

Sayali Upasani

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

ANTICIPATORY BAIL APPLICATION NO. 3441 OF 2023

Rakesh Haridas Pawar

...Applicant

Vs.

The State of Maharashtra and Others

...Respondents

Mr. Sandesh Patil i/b Mr. Chitran Shah, for Applicant.

Mr. S. H. Yadav, APP for State.

Mr. S. S. Kadam, PSI, EOW, Thane Police Station, Present.

CORAM:- N. J. JAMADAR, J.

DATED:- 11th DECEMBER, 2023

PC:-

- 1) Heard the learned Counsel for the parties.
- 2) This application is preferred for pre-arrest bail in connection with C.R. No. 138 of 2023, registered with Kinhavali police station, Thane, for the offences punishable under Sections 406, 409 and 420 of Indian Penal Code, 1860 ("the Penal Code").

3) The applicant, who was then posted as a forest guard, was Secretary of the Joint Forest Management Committee (JFMC), Babare. Grants were released from the year 2019 for the execution for forest works to the said JFMC. It transpired that the works were not executed and there was misappropriation of the amounts. An enquiry was conducted. The enquiry, post physical inspection of the works which were to be executed, revealed that the applicant, who was the then Secretary of the JFMC, had committed fraud and the amounts were misappropriated. There were no entries in the measurement register. Nor documents to evidence the expenditure of the amounts were maintained.

4) Mr. Patil, the learned Counsel for the applicant submits that the JFMC, constituted in accordance with the Rules comprises local residents, and the applicant was merely nominated as member secretary to represent the forest department. JFMC had executed the works for which grants were released. The bills submitted by the applicant in the capacity of Secretary of JFMC along with the President of the JFMC were duly approved by the Competent Range Forest

Officer. The allegations of fraud and criminal breach of trust were, thus, prima facie not made out.

5) Inviting the attention of the Court to the duties of the Secretary JFMC and the copies of the bills which were submitted by the applicant jointly with the President of JFMC, Mr. Patil would urge that the applicant has been made a scapegoat.

6) Mr. Yadav, the learned APP countered the submissions of Mr. Patil. Inviting the attention of the Court to the very bills in Form No. 32 (Pg. 95 and 514 of the application), Mr. Yadav submitted that the applicant had transferred a huge amount in favour of persons, who were allegedly the relatives of the applicant.

7) For instance, cheque No. 092246 was drawn in favour of the Mangalu Balu Gira, for a sum of Rs.12,546/-. In fact, under the said cheque, a sum of Rs.5,80,000/- came to be transferred to one Surekha Chavan. Likewise under cheque No. 092254, a sum of Rs.4,710/- was allegedly paid to Kushi Shravan Mukane. In fact, against the said cheque, a sum of Rs.3,96,717/- was transferred to the account of Yogesh Pawar. It was further submitted that the applicant had withdrawn a sum of Rs.1,53,14,362/- by self cheque. Since the allegation is of

misappropriation of huge amount of Rs.91,18,618/- and there is material to show that the applicant has abused the office of Secretary of JFMC, custodial interrogation of the applicant is warranted.

8) I find substance in the submission of Mr. Yadav. From the perusal of the allegations in the FIR, it becomes evident that the number of acts of malfeasance have been attributed. Total number of works for which the grant were released were not found to have been executed at site. There was discrepancy in the measurements. Measurement books and other records were not maintained. Excess amounts were withdrawn in the names of the persons who are allegedly the relatives of the applicant, by abusing custody of cheques for small amounts as reflected in the bills.

9) Mr. Patil attempted to salvage the position by submitting that the role of the applicant was restricted to issue of the cheques under the bills, which were approved by the Competent Authority.

10) I am afraid, in the face of the material on record, at this stage, the aforesaid submission merits countenance. Prima facie, there is material to show that substantially more amounts

than the amount covered by the cheques shown in the bills have been withdrawn. To add to this, there is allegation of withdrawal of huge amount by presenting self cheques.

11) In the circumstances, in my view, a very strong *prima facie* case is made out against the applicant.

12) In the backdrop of the nature of the accusation, custodial interrogation of the applicant is indispensable for a fair and effective investigation. Custodial interrogation would facilitate unearthing of the fraud in all its facets, ascertain the money trail and identify the persons, who were privy to the fraud.

13) I am, therefore, not inclined to exercise the discretion in favour of the applicant.

14) 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.]