



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

CRIMINAL APPLICATION (ABA) NO.688 OF 2023

(Anubai @ Anusaya w/o Radhelal Vatti and another Vs. State of Maharashtra thr. its
PSO PS Gondia City, Tah. & Dist. Gondia)

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

Court's or Judge's orders.

Mr. R. L. Khapre, Senior Advocate with Mr. Pushkar Deshpande, Advocate for
Applicant.
Mr. N. H. Joshi, APP for Non-Applicant/State.

CORAM: URMILA JOSHI PHALKE, J.

DATE: 7th DECEMBER, 2023.

By this application, the applicants are seeking pre-arrest bail in connection with Crime No.523/2023 registered with Police Station Gondia City, District Gondia for the offence punishable under section 409 read with section 34 of the Indian Penal Code.

2. The applicants are apprehending arrest at the hands of police as accusation is made against them on the basis of report lodged by Vivek Shripatrao Ingale on an allegation that the applicants are the members of Managing Board of Society namely Shriram Abhinav Sanstha Limited, Chutiya, Tahsil and District Gondia. The said society had been appointed to purchase paddy from farmers by State Government and to deliver the same to the Rice Mills. It is alleged that the members of the society have though purchased the paddy from the farmers but have not delivered the same to the Rice Mills for which they were appointed and misappropriated the said paddy to the tune

of 12063.13 quintal of paddy of *Kharip* season and 15996.90 quintal of *Rabi* season total amounting to 28059.13 quintals of paddy which amounts to Rs.5,72,40,625.20/-. On the basis of said report police have registered the crime against the present applicants who are the members of the society.

3. The learned counsel for the applicants Mr. Pushkar Deshpande submitted that as far as the role of the present applicants are concerned they are the only members of the society. On perusal of the FIR and other investigation papers no specific role is attributed to the present applicants. He further submitted that on 26.10.2022 as the applicants and other members were enable to run the said society, the resolution was passed and all the members have decided to resign as a Director of the said society. After passing of the resolution they have forwarded the requests to the Registrar, Co-operative Societies. The Registrar, Co-operative Societies have passed order on 29.05.2023 and directed that if the resignations are not withdrawn within 15 days before 13.06.2023 it deemed to be accepted. As the said resignations are not withdrawn the resignations are deemed to be accepted. He further submitted that considering the role attributed to the present applicants they are only the members of the said society and no overt act attributed to them. He further submitted that as the members of the society were unable to run the activities of the society they have appointed one Manager and Grader. The learned counsel for the applicants further pointed out

that on 15.06.2023 the Flying Squad has inspected the stock of the society and endorsed that the stock is *prima facie* maintained to be correct and thereafter FIR is lodged on 09.08.2023. On 16.06.2023 the Administrator has taken over the charge. He further invited my attention towards the reply filed by the State before the trial court and submitted that from the reply also it is revealed that in the June 2023 itself the Administrator has taken the charge of the said society. He further submitted that as far as the role of the present applicants are concerned they were not the active members of the said society. As far as the custodial interrogation of the present applicants are concerned which are not required and nothing is to be recovered from the present applicants as there is no allegation that the present applicants are the persons who have obtained the said stock from the farmers. Merely because they are members of said society is not sufficient to attract the charge against them, there should be active participation on the part of the present applicants. In view of that they be protected by granting anticipatory bail.

4. Per contra the learned APP strongly opposed the application on the ground that huge quantity of the paddy was misappropriated by the members of the society. There was a clear difference between the quantity in the deliver order and the bills supplied by the society, the said society in the year 2022-2023 during *kharip* and *rabi* seasons obtained the paddy from the farmers and not forwarded the right figures due to which the farmers have

not received any money towards the paddy. He further submitted that the Investigating Agency requires the custodial interrogation of the present applicants as investigation to the effect that the role of the present applicants are to be ascertained is required and prays for rejection of the application.

5. Having heard the learned counsel for the applicants and the learned APP for the State. Perused the investigation papers, as far as the recitals of the FIR is concerned the names of the present applicants are appearing as the members of the society. Admittedly, there is no specific allegations against the present applicants that the present applicants were the active members of the society. During investigation the agreement which is executed by the members of the society and the federation is also seized by the police. From the investigation papers it further reveals the audit report is also obtained by the Investigating Agency. Herein the Grader and the Manager were also made an accused. It is a part of record that all the members of the society have passed the resolution and submitted their resignation prior to the lodging of the FIR, the said resignations are accepted by the Registrar Co-operative Societies by passing detailed order. The Administrator has taken the charge prior to the lodging of the FIR, the Flying Squad has visited and inspected the stock which was found to be correct. Subsequently this FIR is lodged with an allegation that the paddy is misappropriated. During investigation the Investigating

Officer has recorded various statements of the witnesses wherein general allegations are made against the present applicants that the entire Board of Directors and the staff purchased the paddy from the agriculturists and not forwarded to the Rice Millers and they have sold out to the third person. Considering the investigation carried out by the Investigating Officer and the role of the present applicants admittedly their custodial interrogation is not required as nothing is to be recovered from them. This Court is conscious about the fact that consideration for grant of anticipatory bail is not only that merely because the custody is not required, the protection is to be granted to the applicants but after going through the entire statements of the witnesses and the various *panchnama* drawn by the Investigating Officer the agreement executed between the members of the society and the federation, agreement between the society and the Grader and the Manager which sufficiently shows that it was the Grader and Manager both were looking after the transactions of the said society. The active participation of the present applicants in the entire transaction does not reveal from the entire investigation papers. In view of that the custodial interrogation of the present applicants are not required. As far as the interrogation is concerned some conditions can be imposed on the present applicants directing to co-operate with the Investigating Officer. Accordingly, I proceed to pass following order:

- [i] The application is allowed.

- [ii] The applicants are released on anticipatory bail in the event of their arrest in connection with Crime No.523/2023 registered with Police Station Gondia City, District Gondia for the offence punishable under section 409 read with section 34 of the Indian Penal Code, on executing PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.
- [iii] The applicants shall attend concerned police station as and when required for the investigation purpose and shall co-operate in the investigation.
- [iv] The applicants shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witnesses, who are connected with the crime.
- [v] The applicants shall submit their mobile number and address with address proof.

6. The application is disposed of.

JUDGE