

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 225 OF 2015
WITH
CRIMINAL APPLICATION NOS. 656, 650 OF 2015

Pradeep Gyanchand Raisonni **....Applicant.**

Versus

The State of Maharashtra **....Respondents.**

Mr. Uday Dastane h/f. Mr. D.D. Choudhari, Advocate for applicant.

Mr. P.P. Chavan, Special Public Prosecutor for State.

Mr.P.S. Paranjape & Mr. S.B. Talekar, Advocates for assisting
Special Prosecutor.

CORAM : T.V. NALAWADE, J.
DATED : 13th February, 2015.

ORDER :

1) The application is filed for bail in Special Case No. 4/2012 which was initially pending in the Court of Special Judge, Jalgaon and now which is pending in the Court of Special Judge, Dhule. The case is filed against the present applicant and others for the offences punishable under sections 406, 409, 465, 466, 468, 471, 177, 411, 34 and 120-B of Indian Penal Code and sections 13 (1) (d) r/w. 13 (2) of Prevention of Corruption Act, 1988. Both the sides are heard.

2) Previous applications of the applicant were rejected on merits by this Court and he had gone up to Supreme Court where also he could not get bail. The last application of the present applicant was rejected by this Court on 28.2.2014. This order was challenged by the applicant by filing petition for Special Leave in Supreme Court (Cri.) No. 2530/2014. Upon hearing counsels, the Hon'ble Apex Court dismissed the said petition by order dated 28.3.2014.

3) Present application is filed on the ground that bail is granted by Hon'ble Apex Court to one accused, accused Gulabrao Deokar by order dated 5.1.2015 in petition for Special Leave to Appeal (Cri.) No. 7953/2014. Submissions were made for the present applicant that allegations and the material as against Shri. Deokar and present applicant are similar and so, the applicant is entitled to get relief on the ground of parity. The learned Special Prosecutor opposed the application and he submitted that the material as available against the present applicant is altogether different in nature.

4) The learned APP took this Court through the material which is collected against the present applicant. The main accused is one Shir. Jain. He was the member of Municipal

Council, Jalgaon for some time and then he became the President of Municipal Council. He formed a group of his followers and when he became M.L.A., present applicant was made President of Municipal Council. The policy of the State Government then changed and due to that it was not possible for the present applicant, a man of Shri. Jain, to continue as the President of the Municipal Council for further period. The applicant, however, was member of Municipal Council at the relevant time. There is allegation against the main accused Shri. Jain that he and his three main men like present applicant, Rajendra Mayur and Jagannath Wani hatched conspiracy in the year 1997 to siphon and misappropriate the money of Jalgaon Municipal Council. At the relevant time, one lady was the President of Municipal Council. Shri. Jain took steps to see that the Local Body remains under his control and his directions were followed. He illegally created one High Power Committee in the Local Body, Municipal Council, of the members. The powers of the Standing Committee and other committees were to be exercised by this High Power Committee. As the trusted man of Shri. Jain, present applicant, was made the Chairman of the committee. He was to pass on instructions of Shri. Jain to the Councillors and he was to see that the directions given by Shri. Jain were followed by everybody. As the group of Shri. Jain was in

power, there was no other alternative before the Members of his group including the President of Municipal Council to follow the directions given by the present applicant. Present applicant was authorized to issue directions to all the committees, the President and all the Officers of the Local Body. There is correspondence and there is record of office submissions showing that it is the present applicant, who was taking decisions including the policy decisions in the Council and the Officers of the Municipal Council were following his orders. There are letters and circulars signed by the President showing that the meetings were to be chaired by the present applicant when in ordinary course, meetings are to be chaired by the President of the Municipal Council.

5) In furtherance of conspiracy hatched by aforesaid persons, including the present applicant, they prepared a plan of construction of houses and by using a peculiar modus operandi, they diverted funds of the Municipal Council. Even loan was taken by Municipal Council for this project and that amount was diverted. The loss of more than Rs. 169 Crores was caused to the Municipal Council by these persons.

6) As the application is filed on the ground of parity,

this Court will be discussing the difference between the material available as against Deokar and as against the present applicant. The difference is of following nature.

(i) Present applicant was the most trusted man of Shri. Jain inside the Local Body. Even when there was Government policy, to give go-bye to the Government policy, the other person of group of Jain was made President, but that person was kept under the High Power Committee chaired by the present applicant. When Shri. Deokar became president, he was a member of this committee and like other Presidents he was also following the directions issued by the present applicant.

(ii) The President was not holding the meetings of the Officers and various sub-committees of Local Body and it is the present applicant, who was calling the meeting and giving directions to the Officers and to the various committees and sub-committees.

(iii) The implementation of the project Gharkul was to be done by this High Power Committee and all the directions for the same were issued directly by the

present applicant. He was involved in the process from the beginning like preparation of tender etc. Due to his directions, the conditions suitable to the contractor of Shri. Jain, to whom the work was to be given (Khandesh Builders) were included in the tender notice. The changes in the tender notice were made before acceptance of the tender. Even after the acceptance of tender, the conditions were changed. That could happen only due to present applicant, his directions. On most of the occasions, he skillfully tried to ensure that he was not giving written directions. However, there is record of office submissions to show that the submissions were prepared by the officers as per the oral directions given by the present applicant. The material showing as to how the conditions were changed and what was the effect of the conditions on the other contractors, who were likely to fill the tenders is already discussed in the previous orders.

(iv) Due to the present applicant, the contractor of Shri. Jain could get back the bank guarantee, when the contractor was apparently responsible for breach of conditions of the contract. Only due to his control over

the Local Body, including of the President, money could be siphoned to the contractor and then to the main accused.

(v) The District Collector had informed the Government confidentially about the illegal activities of the main accused and the present applicant and the applicant was shown as the person of main accused Shri. Jain. They were doing illegal activities by using aforesaid Local Body.

(vi) Till the year 2006 no officer of council and the corporation could show courage to take action, to give report.

(vii) Pressure tactics were played when the Commissioner of Corporation (Municipal Council was converted to Corporation in the meantime) gave report in respect of aforesaid offences to police. The accused/applicant gave report against the complainant, Commissioner Shri. Gedam to police that he had committed theft of lap-top of Corporation. Fortunately, police filed 'C' summary report and he was protected by Court also. Many other proceedings were filed like

contempt proceedings, after giving of notice of contempt against the complainant. The contractor filed a suit for damages against the complainant after registration of the crime. All these steps were taken apparently as a group of Jain and to see that the concerned are pressurize and actions are not taken in the crime against accused. Shri. Deokar then parted ways and he joined other political party, N.C.P.

(viii) Present applicant became Mayor subsequent to registration of crime and then he took steps like to pass resolutions of the Corporation to the effect that the complaint was wrongly filed and it needs to be withdrawn. Written correspondence was made after passing of this resolution with District Superintendent of Police. The resolution was made on 15.3.2010 and it is signed by the present applicant as a Mayor. The copy of resolution shows that 37 Corporators signed in favour of resolution, 20 abstained and only 1 opposed the resolution. This circumstance shows the influence of this accused even over the Corporators who were not from their group. Under the signatures of present applicant, letter was sent to

District Superintendent of Police and then Commissioner of Corporation was also made to send a letter to police to inform about the resolution. This was done in April 2010. Due to this action of present applicant, the investigation was stalled. There is confidential record of police, which is part of chargesheet and it shows that the main accused, a politician, was highly influential and police were in dilemma. After passing this resolution and receipt of correspondence from the present applicant, Commissioner of Police made correspondence with the Government and requested for guidance. Much time was consumed in that process and investigation was stalled. Fortunately, the Government informed that the complaint cannot be withdrawn by the Corporation. At present also, the group of main accused is in power in Jalgaon Municipal Corporation and this circumstance cannot be ignored.

7) There is the record which is also discussed by the Hon'ble Apex Court showing that this group tried to pressurize everybody including the Judicial Officers. One Hon'ble Judge of this Court recused himself from the matter filed by the

co-accused Shri. Jagannath Wani, a partner of the contractor firm, one of the four main supporters, due to their tactics. The Trial Court Judge could not show courage to take cognizance of offence after filing of the chargesheet for about 11 months. Application was required to be moved for transfer of the matter and the learned Sessions Judge transferred the matter to other Judge and then cognizance of the matter was taken.

8) There are allegations against present applicant that he created bogus record of many things including the record of bogus negotiations with the contractor to show that actions were taken in public interest. The record was prepared outside of office at the residential place of the contractor and this could happen due to present applicant.

9) The learned counsel for the applicant submitted that some observations are made by this Court while rejecting the application of Shri. Deokar and they show that there were similar allegations against Shri. Deokar. He submitted that when there is material to show that Deokar was benefited due to the aforesaid conspiracy, there is no material against the applicant to show that he was benefited. This submission of the present applicant cannot be accepted. The aforesaid material shows that even

during the period when Shri. Deokar was the President of the Council, there was High Power Committee and Shri. Deokar was treated at par with the other Presidents who were followers of main accused Shri. Jain. Different treatment was given to the present applicant by the main accused and it can be said that applicant is the main man of the main accused Shri. Jain and main accused only trusted the present applicant for keeping control over the Local Body on his behalf. It can be said that Deokar was acting under the present applicant and so, the case against Deokar is not similar to the case against the present applicant. Only on the basis of monetary benefits, inference cannot be drawn in such cases. There are trusted followers of the politicians, who can do anything for their leader. Such followers are ordinarily dangerous person as they can go to any extent. The political workers who are interested in monetary benefits are of different nature and they get satisfied after getting some monetary benefits. Specific steps taken by the present applicant during his subsequent regime as a Mayor of the same Local Body show that after the main accused, it is the present applicant, who controls their group. Shri. Deokar could yield some influence during investigation as he became M.L.A. and even Minister in the State Government. This Court has made observations in this regard when the bail of Shri. Deokar was

cancelled. This influence Deokar was having was of his own and that was not of group of Jain. Jain was arrested prior to Deokar. The aforesaid circumstances show that Deokar acted as per the directions received from present applicant and Shri. Jain and so, the material as against him is of different nature. Shri. Deokar is not M.L.A. or corporator or a member of group of Shri. Jain, but applicant is still the man of Shri. Jain.

10) The learned counsel for applicant submitted that as against Deokar there are more than 9 similar cases registered when as against present applicant there are only three more cases registered of similar nature. It needs to be noted here that the case of other project of corporation of airport involves huge amount and the record like audit report in respect of that project is missing. The aforesaid record and circumstances show that present applicant and the main accused continue to keep control over the Local Body and so, the investigating agency was not able to get relevant record in other crimes.

11) Most of the witnesses are from Local Body and the group of main accused and the present applicant is still in power in the Local Body. The same cannot be said in respect of Shri. Deokar. In such a case, imposing of some conditions has no

meaning as the witnesses are always afraid of persons in power. They can be influenced not only by taking disciplinary actions, but by giving post of their choice and by other manners. When a person is kept behind bars, it is not possible for him to send orders and get the orders executed and witnesses feel protected. But when he is out, it becomes possible for him to exercise effective control over the things. For this reason, this Court holds that present applicant is not entitled to get bail.

12) The learned counsel for applicant submitted that applicant is behind bars for more period than the period for which Shri. Deokar was behind bars. This circumstance also cannot help the applicant in view of the aforesaid circumstances.

13) In view of the discussion made above, this Court has no hesitation to hold that the ground of parity is not available for present applicant and the applicant does not deserve bail.

14) The learned counsel for applicant placed reliance on some reported cases which are as under :-

**(i) (2010) 3 Supreme Court Cases 746
(Ajmer Singh Vs. State of Haryana),**

**(ii) (2012) 4 Supreme Court Cases 134
[Dipak Shubhashchandra Mehta Vs. Central**

Bureau of Investigation and Anr.],

(iii) 2011 (126) DRJ 525 [Sharad Kumar & Ors. Vs. CBI],

(iv) 2011 SCC OnLine Del 2365 [Sanjay Chandra Vs. C.B.I.]

There cannot be dispute over the the propositions made in these cases. The facts and circumstances of each and every case are always different. This Court has already held that the case against applicant is not similar to the case against Shri. Deokar.

15) In the result, the application is rejected.

16) Criminal Application Nos. 656, 650 of 2015 filed for permission to assist the learned Special Public Prosecutor are allowed and disposed of.

[T.V. NALAWADE, J.]

SSC/