



290 aba434; 441; 442; 462; 468; 472; 476; 505; 507; & 548.24

1

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

CRIMINAL APPLICATION (ABA) NO.434/2024
Smt.Vanita w/o Vinayak Kale

..VS..

State of Maharashtra, through PSO Parseoni, District Nagpur

WITH
CRIMINAL APPLICATION (ABA) NO.441/2024
Smt.Nanda Sunil Gajwe

..VS..

Police Station Narkhed, Tahsil Narkhed, District Nagpur,
thr.its PSO

WITH
CRIMINAL APPLICATION (ABA) NO.442/2024
Smt.Tai Sayyam

..VS..

Police Station Katol, Tahsil Katol, District Nagpur, thr.its
PSO

WITH
CRIMINAL APPLICATION (ABA) NO.462/2024
Smt.Aparna w/o Rajendra Tiwari

..VS..

State of Maharashtra, PSO PS Hingna, Nagpur

WITH
CRIMINAL APPLICATION (ABA) NO.468/2024
Mrs.Ujwala Raju Dhoke

..VS..

State of Maharashtra, PSO PS Ambazari, Nagpur

WITH
CRIMINAL APPLICATION (ABA) NO.472/2024
Ravindra s/o Jayramsingh Chavan

..VS..

State of Maharashtra, PSO PS Ramtek, Nagpur

WITH
CRIMINAL APPLICATION (ABA) NO.476/2024

Smt.Kalpana Shyamsundar Gajbhiye
..VS..
PS Bhiwapur, Tahsil Bhiwapur, District Nagpur, thr.its PS0

WITH
CRIMINAL APPLICATION (ABA) NO.505/2024
Smt.Pushpa Zibal Nakhate
..VS..
Police Station Mauda, Tahsil Mauda, District Nagpur, thr.its
PS0

WITH
CRIMINAL APPLICATION (ABA) NO.507/2024
Mrs.Chitra w/o Chandrakant Ghade
..VS..
State of Maharashtra, PS0 PS Kalmeshwar, Nagpur

WITH
CRIMINAL APPLICATION (ABA) NO.548/2024
Ravindra s/o Jayramsingh Chavan
..VS..
State of Maharashtra, PS0 PS Kamptee, District Nagpur

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

Court's or Judge's Order

ABA No.434/2024

Shri A.M.Jaltare, Counsel for the Applicant.
Shri K.R.Lule, Addl.P.P. for the State.

ABA No.441/2024

Shri N.S.Warulkar, Counsel for the Applicant.
Ms.T.H.Udeshi, Addl.P.P. for the State.

ABA No.442/2024u

Shri N.S.Warulkar, Counsel for the Applicant.
Shri N.B.Jawade, Addl.P.P. for the State.

ABA No.462/2024

Shri C.S.Dhore, Counsel & Shri S.Rotkar, Adv. for the
Applicant.
Shri D.V.Chauhan, Public Prosecutor assisted by Shri
N.B.Jawade, Addl.P.P. for the State.

ABA No.468/2024

Shri C.S.Dhore, Counsel & Shri S.Rotkar, Adv. for the Applicant.

Ms.T.H.Udeshi, Addl.P.P. for the State.

ABA No.472/2024

Shri C.S.Dhore, Counsel & Shri S.Rotkar, Adv. for the Applicant.

Shri N.B.Jawade, Addl.P.P. for the State.

ABA No.476/2024

Shri N.S.Warulkar, Counsel for the Applicant.

Shri K.R.Lule, Addl.P.P. for the State.

ABA No.505/2024

Shri N.S.Warulkar, Counsel for the Applicant.

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ABA No.507/2024

Shri C.S.Dhore, Counsel & Shri S.Rotkar, Adv. for the Applicant.

Shri K.R.Lule, Addl.P.P. for the State.

ABA No.548/2024

Shri C.S.Dhore, Counsel & Shri S.Rotkar, Adv. for the Applicant.

Shri N.B.Jawade, Addl.P.P. for the State.

CORAM : URMILA JOSHI-PHALKE, J.

CLOSED ON : 03/09/2024

PRONOUNCED ON : 12/09/2024

COMMON ORDER

1. Heard learned counsel appearing for respective applicants and learned Public Prosecutor for the State.

2. By these applications under Section 438 of the Code of Criminal Procedure, applicants working as Incharge Child Development Project

Officers or Child Development Project Officers at various places seek pre-arrest bail in connection with crimes registered at various police stations alleging that applicants, while serving as Child Development Project Officers, by misusing position and by sharing common intention with co-accused and not following prescribed procedure, misappropriated funds provided by the Government in order to increase "Grade of Anganwadis" and thereby committed the offence.

3. **CRIMINAL APPLICATION (ABA) NO.434/2024 :-**

This application is in respect of Crime No.186/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420k, 120-B read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Subhash Jadhav.

4. **CRIMINAL APPLICATION (ABA) NO.441/2024 :-**

This application is in respect of Crime No.280/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420, and 120-B of the Indian Penal Code. The crime

is registered on the basis of report lodged by Block Development Officer Dr.Nilesh Wankhade.

5. **CRIMINAL APPLICATION (ABA) NO.442/2024 :-**

This application is in respect of Crime No.492/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420, and 120-B of the Indian Penal Code. The crime is registered on the basis of report lodged by Ramdas Gunjarkar.

6. **CRIMINAL APPLICATION (ABA) NO.462/2024 :-**

This application is in respect of Crime No.256/2024 registered with the non-applicant/police station for offences punishable under Sections 409 and 420 read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Sandip Godshelwar.

7. **CRIMINAL APPLICATION (ABA) NO.468/2024 :-**

This application is in respect of Crime No.306/2024 registered with the non-applicant/police station for offences punishable under Sections 406, 409, 420, 467, 465, and 471 read with 34 of the

Indian Penal Code. The crime is registered on the basis of report lodged by Vipul Jadhav, Deputy Chief Executive Officer, Zilla Parishad.

8. **CRIMINAL APPLICATION (ABA) NO.472/2024 :-**

This application is in respect of Crime No.362/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420, and 120-B read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Jaysingh Jadhav.

9. **CRIMINAL APPLICATION (ABA) NO.476/2024 :-**

This application is in respect of Crime No.264/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420, and 120-B of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Chetan Jadhav.

10. **CRIMINAL APPLICATION (ABA) NO.505/2024 :-**

This application is in respect of Crime No.531/2024 registered with the non-applicant/police station for offences punishable under Sections 409,

420, and 120-B of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Vijay Zingre.

11. **CRIMINAL APPLICATION (ABA) NO.507/2024 :-**

This application is in respect of Crime No.399/2024 registered with the non-applicant/police station for offences punishable under Sections 409, 420, and 120-B read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Mrs.Anshu Kargarate.

12. **CRIMINAL APPLICATION (ABA) NO.548/2024 :-**

This application is in respect of Crime No.337/2024 registered with the non-applicant/police station for offences punishable under Sections 409 and 420 read with 34 of the Indian Penal Code. The crime is registered on the basis of report lodged by Block Development Officer Pradipkumar Gaygole.

13. The Government of Maharashtra allotted funds to increase "Grade of Anganwadis". Applicants being incharge of "Anganwadis", called upon to

follow process in the light of Government Resolution dated 1.12.2016 and called Tenders for purchasing various items. However, applicants by disobeying the said Government Resolution, without comparing prices of articles and without calling Tenders through E-Tendering Process, purchased articles.

14. It is further alleged that applicants even not compared prices from Gem Portal and caused loss to the Government. It is further alleged that applicants, in furtherance of common intention with suppliers, have not followed procedure and misappropriated funds and made payment before receipt of articles. The articles purchased were also at the highest rate and of inferior quality and, therefore, an enquiry was initiated against them and during the enquiry, it revealed that applicants have even not taken entry of stock received in Stock Book and committed the offence.

15. Learned counsel appearing for respective applicants submitted that in view of the said Government Resolution, an advertisement in newspapers was not required. As per norms, applicants called quotations and three quotations

were received. After receipt of quotations, the lowest amount was not considered. It is submitted that as far as inferior quality of goods is concerned, immediately, applicants issued a communication to suppliers and asked suppliers to exchange goods. Accordingly, suppliers exchanged goods. It is further submitted that applicants were asked to call quotations in a kit format and, therefore, suppliers forwarded quotations in a kit format and, therefore, there was no rate quoted item wise. Thus, no "illegality" is committed by applicants. It is further submitted that even accepting allegations as it is, at the most, it can be said that it is an "irregularity" and not "illegality". Learned counsel appearing for respective applicants also placed on record extract of registers and submitted that entries of the said stock received were already taken in Stock Book Register. The Statement of Accounts maintained with the HDFC Bank show payment of Rs.8.00 lacs by PFMS Mode to vendors. Since articles were delivered at respective "Anganwadis", it was the duty to take appropriate entries in Stock Books. Thus, no monetary gain is received by applicants and,

therefore, no *prima facie* case is made out against applicants. As far as custodial interrogation of applicants is concerned, the same is not required as nothing is to be recovered from them and, therefore, they be protected by granting them anticipatory bail.

16. *Per contra*, learned Public Prosecutor Shri D.V.Chauhan for the State, strongly opposed these applications and submitted that it is not mere violation, but it is a deliberate violation. The applicants were in a position of trust and expected to follow procedure in view of the said Government Resolution wherein with an intention to have transparency, transactions guidelines were issued. Objectives of the Manual were to have uniform, transparent, systematic, efficient and cost effective procedure, which were not followed by applicants. He also invited my attention to quotations and submitted that in quotations, consolidated amount is mentioned in stead of item wise amount. It is pertinent to note that in all these nine centers, only four firms were shown to be in race. The rates quoted by them are either

matching or near to each other. Proprietors of two firms namely "Shambhavi" and "Sanjivani" are common. The payments were made before receipt of articles. The articles were accepted before checking their qualities. Unless connivance is there, there would not have been acceptance. After noting that "irregularity" is committed by various Child Development Project Officers, an enquiry was conducted and it revealed that rates quoted by suppliers are even not compared with rates published on Gem Portal, eg. if articles on Gem Portal show rates around Rs.55,000/-, for which suppliers have quoted higher rates, payment against Rs.55,000/-, Rs.2.00 lacs are paid. Not only this but also Stock Registers are also not maintained properly. It is pertinent to note that some suppliers are dealing with educational articles, but from them electronic items like LED TV and Fire Extinguishers are purchased. Thus, *modus* of applicants is similar. Due to the the act of applicants, loss is caused to the Government. Now, investigation is transferred to the Economic Offence Wing. Thus, considering manner in which alleged transactions are entered into by responsible officers and loss is caused to

the Government, applications deserve to be rejected.

17. Having heard learned counsel appearing for respective applicants and learned Public Prosecutor for the State, I have perused material on record.

18. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, right to liberty and presumption of innocence are vital. At the same time, gravity of offence, impact on society, and need for fair and free investigation are to be looked into. The discretion is to be used in weighing these interests in facts and circumstances of each case.

19. It is well settled that jurisdiction to grant bail has to be exercised having regard to facts and circumstances of cases. Factors to be taken into consideration are; 1) nature of accusations and severity of punishment; 2) reasonable apprehension of tampering with witnesses; and 3) reasonable possibility of securing presence of accused etc. and each has to be considered on its

own merits.

20. In the light of the above well settled legal position, if facts of present applications are considered, it reveals that various crimes are registered at various police stations on the basis of enquiry conducted by the the Child Development Project Department. During investigation, it revealed that the Government of Maharashtra, allotted funds to increase "Grade of Anganwadis". As per the said Government Resolution, norms were fixed while purchasing articles and Child Development Project Officers were under obligations to call Tenders to implement Schemes of purchasing various articles required for gradation of "Anganwadis". It revealed that concerned Child Development Project Officers have not followed norms in view of the said Government Resolution and without comparing rates quoted by suppliers, without entering quotations received in Inward Outward Registers, and without receipt of articles, payments were made and articles of inferior quality were received, resulting into lodging of various First Information Reports. It is further revealed that

electronic items were purchased without obtaining relevant certificates of technical head along with said articles. Even rates were not compared with rates published on Gem Portal and caused loss to the Government.

21. It is submitted by learned counsel appearing for respective applicants that publication of Tenders in newspapers was not required in view of the said Government Resolution. It is further submitted that the Tender process was also not required as the quotation was below Rs.3.00 lacs and, therefore, applicants called quotations and purchased articles. At the most, it can be said as "irregularity" and not "illegality" and there was no *mens rea* to commit such offence.

22. Before advertizing to submissions, it is necessary to consider object behind the said Government Resolution.

23. The said Government Resolution was issued with an object to provide some guidelines for purchase of items of stores by the Government Departments. Introduction to the said Government

Resolution shows that the Government, Semi Government officer, Board, Corporation, Government Enterprises, Institutes, Autonomous Bodies/ Zilla Parishad/Municipal Corporations/Municipality/Local Bodies and Public Enterprises etc. need to purchase various items. Therefore, manual of office procedure for purchase of stores by Government Departments had been prepared. It has been observed and revealed by the Government that Government Enterprises, Organizations, Autonomous Institutions, and Corporations are purchasing items required for it without following the Government Procedures. However, it had been cleared in the said policy that the said policy is applicable to all Departments. It is further clarified in the said Government Resolution that it is mandatory to follow the procedure prescribed in the said policy and Administrative Departments were asked to issue clear instructions to their allied bodies for implementation of the said procurement policy.

24. The said Government Resolution defines "Fraudulent Practice" under Chapter-I, Clause 1(Q) that the "fraudulent practice" means

misrepresentation of facts in order to influence a procurement process or execution of a contract, to the detriment of purchaser and includes collusive practices among tenders designed to establish tender prices at artificial non-competitive levels to deprive purchaser of benefits of free and open competition.

25. As per Chapter-I Clause 1(EE) "Procurement Process" means the process of procurement extending from issue of invitation to pre-quality or to register or to tender, till award of procurement contract.

26. The said Government Resolution describes that procedure of purchase involves during the analysis of requirements, estimations to invite tender, to receive tender, to evaluate tender, to issue work order/purchase order, to execute agreement, and supply goods/services and payment of supplier. The objectives of the Manual to have uniform, transparent, systematic, efficient and cost effective procedure. The aim of the procurement Manual is to establish such procurement procedure as well as provide instruments and further guidance for

carrying out procurement activities. The said Manual guides general principles while following the procurement activities i.e. 1. optimum value for money; 2. integrity, transparency and honesty, optimum competition, 4. long term interest of the Government, 5. sustainable procurement policy, and 6. measures to prevent corrupt practices.

27. The Manual further states that the procurement activity is to be carried out complying with all procedures and principles specified in the Manual.

28. Thus, the object of said guidelines to have transparent, efficient and cost effective procedure.

29. In the light of the above these objects, applicants, who were serving on responsible posts, were expected to follow procedure while implementing the Scheme of gradation of "Anganwadis". Even accepting the submission of learned counsel appearing for respective applicants that the requirement of publishing the Tender in newspapers was not there, quotations received ought to have entered into the Inward and Outward Registers.

Perusal of quotations shows that the said quotations do not bear dates and prices item wise and consolidated prices were mentioned. The quotations were not entered into the Inward or Outward Registers. Before accepting quotations, there was no comparative chart and it was not ascertained whether these suppliers are qualified to provide electronic items. The investigation papers further show that payments were made by some Child Development Project Officers before receipt of articles. It further shows that rates quoted by suppliers are not compared with Gem Portal. The articles were purchased by incurring double the amount than shown on the Gem Portal. Thus, items which were purchased for which, eg., as per the Gem Portal, if amount required is Rs.40,000/-, amount is Rs.1.00 lac is paid. Thus, by making the payment, without comparing prices with the Gem Portal, loss is caused to the Government. The Zilla Parishad, Nagpur conducted enquiry regarding these purchases and various "illegalities" are noted by the said Enquiry Committee. The said Enquiry Committee consists of the Block Development Officer; the Education Officer (Zilla Parishad, Nagpur); and

Accounts Officer (Zilla Parishad, Nagpur). It is specifically observed in the said enquiry report that while calling Tenders, similarity appeared from quotations received from suppliers who participated in said process.

30. During investigation, some statements were recorded from which it reveals that articles received are entered into the register which is not certified. Even extracts of the Stock Register filed on record nowhere show that these are extracts of certified register. Though it is vehemently submitted that quotations were called in a kit format and, therefore, consolidated quotations are submitted, the same is not acceptable as quotations have to be item wise.

31. Perusal of various quotations received from "Shri Book Depot" and "General Stores" shows that they are dealing in school stationery, sports stationery, books and notes books. However, quotations submitted by said suppliers show to supply of LED TV and Furniture. Similarly, quotations are submitted by "Shambhavi Education" which is also similar for the school stationery, but

supplied the fire extinguisher as well as LED TV.

32. Though learned counsel appearing for respective applicants submitted on record authorization letter to show that "Shri Book Depot" and "General Stores" as well as "Shambhavi Education" and "Sanjivani Udyog" were authorized dealers for supplying these electronic items, there is nothing on record to show that there were having technical staff to install the same. Even, licences issued "Shri Book Depot" and "General Stores" shows that it deals in stationery, sports, musical, and Genral Government Supplier.

33. As observed earlier, applicants were holding responsible posts and they were under obligation to implement the Scheme of gradation of "Anganwadis" by following norms of the Government. The Scheme has to be implemented for upgradation of "Anganwadis" and, therefore, the Government allotted funds. By incurring double expenses towards items, without following the due procedure, though by way of the said Government Resolution guidelines were issued, which are mandatory in nature, applicants disobeyed the same. Undisputedly, suppliers were

benefited as rates quoted by them were not compared with the Gem Portal which is for purchase of various articles for Government Departments and caused the loss to the Government and ultimately to the public money.

34. Thus, involvement of applicants reveals in the offence and their act cannot be termed as "sheer negligence" or "irregularity". The various Government Schemes were floated by the Government in the interests of public and implementation of the same is expected from Government officials in a true sense for the benefit of public at large and to fulfill objects of the said Schemes. Due to acts of applicants, loss is caused to the Government and, therefore, the contention of applicants, that it is mere an "irregularity", is not acceptable. Though custodial interrogation of applicants is not required, but it is one of considerations. Merely because their custodial interrogation is not required, the same is not sufficient to grant protection to applicants. The manner, in which the crime is committed, and investigation papers reveal involvement of applicants in the offence.

290 aba434; 441; 442; 462; 468; 472; 476; 505; 507; & 548.24
22

35. In view of the discussion above,
applications deserve to be rejected and the same are
rejected.

Applications stand **disposed of.**

(URMILA JOSHI-PHALKE, J.)

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