

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.2283 of 2023

Sanjay Ananda Gadade	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO.2222 OF 2023**

Kamal Sanjay Gadade	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Kishor Patil i/by Mr. Dilip B. Shinde for the applicant in both ABA.

Mr. Pandurang H. Gaikwad with Ms. Veera Shinde, APP for the respondent/State.

Mr. Mahesh Gaikwad, PSI, Jath Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 17, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.I-443 of 2023, dated 25th July 2023, registered with Jath Police Station, District Sangli for offences punishable under sections 406, 420, 467, 468 read with section 34 of the Indian Penal Code, 1860.
2. According to the prosecution, the applicant in Anticipatory

Bail Application No.2222 of 2023 is accused No.1 and the applicant in Anticipatory Bail Application No.2283 of 2023 is accused No.2. According to the prosecution, on the date of cheque i.e. 10th August 2022 one P. B. Patil was the Gramsevak and authorized to sign the cheque on behalf of Grampanchayat based on resolution dated 26th October 2021. According to the prosecution, till the date of presentation of cheque no change was made in the name of authorized signatory. However, accused No.1 who at the relevant time was Sarpanch and accused No.2 who had done part of developmental work got benefit of Cheque No.059852. According to the prosecution, accused persons forged the signature of the Gramsevak presented the cheque with the banker and withdrawn amount of Rs.1,30,000/-.

3. The Sessions Court by order dated 2nd August 2023 rejected the applicants' application.

4. Learned advocate for the applicant submitted that the case of prosecution is that the accused persons forged signature of the informant. However, earlier Gramsevak Bhate accepts that he had signed the cheque as Bhate. It is not in dispute that work to the extent of Rs.1,30,000/- was completed and, therefore, accused No.2 was entitled to receive amount of Rs.1,30,000/-. According to him, therefore, since the accused No.2 has deposited the amount of Rs.1,30,000/-, custodial interrogation of the applicants is not necessary. Hence, the applicants are entitled to exercise of discretion under section 438 of the Criminal Procedure Code, 1973.

5. Per contra, learned APP submitted that the offence is serious in nature as it affects public money. On bare perusal by the naked eye, it is made clear that the authorized signature available with the banker is totally different than the signature on the cheque. From the material available with the prosecution as of today, it is clear that the resolution dated 26th October 2021 authorizing informant as Gramsevak to operate bank account was in force on the date of cheque and, therefore, essential ingredients of offence alleged against the applicants are made out. Since, prima facie case is made out and it affects public money, the applicants are not entitled to the benefit of discretion under section 438 of the Criminal Procedure Code, 1973. It is submitted that accused No.2 had criminal antecedents of three cases.

6. On perusal of the material on record, it prima facie appears that the Grampanchayat by resolution dated 26th October 2021 had authorized the informant and accused No.1 to operate bank account of the Grampanchayat. Prima facie, there is no material to indicate that either the specimen signature or the name of authorized signatory (Gramsevak) was changed. Learned advocate for the applicants submitted that the cheque in question was issued in the month of September 2022. It needs to be noted that it is for the investigating agency to adjudicate upon the facts as to when the cheque was issued. However, it is well settled that a cheque becomes negotiable instrument on the day when the necessary details are filled in. Prima facie, it appears that on 26th August 2022 is the date when the cheque becomes negotiable instrument. Therefore, at this stage the argument of the learned advocate for

the applicants that the cheque was handed over earlier cannot be countenanced.

7. As per the report of Block Development Officer (B.D.O.), no work as contemplated by work order was carried out by accused No.2. Normally, deposit of amount of misappropriation would entitle accused for certain reliefs, however, in the facts of the case the offence relates to public money. There is serious dispute about the quantum of work carried out by accused No.2. Signature on the cheque and the specimen signature available with the bank produced on record indicate that the signatures are of totally different which is discernible by naked eye. In the absence of similarity in the signatures, even at this prima facie stage, finding needs to be recorded that the signatures differ on the face of it. It is, therefore, prima facie clear that accused No.1, on the date of signing of cheque, was aware of signature of Gramsevak was not by the authorized person. The cheque does not bear any name but the cheque is signed by a person designated as Gramsevak. In the absence of resolution to indicate that any other person than Mr. P. B. Patil (informant) was authorized signatory, in my opinion, the prosecution has made out a prima facie case. The applicants are, therefore, not entitled any relief.

8. The anticipatory bail applications are, therefore, rejected.

(AMIT BORKAR, J.)