

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1085 OF 2024

Ashish Vitthal Vasave	vs.	...Applicant
The State of Maharashtra		...Respondent

Mr. Aniket Nikam a/w. Mr. Amit Icham, for the Applicant.
Smt. Mahalaxmi Ganapathy, APP for the Respondent/State.

CORAM: N.J. JAMADAR, J.
DATE : AUGUST 27, 2024

P.C.

1. Heard the learned Counsel for the parties.
2. This is an application for pre-arrest bail in connection with C.R.No.213 of 2023 registered with Shahapur Police Station for the offences punishable under Sections 409, 420, 464, 468 read with Section 34 of the Indian Penal Code, 1860.
3. The indictment against the applicant and the co-accused is that while the applicant was posted as a Sub-Regional Manager, Marketing Federation, Shahapur, in pursuance of a conspiracy, the applicant and co-accused prepared false and forged documents to show the purchase of 3304 quintal paddy at Khardi paddy procurement center and thereby defrauded the Marketing Federation of the sum of Rs.56,86,192. The applicant and co-accused had allegedly shown that 1425.80 quintal paddy was processed to 955.25 quintal rice and thereby defrauded the

Marketing Federation and the State Government to the tune of Rs.93,41,355/-. An enquiry committee was constituted. The enquiry committee submitted a report on 15 June 2023. On the basis of the said report, FIR came to be lodged.

4. On 19th June, 2024 this Court was persuaded to grant interim protection to the applicant observing, inter alia, as under:-

4] Learned Counsel for the Applicant submitted that the applicant was not directly involved in the procurement of paddy. Being the Sub-Regional Manager, the applicant had, in fact, called upon the co-accused Gokul Rathod to furnish the explanation in respect of the allegations of procurement of huge paddy on one day.

5] Learned APP resisted the prayer for pre-arrest bail. Learned APP invited attention of the Court to the order passed by the Court of Session wherein it is recorded that the applicant being the Sub-Regional Manager was responsible for the procurement of paddy and payment of the amount to the farmers. Therefore, the applicant may not be permitted to wriggle out of the situation by contending that he was not directly involved in the procurement.

6] The question as to whether the applicant was privy to the crime or it was a case of dereliction of duty and lack of supervision on the part of the applicant in the procurement of paddy at the procurement centre would warrant investigation. The Court is informed that initially the applicant was granted interim protection by the Court of Session. Pursuant to the enquiry, the applicant has been suspended from the service.

7] In these circumstances, till the application is heard by providing an opportunity of hearing to the prosecution, liberty of the applicant deserves to be protected.

5. Mr. Nikam, the learned counsel for the applicant submitted

that pursuant to the aforesaid order, the applicant has appeared before investigating officer and cooperated with the investigation. Mr. Nikam further submitted that, at best, it could be urged that there was lack of effective supervision on the part of the applicant. However, no element of criminality can be attributed to the applicant. Emphasis was laid on a communication addressed by the applicant on 13th October, 2021 calling upon the co-accused Gokul Rathod, who was the in-charge of the paddy procurement center, Khardi, to explain the circumstances in which a large quantity of paddy was procured on 30th June, 2021.

6. The said communication, according to Mr. Nikam, indicates that the applicant had initiated measures after noticing irregularities in the procurement. It was further urged that during the course of the investigation, it has not been shown that there was any wrongful gain to the applicant. Hence, the applicant deserves pre-arrest bail.

7. As against this, Mrs. Ganapathy, the learned APP invited attention of the Court to an order passed by this Court rejecting the application for pre-arrest bail of Gokul Rathod, the co-accused. Mrs. Ganapathy urged that the applicant was very much involved in the fraud as it was the duty of the applicant to monitor and control the procurement of paddy, inspect the record, verify the procurement

of paddy at NeML Portal and thereafter submit proposal for payment to the Regional Officer. The inquiry report reveals that the applicant had mechanically approved the deletion of entries of procurement of paddy to the tune of 5633 Quintal on 31st March, 2021 on the NeML Portal without making any inquiry. That shows the complicity of the applicant. The learned APP tendered a supplementary statement of the first informant and copy of the inquiry report which implicates the applicant.

8. While granting interim bail, this Court had noted that the question as to whether the applicant was privy to the crime or it was a case of dereliction of duty on the part of the applicant in the matter of procurement of paddy, warranted investigation. While rejecting the application for pre-arrest bail of co-accused Gokul Rahod (ABA No. 3167 of 2023), this Court had noted that prima facie there was material to indicate a large scale fraud in the procurement of paddy. The observations in paragraphs 6 and 7 of the order in the case of Gokul Rathod, deserve to be extracted. They read as under:-

6] The situation which thus obtains is that, at this stage, there are two enquiry reports. However, in the enquiry report dated 15th June, 2023, the enquiry committee has recorded the mode and manner of the alleged fraud with necessary particulars. The persons from whom the paddy was shown to have been purchased were either found to have no agricultural land in the concerned village or they had no paddy

crop. The enquiry committee has also adverted to the other acts of malfeasance in showing the transportation of the paddy from the procurement centre to the concerned rice-mill, by furnishing numbers of vehicles, which were found to be in fact two-wheelers. Entry of procurement of paddy weighing 5633 quintal was deleted on the NeML Portal on 6th April, 2021 without any reason, though the said paddy was purchased on 31st March, 2021. Prima facie, there is material to indicate a large-scale fraud in the procurement of paddy.

7] Custodial interrogation of the applicant is warranted for an effective and complete investigation to unearth the fraud in all its facets, to unmask the identity of the person privy to the fraud and also have a money trail.

9. Qua the applicant, the first informant alleges that, in the capacity of the Sub-Regional Officer, the applicant was, inter alia, enjoined to monitor the procurement of paddy, inspect the record at the procurement center, verify the procurement of paddy from the farmers on NeML Portal and thereafter submit the proposal for approval to the Regional Officer for payment. If the manner of fraud, as noted in the order of Gokul Rathod (extracted above) is appraised in the light of the duties of the applicant, prima facie, it becomes rather difficult to accede to the submission of Mr. Nikam that the applicant had no direct role in the procurement of paddy. What incriminates the applicant, is the approval for the deletion of the entries evidencing procurement of 5633 Quintal paddy on 31st March, 2021 on NeML portal, without any inquiry. Deletion of

entries of procurement of such a huge quantity is a matter which warrants investigation, for which custodial interrogation of the persons who were privy to the said exercise is indispensable.

10. The Court is informed that the co-accused whose applications for pre-arrest bail have been rejected namely Gokul Rathod and Bharat Ghanghav have made themselves scarce. They are yet to be arrested. As a clear case of fraud is prima facie made out, the applicant does not deserve pre-arrest bail, lest effective investigation would be a casualty.

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

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.)