



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

CRIMINAL APPLICATION (BA) NO.853 OF 2024
(Smt. Swati Vasantrao Suryawanshi Vs. State of Maharashtra)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. A.M. Chandekar, Advocate for the applicant.
Mr. S.A. Ashirgade, Addl.PP for the State.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- OCTOBER 9, 2024.

This is an application filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) (under Section 439 of the Cr.P.C.) for grant of bail in connection with Crime No.316/2024, registered with Police Station Wardha, District Wardha for the offence punishable under Sections 406, 408, 409, 420, 465, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report lodged by Naib Tahsildar Mr. Dhananjay Vishnu Wagh on an allegation that the applicant was serving as a Deputy Collector working as a Land Acquisition Officer, Wardha since 17/01/2022. In a land acquisition matter of Mouza Gadamodi vide case No.04/LAQ-47/1996-1997 compensation was given to the farmers and it is found that none of the farmers have filed application but on the basis of forged applications, false claimants were shown and huge amount was transferred to their account. Although they were not beneficiaries but on the basis of

forged documents, they were shown as beneficiaries of the land acquisition compensation and huge amount was transferred to their account. As soon as this fact was noted, report was lodged by Assistant Superintendent Naib Tahsildar, collector Office, Wardha. On the basis of the said report, police have registered the crime against the present applicant.

3. Learned Counsel for the applicant submitted that in fact, there was no such misappropriation committed by the present applicant. Absolutely, there is no material to show that it was the present applicant who has misappropriated the amount. He invited my attention towards the summery of the charge-sheet and submitted that it was the co-accused Nitesh Yesankar who has received the amount of Rs.18,48,259/-. As far as the present applicant is concerned she has not received any pecuniary gain but merely because she was working as a Land Acquisition Officer, she is implicated falsely in the alleged offence. He submitted that now the investigation is already completed and charge-sheet is already filed, she is behind bar since the date of her arrest. Considering the nature of the transaction and the summery of the charge-sheet itself shows that out of misappropriated amount Rs.2,13,28,311/- was the total amount and out of which Rs.1,86,90,586/- is freeze and only the amount of Rs.26,37,725/- is shown to be misappropriated. He submitted that considering the entire allegation against the present applicant, her further incarceration is not

required. In view of that, the application deserves to be allowed and the applicant be released on bail.

4. Learned APP strongly opposed the application and submitted that present applicant was arrested on 08/03/2024 from Hingoli, her mobile itself is seized in which it is found that she has communicated with one Sharad Kamble and said communication shows that she has communicated with the said Sharad Kamble who was serving in a Bank to open the accounts in the name of the farmers and the said fake accounts are opened with the help of said Sharad Kamble. He further submitted that during the investigation, the communication between the Nitesh Yesankar and the present applicant was also retrieved from her WhatsApp chat which shows that there was a conspiracy between her and the co-accused to commit the misappropriation and in pursuance of that communication they have prepared the list of the farmers and by showing the fake transactions granting compensation in the name of the said farmers who are either not alive or whose land is not acquired for the acquisition purpose and shown that some amounts are transferred in their accounts. In fact, no amounts are transferred in their accounts but it was misappropriated by the present applicant and the other co-accused. He further submitted that the Collector, Wardha constituted an enquiry committee which was headed by the Additional Collector, Wardha and during that enquiry misappropriation of Government funds in 16 cases are

found. The applicant is the person responsible for the said misappropriation. The applicant who was working as a Deputy Collector assigned with the duty as a Land Acquisition Officer, Minor Irrigation Canals, Wardha. Several land acquisition awards came to be passed in the name of concerned land owners and time to time amount of compensation was also granted by the State of Maharashtra. The amount of compensation was supposed to be paid to the concerned land owner in accordance with the prescribed procedure. The applicant was entrusted with the duty of passing orders regarding disbursement of the amount of compensation, already granted by way of land acquisition awards. The present applicant was having duty to issue appropriate orders regarding disbursement of the amount of compensation to the land owners only. The applicant was under obligation to ensure that the amount of compensation must be paid to the concerned land owners and the persons whose names are mentioned in the original awards. During the tenure of the applicant, she issued several communications in the name of co-accused and other persons as well to the Treasury Office, Wardha. In the communications, the present applicant specifically mentioned about the name, details of Bank Account and amount of compensation which is to be disbursed by the Treasury Officer, Wardha through State Bank of India, Treasury Branch, Wardha. The investigation further shows that, the present applicant issued several communications

to the Treasury Office mentioning the names and Bank account details of the persons i.e. co-accused who are not the real land owners or legal representatives of original land owners. Moreover, these persons are nowhere concerned with the original awards. The applicant who was having intention to commit the offence since inception and with that intention she has with the assistance of the bank employees and other co-accused misappropriated the amount and shown that the communications are genuine one. Thus, considering the *prima facie* case against the present applicant, the application deserves to be rejected.

5. I have heard learned Counsel for both the parties. Perused the investigation papers from which it reveals that the applicant who was serving as a Land Acquisition officer as well as the Deputy Collector, Minor Irrigation Canals, Wardha. The duty assigned to her was to pass the land acquisition awards and disburse the compensation amount as per the procedure to the land owners whose lands are acquired. As the applicant was entrusted with the duty of passing orders regarding disbursement of the amount of compensation already granted by way of land acquisition awards. She with the help of other co-accused opened the fake accounts in the name of the persons who are either not alive or who are not the original owners of the land and who are not concerned with the acquisition of the land and the amounts were transferred in the said accounts. During

investigation, the statements of various witnesses are recorded and from their statements it reveals that after they received the notice from the Additional Collector for appearing before the Additional Collector for the enquiry purpose, they came to know that the accounts were opened in their name and the amounts were transferred in the said accounts. Not only the witnesses but the other employees who were working along with the present applicant also stated regarding the transaction incurred by the present applicant regarding the disbursement of the compensation amount. The statements of Rakhi Bhagwanlal Jaiswal who was serving as a Awwal Karkun whose Land Acquisition Officer speaks for itself as to the act of the present applicant and which shows that she has opened the fake account in the name of the persons who are not all concerned with the lands which are acquired and the accounts were opened in their name and thereafter the amounts were transferred in their accounts.

6. Besides the statements of the witnesses, there is WhatsApp communication between the present applicant and the other co-accused. During investigation, mobile handset verification panchnama was drawn by the Investigating Officer from which it reveals that she has save the number of Sharad Arun Kamble who was the Bank employee and the WhatsApp chat reveals that she has asked to open the accounts in the name of various persons. At the same time, from the mobile verification panchnama it reveals that she has saved the number of

one Nitesh Yesankar. The mobile phone of the Nitesh Yesankar was also seized. The mobile number of the Nitesh Yesankar who is the co-accused was saved in the name as Nitesh Yesankar Wankhede Wardha Acquisition matter. It further revealed on verification of the said mobile phone that there was a communication between the present applicant and the said co-accused Nitesh Yesankar through WhatsApp as well as the exchange of media filed between them. The transcript of the communication between both of them shows that they were searching the persons who are not alive and with the assistance of said Nitesh Yesankar the persons were searched, the list was prepared and the accounts were opened in their names. Thus, as far as the allegations levelled against the present applicant that she issued the several communication in the name of the other co-accused as well as to the Treasury office, Wardha is substantiated by the investigation material. The investigation further shows that the present applicant not only issued the communication in the name of the co-accused but to the Treasury officer also mentioning the names and the bank account details of the person i.e. the co-accused who are not the real land owners or legal representative of original land owners. Moreover, these persons are nowhere concerned with the original awards. After disbursement of the amount in the bank accounts of the co-accused, the applicant instructed the accused No.2 to give the amount of misappropriation to her in cash only.

In order to make payment of the amount of misappropriation to the present applicant, accused No.2 received the amount from the other co-accused by way of cash and by cash transfer mode. The accused No.2 handed over the cash to the applicant which he received from the other accused persons. The statements of the various witnesses and the various communications which are collected during the investigation shows the involvement of the present applicant in the alleged offence.

7. It is well settled that jurisdiction to grant bail has to be exercised having regard to facts and circumstances of each case. The factors to be taken into consideration are; nature of accusations; reasonable apprehension of tampering with witnesses; reasonable possibility of securing presence of accused etc. and each has to be considered on its own merits.

8. The involvement of the present applicant reveals in the economic offence, the applicant who was serving as a Public Servant and discharging the duty as a Public Servant was involved in an offence and her involvement is apparent from the investigation papers. The involvement is not only apparent in the present crime, but there are criminal antecedents as FIRs are filed against her under the provisions of the Prevention of Corruption Act. The crime No.324/2020 at police station Nava Monda, District Parbhani and another Crime No.22/2008 at Kalamnuri, District Hingoli. Thus, the involvement of

the present applicant is not only in the present crime but in the crime under the provisions of the Prevention of Corruption Act.

9. The Honourable Apex Court, while dealing with offence, involving conspiracy to commit economic offences of huge magnitude, in the case of ***Y.S.Jagan Mohan Reddy vs. CBI, [(2013)7 SCC 439]*** laid down following parameters:

i) economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country, and

ii) while granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interest of the public/State and other similar considerations.

10. The Honourable Apex Court, in the case of ***State of Gujarat vs. Mohan Lal Jitmalji Porwal, [(1987)2***

SCC 364] held as follows:

“5.The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.....”

11. Considering the role of applicant who is a Public Servant, caused the loss to the money of the Government by committing the offence of the misappropriation and the amount which was misappropriated was for the poor farmers whose lands are acquired by the Government.

12. Thus, Considering the role of the present applicant in the crime having involved enormous and huge amount as well as the involvement in the misappropriation of the amount which was reserved for the farmers whose lands are acquired and the Government

money is at stake, the role of the applicants is clearly exposed.

13. In the background of accusations and its gravity, applicant is not entitled for being released on bail, and therefore, the application deserves to be rejected and the same is rejected accordingly.

14. The observations made above are *prima facie* in nature, on the basis of material collected during the course of the investigation, and the trial Court shall not be influenced by the same.

(URMILA JOSHI-PHALKE, J.)

**Divya*