

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (BA) NO. 67 OF 2023

Vijay Gajanan Nikhar Vs. State of Maharashtra

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri M.P. Kariya, Advocate for applicant.
Shri I.J. Damle, APP for non-applicant/State.

CORAM : ANIL L. PANSARE, J.

DATE : APRIL 21, 2023.

This is an application under Section 439 of the Code
of Criminal Procedure.

2. The applicant has been arrested on 20.02.2023 in Crime No.327/2020 registered with Police Station Maregaon for the offence punishable under Section 420, 465, 468, 469 and 471 of the Indian Penal Code (for short, 'IPC') and under Sections 36(A)(B) of the Maharashtra Land Revenue Code.

3. Learned APP has pointed out that similar such application was filed by the applicant before this Court vide Criminal Application (BA) No.1166/2021. This Court (Coram : Avinash G. Gharote,J.) after considering the application on merits has rejected the same for the reasons recorded in paragraph 5, which reads thus:

“5. The charge-sheet indicates that there were various complaints about irregularities and illegalities committed

by the applicant even by tampering the 7/12 extracts, by manipulating the areas therein, creating bogus 7/12 extract, illegal 7/12 extracts of E-Class land, transfer of tribal land to non-tribals, creating bogus list of beneficiaries, approximately 30 in number for receipt of Government benefits to farmers affected due to untimely rains, and transferring of land of Bhudan Yadnya Mandal, as a result of which, an inquiry was directed against him by the Tahsildar, Zari – Jamani, by his order dated 27.08.2020. The committee so appointed held an inquiry and submitted a report, which indicted the applicant of having created false and fabricated documents. The applicant was also suspended from his services by the SDO, Kelapur, by an order dated 24.11.2020. It is thus apparent, that the applicant prima facie appears to have indulged into falsification of Government revenue records and also has indulged into creating bogus beneficiaries of Government schemes. The plea of absence of any report by a handwriting expert, is one which can be considered on merits of the trial. Though the charge-sheet has been filed, the record indicates that the applicant had committed similar offences in the past i.e. in the year 2013, for which he was suspended. However, on resumption of services in 2015, he has again indulged in similar offence, considering which, I am not inclined to accept the application, for bail.”

4. Learned counsel for the applicant submits that there is change in circumstance, since there is no progress in trial.

The applicant is behind bar for about 2 ½ years. He submits that the maximum punishment for the alleged offence is three years.

5. When enquired about framing of charge, the learned counsel for the applicant submits that charge has been also framed for the offence punishable under Section 409 of the IPC. Punishment for the same is imprisonment for life or with imprisonment of either description for a term which may extend to ten years. It cannot be therefore said that maximum punishment for the offence is three years. Having said so and since the application has already been considered and rejected by this Court, there appears no justifiable reason for the applicant to file present application again. I do not find any merit in the contention of the applicant that absence of progress in the trial would amount to change in circumstance. The application is accordingly rejected.

(Anil L. Pansare, J.)

Wagh