

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**Criminal Application No.2113 of 2015
With
Criminal Application No.2307 of 2015
And
Criminal Application No.2324 of 2015**

Suresh s/o Bhikamchand Jain. .. **Applicant.**

Versus

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

Shri. Raja Thakare, Senior Advocate, holding for Shri. Satyajit Bora, Advocate, for applicant.

Shri. S.S. Ladda and Shri. P.P. Chavan, Special Counsel for the State of Maharashtra.

Shri. A.R. Sayed and Shri. P.S. Paranjape, Advocates, for applicants from Application Nos.2307 and 2324 of 2015.

CORAM: T.V. NALAWADE, J.

DATE : 30th JULY 2015

ORDER:

1) The first application is filed for bail in Special Case No.4/2012 which was initially pending in the Court of the Special Judge appointed under the provisions of the

Prevention of Corruption Act 1988 at Jalgaon and at present the case is pending in the Court of Special Judge from Dhule as the case is transferred to Dhule by the Hon'ble Apex Court. Charge is framed against the applicant for offences punishable under sections 406, 409, 466, 468, 471, 177, 411, 34 and 120B of the Indian Penal Code and also for offence punishable under section 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988. Both the sides are heard. Learned counsels appointed by some residents of Jalgaon were allowed to assist the Special Counsel appointed by the State.

2) The previous four applications filed by the present applicant were rejected on merits and in some applications the ground of ill-health of the applicant was also considered by this Court. Last application of the applicant was rejected by this Court on 18-10-2014. All the orders made by this Court were challenged by filing S.L.P. in Supreme Court by the present applicant and in the fourth proceeding which was filed in the Supreme Court, the Supreme Court refused to grant bail to the present applicant by order dated 20-11-2014. Present

application is filed on the ground that bail is granted to other accused persons like Shri. Deokar and Shri. Raisonni by the Apex Court by orders dated 5-1-2015 and 3-7-2015. Though the present application was filed on 18-4-2015, the learned counsel for the applicant was allowed to argue on the circumstance that bail is granted to Shri. Raisonni by the Apex Court on 3-7-2015. It was submitted for the applicant that this Court had refused bail to Shri. Raisonni by order dated 18-9-1994 and the observations made by this Court against Shri. Raisonni and also to some extent against the present applicant are considered by the Apex Court and then bail is granted to Raisonni and this circumstance needs to be considered by this Court.

3) While deciding the aforesaid applications this Court had observed the present applicant is the main accused of the case. He started his career as a member of the Municipal Council Jalgaon and then he became President of the said Municipal Council. Though he joined political party he had his own group of followers in Jalgaon and even when he became M.L.A., he continued to control the politics of Jalgaon through his separate group.

One Shri. Raisonni to whom bail is granted by the Hon'ble Apex Court was made President of the Municipal Council and he was the most trusted man of the present applicant. As the policy of the Government changed, it was not possible to make Raisonni, the President of the Council and so present applicant started selecting his political workers for the post of President and Shri. Deokar was one of his such workers. For some time, the present applicant and Deokar were members of the same national political party. Even when some persons like Deokar were made President of the Municipal Council, the applicant continued to control the things in the Municipal Council through Shri. Raisonni as Shri. Raisonni was member of the Council and for him special higher power committee was created in the local body by the present applicant. Powers of the Standing Committee and other committees of the Council were given to this high power committee and so the local body was working as per the desire of the present applicant. Shri. Raisonni was passing the instructions of present applicant to the Councillors and nobody could dare to object to any policy decisions or instructions received from the present applicant. There is

record to that effect collected during investigation and it shows that decisions were taken outside of the campus of the Municipal Council.

4) By using the aforesaid unchallenged power, present applicant was misappropriating money of the Municipal Council which was then converted to Corporation. Recently one more crime came to be registered for misappropriation of funds of the Municipal Council and there is allegation that in the said crime amount of Rs.210 crores was misappropriated by the present applicant and his followers.

5) The facts of the present case show that conspiracy was hatched by the present applicant by using his followers in the local body for diverting the funds and for misappropriation of the funds of the local body. A housing project was floated. As the applicant had influence over the Government also, he was Minister, the State Government gave approval for taking huge loan even when the scheme was not feasible. There is allegation that as on the date of the offence the loss of

more than Rs.169 crores was caused to the local body due to the housing scheme. By actually diverting the money of the local body to the accounts of the present applicant and the firms which were under the control of the present applicant the amount is misappropriated. Work order in respect of the housing scheme was given to the firm which was under the control of the applicant and there is record to show that fund, the amount which was paid by the local body to the contractor was diverted to the account of the present applicant. The material available against the applicant in that regard is already discussed by this Court in the previous orders.

6) As the present application is filed mainly on the ground of parity, it is desirable to see difference between the material available as against the present applicant and as against the accused persons like Deokar and Raisonni. The difference in the material is of following nature :--

(i) Present applicant is main accused of the case and almost all the accused including Raisonni were bound to act as per instructions of the present

applicant and they were virtually puppets in his hands. He was able to make anybody the President of the Council and he created even illegal committees like high power committee to see that all the decisions in the local body are taken as per his instructions. Even the officers of the local body could not dare to object to the illegal activities of the present applicant.

(ii) "Gharkul Yojana", housing scheme, was the brain child of the present applicant, he was the Minister and he could influence anybody including the Government at that time and due to the present applicant, the funds were sanctioned, approval was given by the Government and the huge loan could be taken.

(iii) The contractor-firm which got the work order was under the control of the present applicant and it is due to the present applicant the work could be given to the said firm. There is record to show that changes were made in the terms and conditions published in tender notice and even in the agreement after accepting the proposal of the contractor. By changing the terms and conditions care was taken that only this firm gets the work and huge profit can be made by the firm if the work is actually executed. Huge advances were given even when the sites were

not handed over to the contractor. Even when there was fraud on the part of the contractor and the work was not executed, the contractor could get back the bank guarantee. This way loss was caused to the local body. In the past, prior to this project also the then Collector had informed to the Government confidentially about the illegal activities of the present applicant and the manner in which he was causing loss to the local body and was misappropriating the money. No action was taken by the Government;

(iv) When one Commissioner of the local body showed courage in the year 2006 and gave FIR in respect of the present matter, pressure tactics were used by the present applicant against the Commissioner who was of the rank of I.A.S. Even crime was registered against him for theft of a laptop of the Corporation at the instance of brother of applicant. Fortunately the Investigating Officer filed "C" summary report and this Court also gave protection to the said Commissioner. Many proceedings were filed like contempt petition to pressurize him and even a civil suit came to be filed by the contractor against this I.A.S. officer for recovery of crores of rupees by contending that he is personally responsible for the loss caused to the contractor. When crime was registered, procession

was taken by the applicant to the police station to pressurize the police officers and threat was given to them in the presence of public. Threats of use of fire arm even against the Collector were given. The material includes the photographs of the incident in which the applicant was quarelling with the police officers. Police did not show courage to make investigation for many years.

(v) Threats were given to the investigating officer who was of the rank of I.P.S. even in Court campus that he will be implicated in false case to teach him a lesson as he had acted against the present applicant. The said officer fortunately showed courage and made record of this threat.

(vi) Threats were given to some witnesses, councillors who had given statements to police that he would destroy them and their families if they give material against him to the investigating agency;

(vii) Police could not show courage to make investigation of five more crimes registered against the present applicant and his associates for similar offences. Those crimes are still under investigation and it can be said that no progress is made in the investigation of those matters. Even the original audit reports are missing. There is record of

confidential nature showing that the police had informed to the Government that he is influential man, he was pressuring police and everybody was acting under his pressure.

(viii) He and his men gave threats and also rushed at the Government Medical Officer when he tried to show the rules to them.

(ix) Even after his arrest he was in a position to influence even the Government and police machinery. After his arrest, for most of the time he was kept in Saint George Hospital even when he ought to have been kept in J.J. Hospital where there is jail ward. Even when there was no serious illness only to see that no inconvenience is caused to him he was kept in other hospital.

(x) Record is there to show that even judicial officers before whom the matter was taken were acting under pressure. After filing of the charge sheet cognizance was not taken for many months. Even when some orders were made by this Court and when matter was pending in this Court for bail, temporary bail was granted by the presiding officer to the present applicant on flimsy ground like religious function. This order came to be cancelled;

(xi) Two Hon'ble Judges of this Court recused from the matter. In the previous bail application the then learned counsel of the applicant had insisted that the undersigned should recuse himself from the matter. He was allowed to tell the grounds in open Court. The undersigned refused to do so and reasons were also given in the order made in previous matter. These circumstances show as to what extent the applicant can go.

7) The aforesaid circumstances show that the material as against the present applicant is not similar to the material which is available against Shri. Deokar and Shri. Raisonni. Even when he is behind the bars, he can control many things and he has actually controlled the things. If he is out of jail, there will be fear created in the minds of witnesses and even police will be afraid to take steps like serving witness summonses and making it possible to produce the witnesses in the Court. Already much delay is caused due to the tactics played by the present applicant. He had filed proceedings in this Court to challenge the cognizance of the matter itself by contending that sanction under section 197 of the Code of Criminal Procedure and that under the provision of the

Prevention of Corruption Act is necessary. This Court (other Hon'ble Judge) had granted stay to the matter and due to the stay, the case could not make progress for about one year. Thus it cannot be said that the applicant is suffering due to the delay caused in trial of the case. He is interested in delaying the trial of the case and this Court has no doubt in its mind that if he is granted bail the Court will not be in a position to conclude the case.

8) Learned counsel for the applicant showed to the Court some developments of the matter to show that recording of evidence of only one witness is going on. One circumstance needs to be noted in the background of the aforesaid discussion that the present Presiding Officer was on leave on the last three consecutive dates like 10-7-2015, 23-7-2015 and 24-7-2015.

9) It appears that the Government is interested in early hearing of the cases filed against the persons involved in politics. In view of the aforesaid circumstances, a Special Judge can be appointed for this case so that the case is expeditiously disposed of. Such

action is desirable in the present matter. If such step is not taken and the case is not taken to the stage of conclusion, present case will become a glaring example for ordinary persons to say that influential persons can do anything and Courts are helpless when influential persons are before them as accused. Thus at present bail cannot be granted to the applicant and the aforesaid steps need be taken.

10) In the result, Criminal Application No.2113 of 2015 stands rejected. Criminal Application Nos.2307/2015 and 2324/2015 stand disposed of. Copy of this order be sent to the Registrar (Judicial) of the Principal Seat of this Court for placing it before the Hon'ble the Chief Justice and copy of this order be sent to the Principal Secretary to Government of Maharashtra, Law and Judiciary Department for placing it before the concerned so that Special Judge is appointed for this case.

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

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