

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2854 OF 2023

Shilawati Khelu Gaikar @ Gaikwad and Others	...Applicants
vs.	
The State of Maharashtra	...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.834 OF 2024

Manohar Pandurang Sute and Others	...Applicants
vs.	
The State of Maharashtra	...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.859 OF 2024

Sunil Ragho Sute	...Applicant
vs.	
The State of Maharashtra	...Respondent

Mr. Amin Solkar a/w. Mr. Misbaah Solkar, Mr. Gaurav Shenoy, for the Applicants in ABA Nos. 2854 of 2023 and 834 of 2024.
Mr. Sagar Tambe (through VC) for the Applicant in ABA No. 859 of 2024.
Mr. Avinash Naik, APP for the State.
Mr. S.B. Chavan, PSI, Nagothane police station.

CORAM : N. J. JAMADAR, J.
DATE : SEPTEMBER 02, 2024

P.C.:

1. Heard the learned counsel for the parties.
2. These applications are preferred seeking pre-arrest bail in connection with C.R. No. 127 of 2023 registered at Nagothane police station for the offences punishable under sections 406, 408 and 420

read with 34 of Indian penal Code, 1860.

3. The applicants were the members of Grampanchayat Ainghar, Tal. Roha, Raigad for the term 2015 to 2020. The Block Development Officer, Panchayat Samiti, Dist. Raigad lodged a report with the allegations that the office bearers and the persons who were posed at Village Development Officer at Ainghar Village Panchayat misappropriated the Village Development Fund of Rs. 15,23,209/- by falsely showing that the development work was carried out, sans approved estimate and e-tender process. The first informant after implicating the then officer bearers and the Village Development Officers of the Village Panchayat, further alleged that the applicants, being the members of Ainghar village panchayat, were also jointly liable for the alleged offences.

4. When ABA No. 2854 of 2023 was listed before the Court on 11th October, 2023, this Court was persuaded to grant interim bail observing, inter alia, as under:-

7] From the perusal of the FIR, it becomes evident that the role of alleged mis-appropriation is attributed to the then Sarpanch and Village Development Officer. In ABA 2843 of 2023 this Court has granted interim protection to the co-accused Deepak Chiplunkar, as the report of the Chief Executive Officer, Zilla Parishad, Raigad indicated that there was an irregularity in carrying out the development work. It does not appear that the role of mis-appropriation of the village panchayat funds has been specifically attributed to the applicants. They are sought to be roped in by invoking the principle of joint and several liability. I am, therefore, inclined to protect the liberty of the applicants while directing them to join in the investigation.

5. In ABA No. 834 of 2024 and ABA No. 859 of 2024 also interim protection came to be granted to the applicants, based on the aforesaid order.

6. I have heard Mr. Amin Solkar, the learned counsel for the applicants in ABA Nos. 2854 of 2023 and 834 of 2024; Mr. Sagar Tambe, the learned counsel for the applicant in ABA No. 859 of 2024 and Mr. Avinash Naik, the learned APP for the State, at some length. The learned counsel took the Court through the material on record.

7. Mr. Solkar, learned counsel for the applicants in ABA Nos. 2854 of 2023 and 834 of 2024, submitted that in the FIR specific instances alleging misappropriation have been enumerated. The allegations have been made primarily against the then office bearers of the village panchayat and the concerned Village Development Officers. The applicants have been roped in by making a bald assertion that the applicants being the members of the village panchayat were also jointly liable for the alleged fraud and misappropriation.

8. Mr. Sagar Tambe, the learned counsel for the applicant in ABA No. 859 of 2024, supplemented the submissions of Mr. Solkar. It was further urged that all the applicants had appeared before the investigating officer as directed and rendered necessary

cooperation in the investigation. In that view of the matter, the order of interim bail deserves to be made absolute.

9. The leaned APP submitted that as the applicants, being the members of the village panchayat, are parties to the resolution approving the work, they cannot be permitted to wriggle out of the situation by asserting that they had no role in the alleged fraud.

10. Evidently, the applicants were not the persons who were discharging the executive functions. The FIR alleges that the then office bearers of the village panchyat and the village development officers carried out the work in breach of the directions to have approved budget estimate and e-tender process.

11. Prima facie, there appears to be a distinction in the role attributed to the applicants and the persons who discharged the executive functions on behalf of the village panchayat. The mere fact that the applicants had participated in the meetings of village panchayat and were parties to the resolutions to carry out developmental work may not, by itself, be sufficient to rope in the applicants by invoking the principle of constructive criminality. The first informant did not allege that the applicants had a role in either the execution of the work or in releasing the payment. In this view of the matter, the custodial interrogation of the applicants does not seem warranted.

12. At any rate, the offences under sections 408 and 420 of the Penal Code, entail punishment which may extend to seven years. The Court would thus be justified in exercising the discretion in favour of the applicants.

Hence, the following order.

ORDER

- 1] The applications stand allowed.
- 2] The order of interim bail dated 11th October, 2023 passed in ABA No. 2854 of 2023 is made absolute on the terms and conditions incorporated therein.
- 3] The order of interim bail dated 4th April, 2024 passed in ABA No. 834 of 2024 is made absolute on the terms and conditions incorporated therein.
- 4] The order of interim bail dated 5th April, 2024 passed in ABA No. 859 of 2024 is made absolute on the terms and conditions incorporated therein.
- 5] In addition, the applicants shall regularly attend the proceedings before the jurisdictional Court.
- 6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Applications disposed.

(N. J. JAMADAR, J.)