

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3499 OF 2024

Ujwala Dnyaneshwar Javake ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Nishant Mokal a/w. Mr Sagar Tambe, for the Applicant
Mr. Y.M. Nakhwa, APP, for the Respondent/State.
Mr. Sanjay Chavan, PSI, Nagothane police station, Raigad.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 15 , 2025

P.C.:

1. Heard the learned counsel for the applicant.
2. This is an application for pre-arrest bail in connection with C.R.No.127 of 2023 registered at Nagothane police station for the offences punishable Sections 406, 408 and 420 read with Section 34 of the Indian Penal Code, 1860 (the Penal Code).
3. The applicant is a member of Ainghar Village Panchayat.
4. At the outset, the learned counsel for the applicant submits that the other members of the Village Panchayat have been enlarged on pre-arrest bail by this Court in ABA Nos. 2854 of 2023 and connected applications by order dated 2nd September, 2024 and in ABA No. 3401 of 2024 by order dated 6th January, 2025.
5. While allowing the applications for pre arrest bail of the co-accused, in ABA No. 2854 of 2023 and the connected applications,

this Court had observed, inter alia, as under:-

10] Evidently, the applicants were not the persons who were discharging the executive functions. The FIR alleges that the then office bearers of the village panchayat and the village development officers carried out the work in breach of the directions to have approved budget estimate and e-tender process.

11] Prima facie, there appears to be a distinction in the role attributed to the applicants and the persons who discharged the executive functions on behalf of the village panchayat. The mere fact that the applicants had participated in the meetings of village panchayat and were parties to the resolutions to carry out developmental work may not, by itself, be sufficient to rope in the applicants by invoking the principle of constructive criminality. The first informant did not allege that the applicants had a role in either the execution of the work or in releasing the payment. In this view of the matter, the custodial interrogation of the applicants does not seem warranted.

12] At any rate, the offences under sections 408 and 420 of the Penal Code, entail punishment which may extend to seven years. The Court would thus be justified in exercising the discretion in favour of the applicants.

6. The learned APP fairly submitted that principle of parity may apply.

7. As the applicant is similarly circumstanced like the co-accused, who have been given the dispensation of pre arrest bail, for parity of reasons, I am inclined to allow the application.

Hence, the following order.

ORDER

1] The application stands allowed.

2] In the event of arrest in C.R. No. 127 of 2023 registered with Nagothane police station, the applicant Ujwala Dnyaneshwar Javake be released on bail on furnishing a P.R

bond in the sum of Rs. 30,000/- with one or two sureties in the like amount.

3] The applicant shall cooperate with the investigation and attend Nagothane police station as and when directed.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)