



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 785/2023

Mohan s/o Kewalram Rane and others V/s 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. Pushkar A. Deshpande, counsel for applicants
Mr. Nikhil Joshi, APP for the non-applicant/State.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 08/01/2024.

1. By preferring this application, applicants are seeking pre-arrest bail, in the event of their arrest, in connection with Crime 523/2023 registered with City Police Station, Gondia, District Gondia for the offence punishable under Section 409 read with Section 34 of the Indian Penal Code, 1860.
2. The applicant no.4 is the Secretary and other applicants except the applicant No.6 are the Directors of the society namely Shriram Abhinav Co-operative Society Ltd. The learned counsel for the applicant submitted that applicant No.6 is arrested during the pendency of this application and also file an application to delete his name. Accordingly, the name of applicant No.6 is deleted.
3. The applicants are apprehending arrest at the hands of Police as accusations is made against them on the basis report lodged by Vivek Shripatrao Ingle, on an allegation that the applicants who are the President and Secretary

and the Directors of the Society namely Shriram Abhinav Co-operative Society Ltd. Chutiya, Tq. and District Gondia. The said society had been appointed to purchase paddy from farmers by State Government and to deliver the same to the rice mills. It is alleged that the members of the society have though purchased the paddy from the various farmers but have not delivered the same to the Rice Mills, for which they were misappropriated the said paddy to the tune of 12063.13 quintal of paddy of Kharip season and 15996.00 quintals of Rabi season total amounting to 28059.13 quintals of paddy which amounts to Rs.5,72,40,625.20, on the basis of said report, the Police have registered the crime against the present applicants, who are members of the society.

4. Learned counsel for the applicants Mr. Pushkar Deshpande submitted that as far as the role of the present applicants is concerned, they are the only Directors, President and Secretary of the Society. On perusal of the FIR and other investigation papers, no specific role is attributed to the present applicants. In fact on 26/10/2022, the applicants and other members were enable to run the said Society and therefore, the resolution was passed and all the members have decided to resign as a Director of the said Society.

5. After passing of the resolution, they have forwarded the request to the Registrar, Cooperative Societies. The Registrar Cooperative Societies have passed the order on

29/05/2023 and directed that, if the resignations are not withdrawn within 15 days before 13/06/2023 it deemed to be accepted.

6. He further submitted that considering the role attributed, the applicant Nos. 1 and 4 are the President and Secretary, and other are the Directors of the Society. He submitted that as the Members, President and the Secretary were unable to run the activities of the Society, they have appointed one Manager and Grader. He further pointed that on 15/06/2023, the Flying Squad has inspected the stock of the Society and endorsed that the stock is prima facie maintained to be correct and thereafter, the FIR is lodged on 09.08.2023. On 16.06.2023, the Administrator has taken over the charge. Prior to one day of the Administrator taking the charge, the stock was found to be correct.

7. He further invited my attention towards the reply filed by the State before the trial court and submitted that from the reply also, it is revealed that in June 2023 itself, the Administrator has taken the charge of the said society. Thus, he submitted that considering the same, when the applicants were in-charge of the said Society, the stock was found to be correct. The alleged misappropriation is subsequent to the taking over the charge by the Administrator therefore, custodial interrogation of the present applicants is not required. Merely because, they are the office bearers of the said society is not

sufficient to attract the charge against them. There should be active participation on the part of the present applicants. In view of that, they be protected by granting anticipatory bail.

8. Per contra, the learned APP strongly opposed the application on the ground that huge quantity of the paddy was misappropriated by the members of the Society. There was a clear difference between the quantity in the delivery order and the bills supplied by the Society. The said society in the year 2022-2023 during Kharip and Rabi seasons obtained the paddy from the farmers and not forwarded the right figures due to which the farmers have not received any money towards the paddy. He further submitted that the Investigating Agency requires the custodial interrogation of the present applicants, as investigation to the effect that the role of the present applicants are to be ascertained is required. He further submitted that applicant Nos. 1 and 4 as the President and Secretary, who entered into an agreement and therefore, their role is prime role and therefore, custodial interrogation is required and prays for rejection of the application.

9. Having heard the learned counsel for the applicants and the learned APP for the State, perused the investigation papers. As far as the recitals of the FIR is concerned, the names of the present applicants are appearing as the Chairman of the Society, Secretary of the

Society and the Directors of the Society. Admittedly, there is no specific allegations against them that they have played an active role in the said transactions. During the investigation, the agreement which is executed by the members of the society and the federation is also seized by the police.

10. From the investigation papers, it further reveals that the audit report is also obtained by the Investigating Agency. The Grader and the Manager are also arraigned as an accused. It is a part of record that all the members of the society have passed the resolution and submitted their resignation prior to the lodging of the FIR, the said resignations are accepted by the Registrar Co-operative Societies by passing detailed order. The Administrator has taken the charge on 16/06/2023, prior to that the Flying Squad has visited on 15/06/2023 and found stock found to be correct. Subsequently, this FIR is lodged with an allegation that the paddy is misappropriated.

11. From the report of the squad, it appears that when inspection was carried out, the stock was correct when the present applicants were in-charge of the said society. It appears that the alleged incident has occurred after the Administrator has taken the charge. The investigating agency during investigation, has recorded various statements of the witnesses, wherein general allegations are made against the office bearers of the society. The paddy was purchased from the agriculturists and not

forwarded to the Rice Millers and it was sold out to the third person. Considering the investigation carried out by the Investigating Agency and the role of the present applicants admittedly it shows that when they have resigned and Administrator was appointed the alleged incident has taken place.

12. This Court is conscious about the fact that consideration for grant of anticipatory bail is not only that merely because the custody is required, the protection is to be granted to the applicants, but after going through the entire material collected during the investigation and the various panchnamas, agreement between the society and the Grader and the Manager, the fact that the Administrator was appointed on 16/06/2023 prior to that stock was found to be correct, the applicants have made out the prima facie case to show that they are entitled for such protection. In view of that, application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

- a. The criminal application is **allowed**.
- b. The applicants are released on anticipatory bail, in the event of their arrest, in connection with Crime No. 523/2023 registered with Police Station Gondia City, District Gondia for the offence punishable under Section 409 read with Section 34 of the Indian Penal Code, on executing

PR bond in the sum of Rs.25,000/- each with one solvent surety in the like amount.

- c. The applicants shall attend concerned police station as and when required for the investigation purpose and shall co-operate in the investigation.
- d. The applicants shall not tamper with the prosecution evidence or shall not induce, threaten or pressurize any witnesses, who are connected with the crime.
- e. The applicants shall submit their mobile number(s) and address with address proof.
- f. The criminal application is **disposed of**.

[URMILA JOSHI-PHALKE, J.]