

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3115 OF 2024**

Sohail Abdul Rahman Masoom Ali Shah	...	Applicant
vs.		
The State of Maharashtra	...	Respondent

Mr. Narayan R. Bubna for applicant.

Mr. Mayur S. Sonawane, APP for respondent-State.

**CORAM : MANISH PITALE, J.
DATE : 22nd NOVEMBER, 2024**

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is 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 Prevention of Corruption Act, 1988.

3. 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.

4. The learned counsel for the applicant, at the outset, relies upon order dated 01.10.2024 passed in Anticipatory Bail Application Nos.2659 of 2024 and 2634 of 2024 arising from the same FIR, as also a subsequent order dated 11.10.2024 passed in Anticipatory Bail Application No.2748 of 2024, whereby co-accused persons were granted anticipatory bail. It was submitted that the reasons recorded in these orders while granting relief to the co-accused persons, would apply to the applicant in this application also. It was brought to the notice of this Court that while the applicants in the said applications were employees of the Municipal Corporation, the applicant herein is the contractor, who was engaged by the Municipal Corporation for carrying out certain work pertaining to drainage lines within the jurisdiction of Malegaon Municipal Corporation. He submitted that the applicant is ready to co-operate with the investigation and therefore, this Court may allow the present application.

5. The learned APP, on the other hand, submitted that being the contractor concerning the aforesaid contract, the applicant was clearly a beneficiary and considering the allegations of defective work and at a particular place, no work being carried out at all, there is a strong *prima facie* case against the applicant.

6. A perusal of the orders passed in favour of the co-accused persons would show that in the order dated 01.10.2024 passed in Anticipatory Bail

Application Nos.2659 of 2024 and 2634 of 2024, in paragraph No.7, this Court recorded the following reasons while granting relief to the applicants therein:

“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.”

7. This Court is of the opinion that the above-quoted reasons can inure to the benefit of the applicant in this application also, simply for the reason that the FIR *prima facie* appears to be belated and it has been registered 7 years after initiation of the aforesaid open enquiry conducted from the year 2017 for the very same allegations of defective drainage work being carried out.

8. As regards the aspect of the applicant being a beneficiary, as the applicant was the contractor, who executed the said works, merely because he was paid amounts for executing the works, cannot be a ground to claim that he was illegally benefited. This Court is of the opinion that as the applicant is ready to co-operate with the investigation, the application deserves to be allowed.

9. Accordingly, the application is allowed in the following terms:

- (i) In the event the applicant is arrested in connection with FIR No.0230 of 2024 dated 26.08.2024, registered at Malegaon Chhavni Police Station, District Nashik Rural, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court.

- (ii) The applicant shall remain present before the Investigating Officer on 25.11.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when required by the Investigating Officer.
- (iii) The applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case.
- (iv) The applicant shall co-operate with the investigation, including producing documents in their possession, as may be demanded by the investigating officer. He shall also co-operate in the proceedings before the trial court.

10. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

11. 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.

12. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli