

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2659 OF 2024**

Kailas Rajaram Bacchav	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 2634 OF 2024**

Sanjay Janardan Jadhav	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Shirish Gupte, Senior Advocate, a/w. Mr. Nilesh Kumbhar, i/b. Ms. Pravada Raut for applicant in ABA/2659/2024.

Mr. Yogesh Morbale, i/b. Mr. Vinod Sangvikar for applicant in ABA/2634/2024.

Mr. R. M. Pethe, APP for respondent-State in ABA/2659/2024.

Mr. Tanveer G. Khan, APP for respondent-State in ABA/2634/2024.

Mr. Rajendra Sanap, P.I., ACB, Nashik.

**CORAM : MANISH PITALE, J.
DATE : 01st OCTOBER, 2024**

P.C. :

. Heard Mr. Gupte, learned senior counsel for the applicant in Anticipatory Bail Application No.2659 of 2024 and Mr. Morbale, learned counsel for the applicant in Anticipatory Bail Application No.2634 of 2024 as well as Mr. Pethe and Mr. Khan, learned APPs appearing for the respondent-State in both the applications.

2. The applicants before this Court are apprehending arrest in connection with FIR No.0230 of 2024 dated 26.08.2024, registered at Malegaon Chhavni Police Station, District Nashik Rural, for offences under Sections

409, 420, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 and Section 13(1)(a) of the Prevention of Corruption Act, 1988.

3. The applicant in Anticipatory Bail Application No.2659 of 2024 was the then City Engineer of Malegaon Municipal Corporation and the applicant in Anticipatory Bail Application No.2634 of 2024 was the Deputy Engineer of the said Corporation.

4. The FIR in the present case is registered against 15 accused persons. It is registered at the behest of a police officer on the basis of a complaint submitted by an RTI activist. The allegations pertain to alleged corruption and misuse of office, in the context of execution of works related to drainage lines at specified places within the limits of the municipal corporation. It is alleged that the activities of the accused persons, including the applicants herein, resulted in loss of about ₹ 20 lakhs to the municipal corporation and that the work was sub-standard. It is also alleged that at one particular place, no work was carried out at all and yet, the bills of the concerned contractor were cleared by the applicants and other co-accused persons.

5. The learned counsel for the applicants submitted that in the present case, even according to the FIR, the relevant period is between 27.01.2012 and 20.06.2012, thereby indicating that registration of FIR on 26.08.2024 is delayed. It is submitted that the enquiry in the present case, was first initiated in the year 2017 and various officials of the municipal corporation, including the applicants, were called by police authorities. All of them appeared before the concerned authorities and gave their explanations. Nothing much came out of the said enquiry and suddenly on 26.08.2024, the subject FIR was registered. It is submitted that during the course of the earlier enquiry, a number of documents were submitted by the applicants and other co-accused persons concerned with the municipal corporation. The

applicants are ready to co-operate with the investigation and no case is made out for insisting upon physical custody of the applicants, in the facts and circumstances of the present case. It is further indicated that the allegation about pecuniary gain, cannot be said to be relevant as against the applicants herein and even the allegation of forgery and fabrication is far-fetched. On this basis, it is submitted that this Court may allow the applications.

6. On the other hand, the learned APPs submitted that in the present case, substantial loss is caused to the municipal corporation due to the activities of the accused persons, including the applicants before this Court. It is submitted that the applicants were engineers, who were responsible for the quality of work and yet, they not only failed to perform their duties, but connived with the other accused persons to cause loss to the municipal corporation. The works were of poor quality and specific clauses of the contract were violated by the applicants and the other accused persons, only for pecuniary gain. It was highlighted that at one particular place, although on paper, it was mentioned that the drainage work was carried out, but as a matter of fact, no such work was carried out, thereby indicating the extent of involvement of the applicants in the present case.

7. After considering the rival submissions, in the light of the material on record, this Court is inclined to allow the present applications for the following reasons:

- (a) Even according to the FIR, the relevant period was 27.01.2012 and 20.06.2012, while the FIR has been registered on 26.08.2024, thereby showing that *prima facie*, the FIR appears to be belated.
- (b) One more reason for reaching the *prima facie* conclusion that the FIR is belated is that admittedly, from 2017 onwards, an open enquiry was indeed conducted on the basis of certain complaints received in respect

of drainage work of the municipal corporation. This enquiry continued for a long period of time. If, during the course of enquiry, material was available with the investigating authority to proceed to register the FIR, *prima facie*, there appears to be hardly any explanation as to why the FIR came to be registered after 7 years of initiation of such enquiry.

- (c) The allegations in the present case pertain to acts of omission and commission of the year 2012. The earlier enquiry was initiated in the year 2017 i.e. after about 5 years. During the course of enquiry, the material on record indicates that the applicants, as officers of the municipal corporation and also the other co-accused persons, appeared before the enquiring authority and submitted the documents in their possession. Therefore, *prima facie*, it cannot be said that the applicants have avoided the process of law. If at all any incriminating material was revealed during the course of enquiry, FIR could have been registered and appropriate steps could have been taken in the matter. But, the FIR came to be registered 12 years after the alleged offences were committed, thereby indicating a *prima facie* case in favour of applicants.
- (d) The allegations pertaining to forgery and fabrication in terms of the statement leading to registration of FIR, *prima facie* appear to be raising no suspicion specifically against the applicants before this Court.
- (e) As regards pecuniary gain as also specific offence under Section 409 of the IPC, presently there does not appear to be enough material to raise a strong *prima facie* case against the applicants. So long as the applicants are ready to co-operate with the investigation, appropriate relief can be granted.
- (f) The applicants are ready to co-operate with the investigation and to appear before the investigating officer, indicating that the present applications can be allowed.

8. For the aforesaid reasons, the applications are allowed in the following terms:

- (i) In the event the applicants are arrested in connection with FIR No.0230 of 2024 dated 26.08.2024, registered at Malegaon Chhavni Police Station, District Nashik Rural, they shall be released on bail on furnishing PR Bonds of ₹ 50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court.
- (ii) The applicants shall remain present before the Investigating Officer on 04.10.2024 and 05.10.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer.
- (iii) The applicants shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicants shall co-operate with the investigation, including producing documents in their possession, as may be demanded by the investigating officer. They shall also co-operate in the proceedings before the trial court.

9. In the event, the applicants violate any of the conditions specified in this order, it shall be liable to be cancelled.

10. It is also clarified that the observations made in this order are limited to the disposal of the present bail applications and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

11. The applications stand disposed of.

(MANISH PITALE, J)