IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.
Criminal Appellate Jurisdiction.

CRIMINAL APPLICATION NO./2903/2015.
WITH
CRIMINAL APPLICATION NO. 3081 OF 2015.

CRIMINAL APPLICATION NO.2903/2015.	**CRIMINAL APPLICATION NO.3081/2015.**
TUSHAR TUKARAM PAKHARE.	AMIT S/O ARVIND RATNAPARKHI
VERSUS	**VERSUS**
THE STATE OF MAHARASHTRA.	THE STATE OF MAHARASHTRA.

Appearance =>

Mr. A.P. Mundargi, Senior Counsel i/by Mr. A.K. Bhosale, Advocate for the Applicant in Criminal Application No.2903/2015.

Mr. Shirish Gupte, Senior Counsel i/by Mr. Govind Kulkarni, Advocate for the Applicnt in Criminal Application No.3081 Of 2015.

Mr. V.H. Dighe, Additional Public Prosecutor for the State of Maharashtra.

CORAM : V.M. Deshpande, J.

DATE : 3rd July, 2015.

Per Court :-

These two Criminal Applications are filed for grant of regular bail, since the Applicants therein are languishing in jail in connection with CR No. I 45/2015 registered with Police Station, M.I.D.C., Waluj, Aurangabad, District - Aurangabad for the offences punishable under Section/s 277, 278, 284, 308, 336, 120(B), 34 of the Indian Penal Code.

[2] Heard Mr. A.P. Mundargi, learned Senior Counsel i/by Mr. A.K. Bhosale, learned counsel for the Applicant in Criminal Application No.2903/2015, Mr. Shirish Gupte, learned Senior Counsel i/by Mr. Govind Kulkarni, learned counsel for the Applicant in Criminal Application No.3081 Of 2015 and Mr. V.H. Dighe, learned Additional Public Prosecutor for the State of Maharashtra, in extenso.

[3] These two Applications are for bail, pending trial. The court is not expected to evaluate the merits and de-merit of the prosecution case in detail for deciding the Applications for bail. Suffice to say, the court has to take overall and broader view of the prosecution case.

[4] In Criminal Application No.3081 Of 2015, the Applicant is the employee of the Sterlite Technologies Company Limited. (In short, “S.T.C.Ltd.”). Applicant therein holds the post of Supply Chain Manager.

[5] “S.T.C.Ltd.” is a company registered under the Indian Companies Act, 1956. The said company is having factory which produces optic fiber and it is situated at Plot Nos. E-1 to E-3, M.I.D.C., Waluj, Aurangabad, District – Aurangabad. Said company in the process of creating its final product i.e. optic fiber, creates a bio-product known as hydrochloric acid (In short, HCL), which is used as raw material by different companies. Undisputely, said bio-product is hazardous one. Though the said bio-product is hazardous one, it can be used as raw material by some other companies for their final product. In order to purchase such hazardous product, the company which intends to purchase such hazardous product requires necessary No Objection Certificate from the Pollution Control Board. Said bio-product can be dispose of by parent company according to procedure and norms as laid down by the government agency either by effecting certain treatment or it can be disposed of by selling the same to the intended purchasers, who requires the same, ultimately for manufacturing their own final products.

[6] With these background, let's scrutinize broadly the prosecution case **:-**

First Information Report is lodged by Police Inspector, M.I.D.C. Police Station, Waluj, Aurangabad. According to the First Information Report, secret information was received in the Police Station that near agricultural field bearing Gat No.124, situated at Aurangabad - Ahmednagar highway, at company by name – Gujrath Fright Carrier Transport Company located in Survey No.124 of village Tisgaon, which is owned by one of the Accused in present crime, in the precinct of said company, HCL which is waste chemical is being discharged/emanated, therefore, according to the First Information Report, the raid was made on 20th February, 2015. at 7.25 a.m., in the morning.

[7] When the raid was made, that time, in the precinct of Gujrath Fright Carrier Transport Company, towards river known as

"Khamb" tankers were standing there and with the help of pipe from one of such tanker through compound wall of the said company, it was noticed that chemical was being discharged / emanated. According to the First Information Report five persons were present there. In the First Information Report itself their names are appearing. Out of that, one is Tushar Pakhare, who is the Applicant in Criminal Application No.2903/15. Said Tushar was arrested immediately alongwith other persons, present there.

[8] Mr. A.P. Mundargi, learned Senior Counsel submitted that except Section 308 of the Indian Penal Code all other Sections are triable by Judicial Magistrate, First Class and further they are bailable offences. In so far as section 308 of the Indian Penal Code is concerned, though applicability is not seriously challenged by the learned Senior Counsel, at this stage, it is submitted that, it is in two parts and in the given set of facts, from the entire charge sheet, it is clear that at the most second part of Section 308 of the Indian Penal Code can be made applicable and, therefore, it is submitted that, maximum punishment will be three years.

Mr.A.P. Mundargi, learned Senior Counsel further submitted that, Applicant – Tushar is arrested on 28th February, 2015. Applicant – Tushar is in jail since about four months.

[9] Mr. V.H. Dighe, learned Additional Public Prosecutor, who in his usual submissive manner tried to drive the point in favour of the prosecution, painstakingly, however, he has fairly submitted that, prima facie statement of Mr. A.P. Mundargi, learned Senior Counsel in respect of applicability of Section 308 of the Indian Penal Code cannot be disputed.

[10] In so far Applicant – Tushar is concerned, there is nothing available on record to show that in any way, he is concerned with "S.T.C.Ltd." or Gujrath Fright Carrier Transport Company, at least prima facie.

[11] Mr. A.P. Mundargi, learned Senior Counsel has pointed out the following material against the Applicant – Tushar :-

(i) His presence at the spot, at the time, when raid was made.

(ii) Page No.81 of the charge sheet, which is a communication from Police Sub Inspector of M.I.D.C., Police Station, Waluj, Aurangabad to the A.C.P., Local Crime Branch, Aurangabad, by which the information is called about CDR/SDR, in respect of 20 persons, who are mentioned in the said communication. Name of Applicant – Tushar is at Sr.No.9 and against his name cell No.9823947647 is shown.

[12] Mr. A.P. Mundargi, learned Senior Counsel also invited my attention to the name which is appearing at Sr.No.5 in the said communication which stands as "Sunil Khambekar" and against his name, three cell numbers are shown, out of which one is same cell number which is shown in the name of Applicant – Tushar, therefore, according to Mr.A.P. Mundargi, learned Senior Counsel, there cannot be dialogue between same man on two different cell phone.

[13] I am afraid to accept the said submission of the learned Senior Counsel in view of availability of the CDR which are rightly pointed out Mr. Dighe, learned Additional Public Prosecutor, which is available on record at page Nos.93 to 98. This CDR report is in respect of Sumit Khambekar which shows that from his cell phone No.9823306406 certain calls are made to cell phone No.9823947647 which is in the name of Applicant – Tushar. However, merely certain calls are made that by itself cannot be a incriminating circumstance against Applicant – Tushar. If we have close look to the said CDR it starts from September, 2014 to December, 24th, 2015.

[14] The present offence, according to the prosecution has occurred in the month of February, 2015. Thus, there is no proximity and live link between these telephonic talk with the date of alleged offence. This is important for the reason that it is not prosecution case that earlier to the present incident, any of the Applicant or "S.T.C.Ltd." was guilty of discharging hazardous material in the said river.

[15] In that view of the matter, submission made on behalf of learned Additional Public Prosecutor that there is material that present Applicant – Tushar was in contact with other accused – Sumit, cannot have impact while evaluating the case of the present Applicant – Tushar for his personal liberty.

[16] Further according to the prosecution, Tushar was found present on the date and time of the raid. Merely because person was found to be present at the spot, allegedly the spot of incident, that by itself cannot be a incriminating circumstance. There may be various reasons for his presence there.

[17] Further learned Additional Public Prosecutor has fairly stated that, in this bulky charge sheet, except the fact that at the time of raid, present Applicant was present and there is CDR report, as discussed in preceding paragraphs, there is no other material against Applicant – Tushar. It is also submitted by learned Additional Public Prosecutor that there is nothing available with the investigating agency to show that Applicant - Tushar is having any direct or indirect contact either with "S.T.C.Ltd." or Gujrath Fright Carrier Transport Company or any of the company, which has purchased by-product of "S.T.C.Ltd.. In that view of the matter and since the charge sheet is already filed and looking to the fact that, in the near future, there is no possibility of the trial being taken up for its hearing, Applicant – Tushar can be released on bail.

[18] The learned Additional Public Prosecutor submitted that conditions be imposed upon Applicant – Tushar that he shall attend Local Crime Branch, Aurangabad, which is investigating agency and who has filed the challan before the court of law, once in a fortnight, preferably on every Friday, between 3.00 p.m. to 5.00 p.m., till trial is over.

[19] In so far Appliant – AMIT S/O ARVIND RATNAPARKHI

(Applicant in Criminal Application No.3081/15) is concerned, the learned Additional Public Prosecutor would submit that his application is opposed on the ground that charge sheet against this Applicant is not filed. According to the learned Additional Public Prosecutor, Applicant – Amit is arrested on 11th May, 2015, therefore, he submits that, till charge sheet is filed, he should not be released on bail.

[20] To counter this submission, it is submitted by Mr. Shirish Gupte, learned Senior Counsel that after the arrest of Applicant – Amit, he was taken into police custody remand. Even the learned Additional Public Prosecutor submitted that after the arrest of Applicant – Amit, he was in the custody of Investigating Officer till 19th May, 2015. Thereafter he was taken into M.C.R. Thus, in so far as Applicant – Amit is concerned, investigation is over, at the hands of Investigating Officer.

Further it is also fairly submitted by the learned Additional Public Prosecutor that other investigation *vis-a-vis* Applicant – Amit is also completed. In so far as his case is concerned, admittedly, he is not having any control over the company. He was discharging his duty as employee. Submission is made before this court by the learned Additional Public Prosecutor for the State that Applicant – Amit is authorized signatory. May be, he is authorized signatory that by itself does not reflects or connotes that he is having control over policy decision of the company, in which is is serving as employee.

[21] Charge sheet itself contains a various agreements executed by "S.T.C.Ltd." with buyers who have purchased the bio-products namely HCL. They are **:-**

(i) M/s. Shri. Balaji Chemical Industries, having its office 56, Jail Road, Indore (M.P.)

(ii) Shivem Solutions, having Office at Shop No.11, Shoppers Gate, Near Shubham – 3, Vapi, Daman Main Road, Chala Vapi – 396191.

(iii) Jetsons, having factory at Kalyan-Murbad Road, Mharal Pada, District Thane and Office : behind State Bank of India, ground floor, Kalyan-ambarnath Road, Sector – 17 Ulhasnagar – 421 003.

[22] It is not prosecution case that, these three companies – buyers are not armed and/or not having required No Objection Certificates to purchase the hazardous product like HCL. In fact, charge sheet itself contains communication dated 19th August, 2010 from Member Secretary, M.P. Pollution Control Board, Paryawaran Parisar, E-5, Arera Colony, Bhopal -17 (No.2052/HOPCB/HSMD/ Indore-Recy./2010, dated 19th August, 2010) which is in respect of No objection for utilization of the hazardous waste spent acid / used acid as a supplementary resource or after processing under Hazardous Wastes (Management, Handling and Trans-boundary Movement) Rules, 2008 and said licence is from 7th February, 2010 for a period of five years.

[23] The learned Additional Public Prosecutor invited my attention to the communication made from Gujrath Pollution Control Board to the Police Inspector, Valuj (MIDC) Police Station, Aurangabad dated 12th March, 2015 (GPCB/VAPI/T-249/191 Dated 12/03/15). It appears that this communication is made in response to the query made by the Investigating Officer to the Gujrath Pollution Control Board.Said communication unequivocally demonstrates/show that Shivem Solutions, is not armed with the necessary permission for trading chemical activities and, therefore, it is the submission of the learned Additional Public Prosecutor that present Applicant, who is authorized signatory to the agreement between Shivem Solutions and "S.T.C.Ltd." is responsible person. Though at the first look submission made by learned Additional Public Prosecutor appears attractive however, on closure scrutiny, at least, prima facie, it cannot be considered while deciding the bail application for the reason :-

> **(i)** That at least prima facie, there is no material available on record to show that when the agreements between Shivem Solutions and "S.T.C.Ltd." was entered into by applicant Amit in spite of the knowledge that, Shivam Solution is not having necessary permission in spite of that "S.T.C.Ltd." has agreed to handover the hazardous material.

[24] Secondly, after the chemical are handed over to buyer, "S.T.C.Ltd." loose its control. It is not prosecution case that as per the direction of the present Applicant – Amit, these three buyers have found to be disposing of hazardous material into the river.

[25] Admittedly, when these hazardous product were found to be in process of discharge in Khamb river that time, Applicant – Amit was not present on the spot. In that behalf, Mr. Shirish Gupte, learned Senior Counsel has invited my attention to point out that this Applicant was initially cited as a prosecution witness and his statement was also recorded by the Investigating Officer under Section 161 of the Code of Criminal Procedure.

[26] Thus, according to learned Additional Public Prosecutor only material that can be used against the present Applicant is that he is authorized signatory. In absence of any material on record that the Applicant was having any control over the policy to dispose of hazardous material, he cannot be held responsible.

[27] In view of the said aspect, the Applicant who is in jail from 11th May, 2015 need not remain there, especially when in so far as this Applicant concerned investigation is over and mere formality of filing of the charge sheet is remained to be done. Further it is not case of the prosecution that in the event, the Applicant is released on bail, he will not available to the course of justice. Record shows that both these Applicants are having deep roots in the society.

[28] That reminds me a authoritative pronouncement of Hon'ble Apex Court in case of Sanjay Chandra Gupta v/S. C.B.I., reported in 2012(1) S.C.C., 40 the Hon'ble Apex Court has in Paragraph No.23 has observed as under :-

> "..Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that

any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."

Also in paragraph No.40 of the said Judgment, the Hon'ble Apex court has observed as under :-

The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. That leads me to pass the following order **:-**

ORDER

(1) Criminal Application No.2903 Of 2015 is allowed.

(i) Applicant - TUSHAR TUKARAM PAKHARE shall be released on regular bail on he executing P.R. Bond of Rs. 50,000/- [Rs. Fifty Thousand.] with two solvent sureties in the like amount, in connection with CR No. I 45/2015 registered with Police Station, M.I.D.C., Waluj, Aurangabad, District - Aurangabad for the offences punishable under Section/s 277, 278, 284, 308, 336, 120(B), 34 of the Indian Penal Code.

(ii) Bail before trial court.

(iii) Applicant - TUSHAR TUKARAM PAKHARE shall attend Local Crime Branch, Aurangabad, who is investigating agency once in a fortnight, preferably on every Sunday, between 3.00 p.m. to 5.00 p.m., till trial is over.

(iv) Applicant shall not leave the country, without prior permission from the trial court.

(v) Applicant shall not try to influence any of the prosecution witnesses or shall not tamper with the prosecution case.

(2) Criminal Application No.3081 Of 2015 is allowed.

(i) Applicant - AMIT S/O ARVIND RATNAPARKHI shall be released on regular bail on he executing P.R. Bond of Rs. 50,000/- [Rs. Fifty Thousand.] with two solvent sureties in the like amount, in connection with CR No. I 45/2015 registered with Police Station, M.I.D.C., Waluj, Aurangabad, District - Aurangabad for the offences punishable under Section/s 277, 278, 284, 308, 336, 120(B), 34 of the Indian Penal Code.

(iii) Bail before trial court.

(iii) Applicant - AMIT S/O ARVIND RATNAPARKHI shall attend Local Crime Branch, Aurangabad who is investigating agency once in a fortnight, preferably on every Friday, between 3.00 p.m. to 5.00 p.m.

(iv) Applicant shall not leave the country, without prior permission from the trial court.

(v) Applicant shall not try to influence any of the prosecution witnesses or shall not tamper with the prosecution case.

(3) With this, both the Criminal Applications are allowed and same are disposed of accordingly.

(4) Needless to mention, observations made in this order are prima facie in nature and those are made only for the purpose of decision of present bail Applications and those may not be considered by the learned Judge of court below, who shall be ultimately ceisen with the matter, while deciding the matter.

(5) Parties to act on the humdust of operative portion of this order.

(V.M. DESHPANDE, J.)