IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

Criminal Application No. 828 of 2015

Umesh s/o Balkisan Agrawal (Goyal). .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. R.R. Mantri, Advocate, holding for Shri. P.K. Lakhotiya, Advocate, for applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for respondent.

Shri. S.S. Patil, Advocate, to assist the A.P.P.

CORAM: T.V. NALAWADE, J.

DATE : 5th MARCH 2015.

ORDER:

1) The application is filed for the relief of bail. Both the sides are heard. This Court has perused the papers of investigation. Learned counsel Shri. S.S. Patil was allowed to assist the learned Additional Public Prosecutor.

2) Charge sheet is filed against the applicant and others for offences punishable under sections 406, 408, 409, 420, 467, 468, 470, 34 etc. of the Indian Penal Code. Crime was registered on the basis of report given by one cooperative spinning mill by name Jawahar Shetkari Sahakari Sut Girni, Morane, Tahsil and District Dhule. There is allegation that this cooperative society had purchased cotton for its business and in respect of every transaction Value Added Tax (VAT) was collected by the vendor. This VAT amount was not deposited with the Government. As per the scheme of the Government as incentive, which the Government provides, the society was entitled to refund of the VAT amount after production of relevant record. When the society applied for refund of the VAT, it transpired that VAT amount of the transactions made by the society with the accused persons was not deposited with the Government. False record was created by vendor. The amount was more than Rs.3.67 crores.

3) There are allegations that the main accused Dinesh Balkisan Agrawal had approached the society for the transactions and other persons like Subhash

Girdharilal Mangal, Omprakash Ramavatar Tayal were also there and names of at least 14 firms were given for such transactions but Dinesh Balkisan Agrawal had represented that all these firms were created by them though in different names. The applicant is the real brother of said Dinesh Balkisan Agrawal. In the names of some accused, separate registration was done for VAT purpose.

4) The investigation revealled that most of aforesaid concerns were not in existence at the addresses given to the complainant and also at the addresses mentioned on the relevant record like bilties etc. The investigation revealled that bales of cotton were loaded at Mansa Cotton Ginning Factory,Sendhwa, Madhya Pradesh. It is admitted that said company is in the name of wife of the applicant and the applicant has obtained general power of attorney of his wife to run that business. There is material collected to show that Dinesh and present applicant were together in the said business and from the premises of Mansa Cotton Ginning Factory the goods were loaded for reaching to the complainant's factory. The

goods were not dispatched at addressed given in bilties. The submissions made show that the land on which there is aforesaid factory belongs to both Dinesh and present applicant. Though submission was made by learned counsel for the applicant that partition was effected between Dinesh and the applicant, he admitted that there is no record of partition with them.

5) The material collected shows that blank bilties were collected from transporters and the contents were filled by these persons. False record was created to misappropriate the VAT amount. It appears that the Sales Tax Department has also filed a report in respect of this misappropriation and separate crime is registered. Submissions are made that one more crime is registered in Hatkanangale Tahsil of Kolhapur District on the basis of report given by one more cooperative spinning mill against these accused. Learned counsel for the applicant submitted that his name was not mentioned in the F.I.R. of the present case and also as per his information in another F.I.R. Even if the name of the applicant was not initially mentioned in the present F.I.R., his name

transpired during investigation. There is voluminous record against the applicant. Many witnesses will be giving evidence against the applicant to show that he and Dinesh were doing this business together. The learned counsel for the applicant submitted that there is no record with the prosecution to show that the amount was credited in the account of the present applicant. However, this submission cannot be accepted at this stage. When the applicant was doing the business with Dinesh and if Dinesh had withdrawn the amount, in some way he could have siphoned the amount. This fact need not be proved by the prosecution, if there is other convincing material to show that they were together doing this business.

6) Learned counsel for the applicant submitted that the applicant is behind the bars since more than two and half months. Learned counsel submitted that this Court has granted bail to co-accused Sachin Panwar though condition was imposed on him to deposit Rs. 76 lakh. This Court granted bail to other accused Pratik Agrawal, son-in-law of aforesaid Dinesh also and against Pratik no condition of deposit of any amount is imposed

by this Court. Learned counsel for the applicant submitted that the other Hon'ble Judge of this Court has granted bail to other accused Arpit Banwarilal Garg, the other son-in-law of Dinesh though condition was imposed on him to deposit Rs. one crore.

7) Learned counsel for the applicant has placed reliance on the observation made by the Apex Court in a case reported as **AIR 2012 SC 830 (Sanjay Chandra v. CBI)**. Learned counsel submitted that there is no possibility of abscondance of the applicant and in view of the fact that the investigation is complete it is not desirable to keep the applicant behind the bars till disposal of the case.

8) It is not certain as to how much time will be required for disposal of the case. Such cases do take some time for disposal. However, this Court cannot ignore the aforesaid circumstances. Such persons dupe the Government by creating false record. The Government does not receive money for implementation of the projects prepared in the interest of public at large. Such economic

offences need to be dealt with sternly. Such offences are committed only to make wrongful gains and to curb such tendency it is necessary to recover the money involved in the crime. In the present case in respect of the complainant society an amount of Rs.3.67 crores was misappropriated. As per the provisions of the Maharashtra Value Added Tax Act, 2002 made in that regard 100% penalty can be recovered. So this Court holds that in view of the aforesaid material the present applicant needs to be made to deposit at least R.3.5 crores and this amount needs to be paid directly to the Department and the amount needs to be accepted as VAT in respect of the transactions in question. Subject to condition of deposit of this amount bail can be granted to the applicant. In the result, following order.

9) The application is allowed. If the applicant deposits the amount of Rs.3.5 (Rupees Three Crore and fifty lakh only) he is to be released on bail on his furnishing PR and SB of Rs.5,00,000/- (Rupees five lakh only) with one or more solvent sureties in the like amount. He is not to be released unless and until he deposits

amount of Rs.3.5 crores with the Department. He is not to tamper with prosecution witnesses. He is not to commit similar offences. He is to surrender his passport, if any, and is not to leave the country without prior permission of the Sessions Court.

Sd/-
(T.V. NALAWADE, J.)

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