

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 2966 OF 2023

Kunda Dilip Dherange and Others ...Applicants

Vs.

The State of Maharashtra and Others ...Respondents

Mr. Pramod G. Kathane with Mr. Samyak Bhatkar, R.
Duppattewala, for Applicants.

Mr. M. G. Patil, APP for State.

Mr. Sachin R. Pawar, for Intervenor.

Ms. Snehal Gurav, API, Khed Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 25th OCTOBER, 2023

PC:-

1) Heard the learned counsel for the applicants and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 627 of 2023, registered with Khed Police Station, for the offences punishable under Sections 406, 409, 420, 465, 467, 470 and 471 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The applicant Nos. 1 and 2 are the former Sarpanch of Village Panchayat Gulani. Applicant No. 2 – Dilip had filed a dispute under Section 39 of Maharashtra Village Panchayat Act, 1958 (“the Act, 1958’), seeking the removal of Mrs. Indubai Herenge, the incumbent Sarpanch of Village Panchayat Gulani.

4) One Mr. Dnyaneshwar Shantaram Rode had filed a petition being Writ Petition No.3478 of 2021 in this Court seeking direction to the authorities to take cognizance of the complaint lodged on 26th June, 2020. By an order dated 6th August, 2021, the Chief Executive Officer, Zilla Parishad, Pune was directed to give a hearing to the said petitioner as well as to all concerned parties and pass a speaking order dealing with the complaint.

5) During the course of the hearing of the said complaint, the incumbent Sarpanch lodged a complaint with the Block Development Officer, Tal. Khed that the applicants had annexed copies of the documents to the complaint under Section 39 of the Act, 1958, which appeared to be forged and fabricated. It was alleged that the applicants had in connivance with the then Gramsevika Mrs. Anita Amrale – accused No. 6, had taken the Village Panchayat record out of the office of the Village Panchayat without the permission of the Sarpanch and committed forgery therein. The first informant who is the

Development Officer conducted an enquiry, which revealed that the applicants had taken away the Village Panchayat record out of the office and fabricated the same. The enquiry further revealed various acts of misfeasance, malfeasance and misappropriation during the terms, for which the applicant Nos. 1 and 2 – husband-wife duo, were the Sarpanch of the Village Panchayat. The complicity of the then Gramsevak was also revealed. Hence, with the approval of the authorities, the first informant lodged the report.

6) Mr. Kathane, the learned Counsel for the applicants submitted that the applicants have been falsely roped in. Applicant No. 2 – Dilip has filed a complaint for removal of the incumbent Sarpanch under Section 39 of the Act, 1958. It was submitted that during the course of the inquiry, it was found that the copies of the documents which are annexed to the said complaint under Section 39 of the Act, 1958 tally with the original record. Therefore, it cannot be said that the applicants have committed any offence. It was further submitted that the direction of the Chief Executive Officer in the letter dated 17th April, 2020 to initiate the prosecution in conformity with the Government Resolution dated 4th January, 2017 and

corrigendum dated 18th September, 2019 have not been followed in as much as no enquiry has been conducted.

7) Since the applicants are being proceeded against on account of the political rivalry, their personal liberty deserves to be protected. On the aspect of the alleged removal of the office record, attention of the Court was invited to the complaint addressed by Mrs. Anita Amrale – accused No. 6, to the concerned police station making allegations against the incumbent office bearers as well as the Inquiry Officer.

8) The learned APP resisted the prayer for pre-arrest bail. It was submitted that there is material to show that the applicants had removed the original record and fabricated the same to sustain the complaint for removal of the incumbent Sarpanch. The Gramsevak, who was complicit in the said act, has since been suspended. Custodial interrogation of the applicants is warranted to facilitate further investigation not only in respect of the forgery of the record but also the various acts of misfeasance, malfeasance and misappropriation revealed during the course of enquiry.

9) It is pertinent to note that the enquiry into the affairs of the Village Panchayat, Guloni, commenced pursuant to the directions of this Court in WP No.3478 of 2021. During the

course of the said enquiry, it was pointed out that applicant No. 2 has relied upon the forged documents in the complaint under Section 39 of the Act, 1958. There is no material to show that the applicants had obtained the said documents either by applying for certified copies or by making an application under the Right to Information Act or otherwise. The allegations against the applicants are not that they had forged the documents, which were tendered before the Court by addition, erasure and interpolation in those documents. The allegations are that the original record of the Village Panchayat was surreptitiously removed in connivance with the Gramsevak and forgery was committed in the original record. The allegations are manifestly grave.

10) The circumstances in which the applicants obtained the custody of those documents, which were tendered in the complaint under Section 39 of the Act, 1958, assume critical salience. The applicants do not claim to have obtained copies of the documents under the Right to Information Act. On the contrary, Mr. Kathane, attempted to wriggle out of the situation by asserting that those documents were delivered to the applicants by their relatives. The situation in life of the applicants cannot be lost sight of. They were the Sarpanch of the

Village Panchayat, in the past. At this stage, the explanation sought to be offered regarding custody of the documents prima facie does not appeal to human credulity. In addition, there is material to show that in connivance with the Gramsevak, the original record was removed from the office of the Village Panchayat, and an endeavor was made to fabricate the same. This was done to sustain the complaint under Section 39 of the Act, 1958, prima facie constitutes an aggravating circumstance.

11) The inquiry further revealed that the applicants were allegedly guilty of misfeasance, malfeasance and misappropriation of the Village Panchayat's property/funds. The material which has thus emerged cannot be brushed aside lightly. Custodial interrogation of the applicants seems to be indispensable for an effective investigation especially as regards the source of the custody of the documents, which were tendered, the circumstances in which the original record was allegedly removed from the Village Panchayat office, persons privy thereto and the manner of alleged forgery. Investigation qua the applicants while they are protected by a pre-arrest bail order, would not be effective.

12) I am, therefore, inclined to reject the application.

13) Hence, the following order:-

ORDER

- I) The application stands rejected.
- II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]