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

1. CRI.APPLN/3286/2015 In CRI.APPLN/828/2015

UMESH S/O BALKISAN AGRAWAL (GOYAL)
V/S
THE STATE OF MAHARASHTRA

WITH
CRI.APPLN/1990/2015 In CRI.APPLN/385/2015

SACHIN S/O MANAK PANWAR
V/S
THE STATE OF MAHARASHTRA

WITH
CRI.APPLN/2116/2015 In CRI.APPLN/1990/2015

VISHWASRAO CHINTAMAN THAKARE
V/S
SACHIN S/O MANAK PANWAR

WITH
CRI.APPLN/3606/2015 In CRI.APPLN/3286/2015

SHRI VISHWASRAO CHINTAMAN THAKARE
V/S
UMESH S/O BALKISAN AGRAWAL (GOYAL) AND ANR

Mr. R.F. Totla h/f. Mr. P.K. Lakhotiya, Advocate for applicant in Cri. Appln. No. 3286/15.
Mr. H.D. Deshmukh, Advocate for applicant in Cri. Appln. No. 1990/15.
Mrs. R.K. Ladda, APP for State in all applications.
Mr. Shrikant S. Patil, Advocate for applicant in Cri. Appln. Nos. 2116/15 & 3606/15 (for assisting APP).

CORAM : T.V. NALAWADE, J.
DATED : 21st July, 2015.

ORDER :

1. The first two applications are filed for relaxation of condition imposed by this Court while granting relief of bail to

the applicants and the remaining two applications are filed on behalf of original complainant for permission to assist the learned APP. The original complainant wants to oppose the application. Both the sides are heard.

2. Bail was granted to Sachin Panwar by this Court in Criminal Application No. 385/2015 and condition was imposed that he should deposit Rs. 76 lakh for getting the relief. Bail was granted to Umesh Agarwal (Goyal) by this Court in Criminal Application No. 828/2015 and condition was imposed that he should deposit in the Court the amount of Rs. 3.5 Crore. Only after depositing the aforesaid amounts, these accused were to be released on bail.

3. Present proceedings are filed only on the ground that the applicants are not in a position to deposit the aforesaid amounts. For Umesh Agarwal, there was additional submission that in the past, Umesh could not produce the record of partition between him and the brother and now he is having the record of partition. Even if this contention is accepted, this circumstance will not make any difference and on that ground, applicant Umesh cannot get bail. Some record is produced to show that a proceeding was started by these two brothers before revenue

authority of the State and in that proceeding, orders were made by revenue authority to enter the name of Dinesh Goyal, brother, as the owner of the properties like Survey Nos. 80/14, 81/39, 80/12 and 81/21. The names of Dilip, Basant were also entered and that was done in the year 2004. However, the record like lease document shows that in the year 2012 in respect of the same properties, lease deed was shown to be executed by Mansa Industries owned by Umesh Goyal in favour of M/s. Mansa Cotton. Of this concern Rakesh Goyal and Smt. Lata Umesh Goyal are shown as partners.

4. In view of the seriousness of the offence committed by the applicants, it is necessary to reproduce the relevant portions of previous orders made by this Court when condition was imposed. The relevant portions are paragraph Nos. 2 to 7 from Criminal Application No. 385/2015 which is as under :-

> "2. The crime was registered on the basis of report given by Jawahar Shetkari Sahakari Sutgirni Limited, Dhule to Dhule Taluka Police Station. This society has purchased cotton bales and it had paid VAT. The cotton was sold to the Society in the names of different firms which were proprietary concerns, having separate VAT TIN numbers. It is the allegation of the Society that even when it had paid the VAT in respect of every

transaction, the VAT was not deposited with the concerned department of the Government. It is the case of the Society that it is entitled to reimbursement of such tax and when it took steps for having reimbursement, it was informed that the VAT amount was not deposited by the vendor with the concerned department. This total amount of VAT was around Rs. 3.67 Crore. In the complaint, Society gave the names of the firms and also the proprietors of the firms.

3. It appears that the transactions were mostly done through one commission agent and commission agent had contacted one Dinesh Balkishan Agrawal. Allegations are made that though the transactions were made between the Society and different firms, it is Dinesh Agrawal, who was making the transactions in the names of these firms. There is allegation that one Sachin Manak Panwar, applicant from the first proceeding is the proprietor of Chirag Enterprises and many transactions were made with Chirag Enterprises and the VAT which was paid was deposited in the bank account opened by Chirag Enterprises. This amount was more than Rs. 64.46 lakh.

4. The applicant from the second proceeding Pratik Agrawal is the son in law of Dinesh Balkishan Agrawal, the main accused. There are allegations against applicant from the

second proceeding that he was actually handling the business of Dinesh and he was handling the accounts of Dinesh and he was making the transactions of transfer of amounts from various accounts and that way, he is also benefited.

5. Chargesheet is filed and the prosecution wants to prove from the account statements of Vaishali Cotex of which Dinesh is proprietor, that the amount of Rs. five Crore was diverted to the concerns by name Rajesh and Rajni and some amount was also paid by cash to these concerns by Vaishali Cotex. The prosecution wants to prove that though the concerns like Rajesh and Rajni are standing in the name of different persons, the present applicant Pratik was running the business under those names.

6. This Court asked the learned APP, who is assisted by learned counsel Shri. S.S. Patil and who has filed appearance for original complainant that whether there is some material to show that Pratik was benefited out of these transactions or that any concern of Pratik had supplied cotton to the complainant Society. The submissions show that there is no such record. Though the prosecution wants to prove that Pratik had started three concerns, no transactions were made by the Society with those three concerns. This applicant is behind bar since 30.8.2014.

7. The chargesheet is filed for the offences punishable under sections 408, 406, 420, 467, 468, 34 etc. of I.P.C. and 120-B of I.P.C. also. The main accused Dinesh is arrested and he is still behind bars. The submissions were made by the learned counsel for the applicant Pratik that some amount (Rs. 49.70 lakh) is already deposited by other accused from the aforesaid amount of Rs. 3.70 Crore. In view of this submission, this Court holds that the applicant from the first proceeding viz. Sanchin Panwar can be granted bail subject to condition that he deposits the amount, which is shown to be due from him as VAT. Though the initial amount was Rs. 64.46 lakh, the submissions made show that with the penalty and other things, the amount may go up to Rs. 76 lakh. This Court holds that applicant Sachin Panwar can be released on bail subject to condition of deposit of Rs. 76 lakh by him with the Department which is to be accepted as VAT. Only after depositing of such amount by Sachin, he is to be released on bail. So, his application is allowed. If he deposits the amount of Rs. 76,00,000/- (Rupees seventy six lakh), he is to be released on bail on his furnishing PR and SB of Rs. 5,00,000/- (Rupees five lakh) and one solvent surety of like amount. He is not to commit similar offence. He is not to tamper with the prosecution witnesses."

Paragraph Nos. 3 to 8 from Criminal Application No. 828/2015 are as under :-

> "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.
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> 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 from address 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 together were 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."

5. It is unfortunate that the investigation was limited only to aforesaid crime. This crime revealed only due to one circumstance that the complainant Society was entitled to refund of VAT amount and when it claimed refund, rebate, it transpired that the VAT amount collected from the Society was not deposited with the Government. Considering the aforesaid modus operandi, there was possibility that similar offences were committed in respect of other VAT amounts collected from other customers by the accused and that amount was also not deposited. It appears that investigation was not made on that line. In view of these circumstances, this Court holds that the condition cannot be relaxed or cancelled. The learned counsel for applicant placed reliance on the case reported as **2014 (3) MWN (Cr.) 425 Madras High Court [Roashan Vs. The State].** The High Court has made some observations regarding the conditions which can be imposed for giving relief of bail. The

facts and circumstances of each and every case are always different. The agency involved in the investigation is not taking steps for recovery of such amount which needs to be treated as stolen property and even the department can recover such amount by attaching properties. In such cases, it is the Court which is expected to take care of public interest and so, the conditions cannot be cancelled.

6. In the result, both the applications filed for relaxation of condition stand rejected.

7. The applications filed for permission to assist the learned APP are allowed and disposed of.

[T.V. NALAWADE, J.]

ssc/