do not show that the applicant has misappropriated the amount or gained any financial benefits by diverting the funds. The act of the applicant can be considered as serious irregularity for which departmental action may be initiated. However, it is doubtful if the offence punishable under Sections 409, 420 of the Indian Penal Code can be invoked against the applicant. The applicant is behind the bar since 01.08.2023. Although, investigation is in progress, the allegations in the FIR are based on documents already seized. The detention of the applicant may not be required for any purpose. In that view of the matter, case is made out for grant of bail. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Harikalyan Janardhan Yelgatte be released on bail in Crime No.292/2023 registered with Anandnagar Police Station, Dist. Osmanabad for the offence punishable under Sections 420, 409 r/w 34 of the Indian Penal Code on executing P.B. and S.B. of Rs.50,000/- (Rs.Fifty Thousand only) each on following condition:

- a. The applicant shall not tamper with the prosecution evidence in any manner.
 - b. The applicant shall not establish contact with the witnesses named in the charge-sheet.
 - c. The applicant shall attend the concerned Police Station once in a week i.e. on every Saturday between 10.00 am to 02.00 pm.
 - d. The applicant shall co-operate in the investigation.
- (iii) Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE