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

CRIMINAL APPLICATION NO. 2236 OF 2015

Dinesh Balkisan Agrawal,
Age: 49 Years, Occu: Business,
R/o A. B. Road, Dendhwa,
Dist. Badwani, Madhya Pradesh

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr P. M. Shah, Senior Advocate, instructed by Mr S. P. Shah, Advocate for applicants;
Mr S. R. Palnitkar, Addl. Public Prosecutor for respondent
Mr Shrikant S. Patil, Advocate to assist Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO.2325 OF 2015

Mangalsingh S/o Surendrasingh Chavan,
Age: Major, Occu.: Agriculture,
R/o : Parashi Mohalla Main Road,
No. 4 Indor.

..APPLICANT

VERSUS

The State of Maharashtra

..RESPONDENT

Mr N. L. Chaudhari, Advocate for applicant;
Mr S. R. Palnitkar, Addl. Public Prosecutor for respondent
Mr Shrikant S. Patil, Advocate to assist Addl. Public Prosecutor

CORAM : N.W. SAMBRE, J.

DATE : 26th October, 2015

ORAL ORDER :

In both these applications, the accused were arrested in connection with C.R. No. 85 of 2014, registered with Taluka Police Station, Dhule, for offences punishable under sections 406, 408, 409, 420, 467, 468, 469,

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470, 471, 472, 120-B read with sec. 34 of the Indian Penal Code. The arrest was effected on 6th November, 2014 and after filing of the chargesheet, an application was moved seeking regular bail.

2. The applicant in Criminal Application No. 2236 of 2015 was ordered to be released by learned Additional Sessions Judge, Dhule, vide order dated 2nd April, 2015 on regular bail, on condition that he shall deposit an amount of Rs. 2,43,00,000/-, whereas the applicant in Criminal Application No. 2325 of 2015 shall deposit an amount of Rs. 20,00,000/-.

3. It is the order which directs the applicants to deposit the amount referred supra, is subjected to challenge in the present applications, as according to the applicants, the said conditions are onerous and the object to effectuate the conditions will not be fulfilled.

4. Learned Counsel appearing on behalf of the applicants would urge that the conditions so imposed are beyond the scope of sections 437 and 438 of the Code of Criminal Procedure.

5. Mr Shah, learned Senior Counsel appearing on behalf of the applicant, while relying upon the judgment of the Apex Court in the matters of **Sumit Mehta Vs. State (NCT of Delhi)**, reported in (2013) 15 SCC 570, **Ramathal and ors. Vs. Inspector of Police and anr.**, reported in (2009) 12 SCC 721, **Sheikh Ayub Vs. State of M.P.**, reported in (2004) 13 SCC 457, **Sandeep Jain Vs. National Capital Territory of Delhi**,

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reported in (2000) 2 SCC 66, would urge that such conditions are beyond the scope of section 438 of the Code of Criminal Procedure, as they violate the personal liberty and as such, fundamental rights of the party.

4. Learned Additional Public Prosecutor appearing on behalf of the State, while opposing the applications would urge that this Court, in other Criminal Applications bearing No. 3286 of 2015 in Criminal Application No. 828 of 2015, 1990 of 2015 in Criminal Application No. 385 of 2015, 2116 of 2015 in Criminal Application No. 1990 of 2015 and 3606 of 2015 in Criminal Application No. 3286 of 2015, vide order dated 21st July, 2015, has already rejected the similar prayer in the similar circumstances, which order, according to him, is upheld by the Apex Court. According to him, the amount of defalcation was held in trust, meant for Value Added Tax (VAT) which is to be paid to public exchequer and in law, the applicants were never entitled for the same. According to him, any undertaking; guarantee or an affidavit will not entail the Government to run on such documents, as the amount defalcated is the amount of deposit which was held by the applicants in trust for the Government which they have intentionally mismanaged. He then would urge that the Court below was right in incorporating the condition of pre-deposit before releasing the applicants on bail.

5. Learned Counsel appearing on behalf of the complainant would urge that the applicants are in habit of committing such type of offences and has sought to place reliance upon the various first information reports

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registered against them at Police Station, Hatkanangale in Kolhapur district and at Police Station, Navapur in Nandurbar district etc. According to him, similar prayer made by accused Dinesh was rejected by this Court in Criminal Application No. 2227 of 2014 on 7th July, 2014, which order was upheld by the Apex Court in Special Leave Petition No. 7075 of 2014, on 8th October, 2014.

6. According to the learned Counsel, the applications being sans merit are liable to be rejected.

7. In my opinion, the present applications do not call for any interference, particularly at the behest of the present applicants, for the following reasons :-

(a) That the applicants herein appear to be holding the amount in trust, which was required to be deposited with the Government towards Value Added Tax. The amount was never meant for the applicants for their personal use and as such, there is no occasion for the present applicants to dispute as regards their statutory liability to pay the said amount to the Government, which is towards the tax. It is a fact that the submissions on the part of the applicants were made that they undertake to deposit the said amount, however, in my opinion, the amount which was due towards payment of tax cannot be given latitude, as Government cannot run on assurances and

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undertakings.

(b) Apart from above, it is required to be noted that the applicants herein appear to be in habit of committing such offences, as is apparent from registration of crimes against them in Kolhapur and Nandurbar districts.

7. In the above background, though the submissions are made that the conditions imposed while releasing the applicants on bail are unreasonable and onerous, it will be required to be noted here that the said exception, in my opinion, will not operate in favour of the applicants, particularly when the amount was held by the applicants for the Government in trust.

8. In the light of above, both the applications lack merits and, therefore stand rejected.

(N.W. SAMBRE, J.)

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