

**CNR No. MHNS010001162022**

**Order below Exh.1 in Cri. Bail Application No.39/2022.**

( Naresh Shantaram Pawar and others Vs. State )

The present application is moved by the applicants-accused 1) Naresh Shantaram Pawar, 2) Dagdu Dharu Patil, 3) Sanjay Shamrao Patil, 4) Vitthal Uttamrao Randhe, 5) Deepak Piraji Kusalkar, 6) Dilip Dnyandeo Fulpagar, 7) Mukund Karbhari Choudhari, 8) Pratibha Yadavrao Maghade, 9) Vishwanath Bajirao Patil, 10) Sardarsingh Umedsingh Rajput, 11) Sheelanath Jagannath Pawar and 12) Radha Chintaman Sahare under section 438 of Cr.P.C. in connection with CR No.5/2022 registered with Peith Police Station, Dist. Nashik for the offence U/s. 406,409,420,464,465,471,120(B) r.w.s.34 of the Indian Penal Code.

2. It is stated in the application that, applicants-accused are Government Servants. The original complainant Yogendra @ Yogesh Suresh Sapte has filed a private complaint under section 156(3) of Cr.P.C. before learned 2<sup>nd</sup> JMFC, Nashik on 20.10.2021 against the present applicants-accused alleging that, his father is owner of a tractor bearing No. MH-15-CV-7361. He and other tractor owners under government contracts and lent their tractors for government work, during the period 2011 to 2017 and done work for the government under two schemes i.e. Gatiman Mazgi and Panlot Mazgi under the control of the present applicants-accused. However, the applicants-accused have not paid entire amount of their work and made criminal conspiracy and by preparing bogus record and by making bogus signatures, withdraw the payment of complainant and others without their knowledge.

Therefore, learned JMFC pleased to pass the order and investigation on 18.12.2021 directing the Peith Police Station to register the FIR. The copy of order is placed on record. On the basis of the said order Peith Police Station registered the FIR against the present applicants-accused. Therefore, applicants-accused have apprehension of their arrest in connection with the said crime.

3. It is stated in the application that, case is related to all government record and so their custodial interrogation is not at all required. The offence is too old and there is unexplained delay in lodging the FIR. Agricultural department had already appointed an Enquiry commission in respect of the present matter and Commission has submitted his report on 4.7.2019. The applicants-accused being public servant, require valid sanctioned to prosecute under section 197 of Cr.P.C. from the competent authority. Unfortunately that has not been happened in the present case. All the applicants-accused are Class-II and Class-III government servants and after being released them on bail they will not abscond. Hence, prayed to allow the application.

4. Application is strongly objected by the State as well as original complainant. Both the parties have filed on record various documents.

5. As I.O. was sick, during hearing of the present proceeding, he could not investigate the matter and it was causing delay in hearing of the main application. Therefore, this court has granted ad-interim protection to the applicants-accused on 18.1.2022 till final disposal of the main application.

6. Today the I.O. is present. Learned counsel Shri. Padavi for original complainant has filed his say and placed on record various documents. Heard both the parties. Perused entire record.

7. The learned counsel Shri. Vaibhav Jadhav for applicants-accused has pointed various documents placed on record to show that before initiating present proceeding the internal Enquiry was conducted by the Department and the report is placed on record, which is at Exh.-F and on perusal of the said report of the N.G. Aghav Committee has granted clean-chit in the matter including the complaint received from the original complainant Yogesh Sapte. The Committee has observed or concluded the enquiry which is reproduced as under:

“वरील सर्व मुद्दयांचे अवलोकन केले असता श्री. योगेश सुरेश सापटे, मौजे.हेदपाडा, ता. पेठ यांना त्यांनी केलेल्या कामाचा देय असलेला मोबदला बेअरर धनादेशाचे स्वरूपात दिल्याचे उपलब्ध व संबंधितास सादर धनादेश प्राप्त झाल्याचे पोहोच पावती (धनादेश क्रं. ३३८५३२ दि. २०.५.१३ व ३३८७०६ दि.१२.४.१२ च्या पावत्या वगळून) व उपलब्ध कागदपत्राचे आधारे दिसून येत आहे. सन २०११ ते आजपर्यंत त्यांनी केलेल्या आमाचा मोबदला संपुर्णपणे मिळाला असून सर्व शंकाचे निरसन झाल्याचे व कोणत्याही स्वरूपाची तक्रार आता राहिली नसल्याचे निवेदन त्यांनी चौकशी समितीस सादर केलेले आहे”.

“on perusal of the above issues, it appears from the available documents that Shri. Yogesh Suresh Sapte, R/o. mauje Hedpada, Tal. Peith was given and received the entire amount of his work by bearer cheque and he had received the said chques with acknowledgment (excluding receipt of Cheque No.338532 dated 20.5.12 and 338706 dated 12.4.13). There is no doubt that, since 2011 till now he has received the entire amount of his work and he has filed his statement before the Committee that he has no complaint about it”.

8. He has also pointed out that the original complainant

has given handwriting that he has no complaint in respect of the said transaction in his handwriting. It is dated 3.7.2019. The photocopy relating to the said proceeding is filed on record. So far as the alleged correspondence made by the complainant to the Agricultural Department for seeking sanction to Divisional Joint Director, Agricultural Department, Nashik Division, Nashik. The office of the Head of the Department has mentioned that the office has not received any application for sanction particularly dated 7.9.2021.

9. On the other hand, learned APP has submitted that the entire contract was under surveillant of the Agricultural Department and the payment was to be made by cross-cheque only or RTGS, however, he pointed out towards the cheques which appear to be bearer and therefore, he has submitted that there is a syndicate and working since long hand in hand and misappropriation of lacs of rupees might have been taken place. I.O. has to be given opportunity to custodial interrogation of the applicants-accused and therefore, custodial interrogation of the applicants-accused is necessary.

10. The original complainant represented by Advocate Shri. Padvi submitted that, complainant has made correspondence up to the Chief Minister, Maharashtra State including police department and he could not get justice and therefore, ultimately he moved to the court of law and therefore, learned JMFC, Nashik passed order to investigate in the matter and therefore, in order to fair, smooth and thorough investigation of the crime and hence, he prayed present application may be rejected.

11. On perusal of the case diary and various documents discussed above, all the applicants-accused are government servants. So far as order passed by learned JMFC, Nashik under section 156(3) of Cr.P.C. is concerned, merit of the said order cannot be discussed at this stage of proceeding. The fact remains is that the learned JMFC, Nashik has passed order under section 156(3) of Cr.P.C. and consequently, FIR came to be registered with Peith Police Station and police are investigating the matter.

12. So far as misappropriation at the hands of the applicants-accused is concerned based entirely on documentary evidence, which is in public domain. Applicants-accused being government servants the entire record with their office, which is easily available to the investigating officer. So far as bank transaction done with the local State Bank of India, the I.O. has to contact with the Branch Manager of the State Bank of India and taking necessary information from bank.

13. Thus, considering all these things mentioned above ad-interim protection is needs to be confirmed. The applicants are public servants, entire transaction took place from 2011 to 2017 and considering this situation applicants-accused are entitled for anticipatory bail. Hence, following order.

**ORDER**

- 1) Anticipatory bail application No.39/2022 is hereby allowed.
- 2) Interim anticipatory bail granted by this court to applicants-accused No. 1) Naresh Shantaram Pawar, 2) Dagdu Dharu Patil, 3) Sanjay Shamrao Patil, 4) Vitthal Uttamrao Randhe, 5) Deepak Piraji Kusalkar, 6) Dilip

Dnyandeo Fulpagar, 7) Mukund Karbhari Choudhari, 8) Pratibha Yadavrao Maghade, 9) Vishwanath Bajirao Patil, 10) Sardarsingh Umedsingh Rajput, 11) Sheelanath Jagannath Pawar and 12) Radha Chintaman Sahare by order dated 18.1.2022 is hereby made absolute on same terms and conditions.

- 3) Applicants-accused shall make available the entire office record relating to the present transaction in question including their personal bank account and other related documents of required by the I.O.
- 4) Inform to concern police station accordingly.

Date- 04.02.2022

( M.A. Shinde )  
Additional Sessions Judge-8,  
Nashik.