

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPP) NO. 782/2023
IN CRIMINAL ABA NO. 502/2021 (D)

PANJABRAO JANGLUJI PATIL
VS
THE STATE OF MAH. THR PSO PS SADAR, NAGPUR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr Abhay Sambre, Advocate for the applicant.
Mr I.J.Damle, APP for the respondent/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 14/06/2023.

1. Heard.
2. The present application is filed by the applicant for withdrawal of the amount.
3. As per the contention of the applicant that he had filed anticipatory bail application bearing No. 502/2021 and made a statement before this Court to show the bonafide that he will deposit the amount of Rs. 5,00,000/-. Accordingly, he has deposited an amount of Rs. 5,00,000/- on 01/11/2021 by way of demand draft drawn on State Bank of India. This Court rejected the anticipatory bail application No. 502/2021 vide order dated 29/03/2022. Thereafter, he filed a fresh application vide anticipatory bail application No. 444/2022 for grant of anticipatory bail. While deciding

the anticipatory bail application No. 444/2022, this Court observed that tender work was completed in 2019 itself and as per clause 4.6.7 of G.R. dated 12.4.2017, the contractor was permitted to withdraw the security deposit after three months on certification of satisfaction of work by the Executive Engineer and has further discarded the contention of the prosecution that the said security deposit are to be withheld for 36 months as a period of defect liability.

4. It is further submitted by the applicant that while granting anticipatory bail, this Court is pleased to hold that the applicant was entitled to withdraw the security deposit and allowed the application, and released the applicant on anticipatory in the event of his arrest. He filed this application to withdraw the said amount deposited by him, in view of this order by this order.

5. The said application is strongly opposed and objected for the withdrawal of the amount as the investigation is in progress and prayed for rejection of the application.

6. Heard Mr Sambre learned counsel for the applicant. He invited my attention towards para-8 of the order passed by this Court while deciding the anticipatory bail application No. 444/2022 in para-8, it

is observed by this Court that learned APP submitted that as per the clause-21 of the tender document in respect of E-Tender No. 4/2018-19, the period of 36 months from the date of the completion is the period of defect liability. It is submitted that it has come in the investigation that the amount of the security deposit i.e. Rs. 14,50,200/- was withdrawn by the applicant before the completion of three years. It is pointed out that the work was completed on 8/08/2019, 12/06/2019, and 30/06/2019 and the period of defect liability i.e. 36 months was over on 08/08/2022, 12/06/2022, and 30/06/2022. However, the amount was withdrawn on 23/10/2019 and 16/08/2019 i.e. before the defect liability period. He, therefore, submits that there is a clear violation of clause 20 of the agreement.

7. While considering the submissions of the learned APP, this Court has observed that the Government Resolution dated 12/04/2017 more particularly clause 4.6.7 permits the contractor to withdraw the amount of security deposit after three months on completion of work, and on certification about satisfaction of work by the Executive Engineer.

8. It is further observed by this Court that such certificate is on record which is signed by the Executive Engineer and Sectional Engineer which not only certifies the completion of work but also it certifies

that the work was completed as per standard specification. It is also certifies that there is no recovery outstanding against the contractor.

9. In view of the observations made by this Court while releasing the present applicant on bail, the present applicant is entitled to receive the said amount which is deposited by him vide demand draft No. 509245, this Court has directed to deposit the said amount, considering the allegations made against him. While passing order, this Court has clarified that the work is already completed and in view of the agreement, the applicant is entitled to withdraw the security deposit. So, prima-facie it appears the applicant is entitled to receive the said amount back.

10. In view of the above reasons recorded in the application, criminal application is **allowed**.

11. The amount of Rs. 5,00,000/- deposited by the applicant vide demand draft No. 509245 dated 01/11/2021 be disbursed to him on due identification and verification along with accrued interest.

JUDGE