

(1)

4447.15crapln.

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 4447 OF 2015

Maharu s/o Chapla Rathod,
Age: 53 years, Occu: Government Service,
R/o. Plot No. 23, Sambhaji Colony,
Hiwarkheda, Road, Kannad, Tq. Kannad,
Dist. Aurangabad,
At present Tirupati Executive Kaveri, E-4,
Ulkanagari, Garkheda Parisar, Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,
Through Investigation Officer,
Kranti Chowk Police Station,
Aurangabad, Dist. Aurangabad

....RESPONDENT

Mr R. V. Gore, Advocate for applicant;
Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 4036 OF 2015

Ramnath S/o Khushalrao Chormale,
Age: 56 years, Occu: Social Worker,
R/o. At post Changatpuri, Tal. Paithan,
District Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Kranti Chowk,
Aurangabad, Dist. Aurangabad

....RESPONDENT

Mr S. S. Thombre, Advocate holding for Mr M. S. Karad Advocate for
applicant;
Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH

CRIMINAL APPLICATION NO. 3970 OF 2015

Sambhajirao Bhagwanrao Langore,
Age: 48 years, Occu: In Charge Additional
Chief Executive Officer, Zilla Parishad,
Aurangabad, R/o. Vedantnagar,
Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,

....RESPONDENT

Mr Joydeep Chatterji, Advocate for applicant;
Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 3966 OF 2015

Deepak S/o Devidasrao Joshi,
Age: 58 years, Occu: Service,
R/o. C-2, saraswati Colony (West),
Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,
Through Kranti Chowk Police Station,
Aurangabad

....RESPONDENT

Mr A. B. Kadethankar, Advocate for applicant;
Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 3949 OF 2015

Vilas S/o Sopanrao Jadhav,
Age: 58 years, Occu: Retired,
R/o. Plot No. 6, Rashmi Nagar,
Near Auditor Society, Jalgaon Raod,
Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,
Through Kranti Chowk Police Station,
Aurangabad, Tal & Dist. Aurangabad

....RESPONDENT

Mr A. D. Shinde, Advocate holding for Mr M. P. Bhaskar, Advocate for applicant;

Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 3947 OF 2015

Smt. Jayshiri Rawan Sonkawade,
Age: 41 years, Occu: Service,
R/o. B-2/4, Kasliwal Tarangan,
Mitmita, Aurangabad
Tq. & Dist. Aurangabad

....APPLICANT

VERSUS

1) The State of Maharashtra,
Through Police Station, Kranti Chowk,
Aurangabad, Dist. Aurangabad

2) The Superintendent of Police,
Aurangabad, Dist. Aurangabad

....RESPONDENTS

Mr S. J. Salunke, Advocate for applicant;

Mr S. A. Ambad, Addl. Public Prosecutor for respondent

WITH
CRIMINAL APPLICATION NO. 3928 OF 2015

Deepak S/o Gopalrao Chaudhary,
Age: 52 years, Occu: Govt. Service,
As Chief Executive Officer,
R/o Z. P., Jalna, Dist. Jalna

....APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Kranti Chowk,
Aurangabad, Dist. Aurangabad

....RESPONDENTS

Mr S. S. Thombre, Advocate holding for Mr A. D. Aghav, Advocate for applicant;

Mr S. A. Ambad, Addl. Public Prosecutor for respondent

(4)

4447.15crapln.

WITH
CRIMINAL APPLICATION NO. 3972 OF 2015

Seema Madhukar Sindikar,
Age: 37 years, Occu: Service,
R/o Plot No. 8, Gat No. 92,
Peshwa Nagar, Satara Parisar,
Beed by-pass, Aurangabad,
Taluka and District Aurangabad

....APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Kranti Chowk Police Station,
Aurangabad,
Taluka & District Aurangabad

....RESPONDENTS

Mr D. S. Bagul, Advocate for applicant;
Mr S. A. Ambad, Addl. Public Prosecutor for respondent

CORAM : N.W. SAMBRE, J.

DATE : 25th August, 2015

ORAL ORDER

Heard respective Counsel for the applicants and learned
A.P.P. for non applicants – respondents.

2. Present applicants are accused in Crime No. 465/2015 registered with Kranti Chowk Police Station, Aurangabad, for the offence punishable under Sections 109, 120-B, 166, 167, 201, 34, 403, 405, 409, 417, 420, 365, 465, 468, 471 of the Indian Penal Code.

3. One Mr. Rajesh Polad Rathod, claiming to be a social worker, preferred the complaint under Section 156 of the Code of Criminal Procedure alleging therein the commission of offence with following accusations.

4. According to the complainant, for the financial year 2012-2013 out of total budget, Rs.28,00,000/- was sanctioned for providing solar lights which were made available to the concerned users/beneficiaries who were from S.T. and V.J.N.T. categories. It is alleged in the complaint that 95% subsidy was provided to the beneficiaries and solar lanterns were to be purchased from the agencies which are approved and for which scheduled rates are decided and fixed by the Maharashtra Energy Development Agencies. It is alleged that on 20/10/2012 the subject about purchase of solar lights was not on agenda of the meeting of the Social Welfare Committee of Zilla Parishad and the said meeting was adjourned to 29/10/2012. In the adjourned meeting held on 29/10/2012, Resolution Nos. 34 and 35 came to be passed approving list of the beneficiaries. It is further alleged that since the subject was not on the agenda of the meeting dated 29/10/2012, same ought not to have been considered and taken on record in the adjourned meeting on 29/10/2012. It is further alleged that in absence of list of the beneficiaries forwarded by Panchayat Samiti, so as to cause defalcation of public money, resolution of purchase of solar lights was passed. After passing

the resolution, the order of purchase was placed to B.G. Appliances Pvt. Ltd., and amount was paid to the extent of 95%. It is alleged that the quality of solar lights which were purchased, were not up to the mark

5. Criminal Application No. 3966 of 2015 is by the applicant, who was posted as Assistant Finance Officer from the Department of Social Welfare, Zilla Parishad, Aurangabad, who has alleged to have prepared false documents such as list of beneficiaries and has benefited the B.G. Appliances Pvt. Ltd. from whom the purchases were made.

6. Criminal Application No. 3928 of 2015 is by the Chief Executive Officer, whose tenure was for the period of 21/10/2013 to 15/01/2015. According to him, he was not Incharge of the post of Chief Executive Officer of Zilla Parishad, Aurangabad when the transaction in question took place. Perusal of the complaint reflects that the allegations against him that in spite of sufficient evidence available against the accused persons, he has intimated the Investigating Officer not to initiate the action against the accused persons.

7. Criminal Application No. 4036 of 2015 is by the Chairman of Social Welfare Committee. In the complaint under Section 156(3) of Code of Criminal Procedure, the allegations against the said applicants are acting in connivance with other accused persons, the subject which was

not on agenda of the meeting dated 20/10/2012 about purchase of solar lights, was inserted in the adjourned meeting and illegally passed Resolution Nos. 34 and 35.

8. Criminal Application No. 3949 of 2015 is by Chief Accounts Officer, who stood retired on 31/05/2015. The accusations against him are that in contravention to the Government policy i.e. Government Resolution, the payments were sanctioned and made to the agency from whom solar lights were purchased.

9. Criminal Application No. 3972 of 2015 is by Social Welfare Officer against whom the allegations are of preparing incorrect file and placing on record the forged and false list of beneficiaries and to misguide the Committee in the matter of purchase of solar lights with an intention to cause loss to the public exchequer and to benefit the private company from whom purchases were made.

10. Criminal Application No. 3947 of 2015 is by District Social Welfare Officer who was posted from 23/11/2012 against whom the allegations are acting in contravention to the Government policy as provided in Government Resolution and aided preparation of supplying the order. According to her, the charge was handed over to one Mr. M.C. Rathod, Child Development Project Officer, Aurangabad by order dated

21/11/2012 and she was not in charge of the present case.

11. According to her and other applicants, Resolution No. 35 pertains to approval of list of beneficiaries for entitlement of purchase of various equipments such as oil engine, electric pump, power spray pump, solar lantern, bicycles, computers, flour mill, tin sheets.

12. According to the applicant in Criminal Application No. 3947 of 2015, the resolution of purchase and approval of list of beneficiaries was prior to, her taking over charge. She has invited attention of this Court to the purchase order dated 09/11/2012. The applicant further submits that supply order in the matter pursuant to the resolution was issued by the Additional Chief Executive Officer and as per policy of the Government, the material purchased was certified by MEDA, an expert body. According to the applicant, the applicant has no involvement in the matter in question.

13. In Criminal Application No. 3970 of 2015 i.e. by Incharge Additional Chief Executive Officer, the case of the prosecution appears to be issuance of supply order dated 09/11/2012 pursuant to a forged list of beneficiaries. The applicant therein submits that the entire action of the applicant is pursuant to Resolution No. 35 referred supra passed in the meeting of the Committee authorized to deal with the issue. According to

him, the file was put up before him certifying that the agency MEDA has communicated on 17/07/2012 about availability of B.G. Appliances Private Company Limited, Aurangabad agency with whom rate contracts are already approved certifying the availability of Rs.28,00,000/- towards funds, approval of the Committee, to the rate contract based upon the supply order was issued and was signed by him. He would further urge that the purchase order was issued after approval of the list of the beneficiaries. According to him, the ground level agencies though cleared file in question and material purchased was certified by the MEDA. According to him, original record in the matter is already submitted to the Investigating Officer on 14/08/2015.

14. In Criminal Application No. 4447 of 2015, same is preferred by the Social Welfare Officer. According to him, his tenure on the said post was in between 09/10/2012 to 22/11/2012. He submits that the entire action of technical/administrative approval and selection of beneficiaries was completed before the approval granted by the applicant. According to him, as per the policy, beneficiaries are selected by Grampanchayat.

15. All the applicants would urge that list of beneficiaries was prepared pursuant to the Government Resolution dated 20/10/1999 and 20/06/2008, the select list was prepared by the Gramsabha of village Panchayat which was in turn approved by Panchayat Samiti and Zilla

Parishad. Once both the authorities have approved it, according to the applicants, it is not even open to the Zilla Parishad to go into details of the said list, if the said list is approved by both the authorities below. The applicants would then urge that having approved list of beneficiaries unless anything adverse was brought to the notice of the present applicants, they were not in law on wrong side to change or reject the list.

16. While opposing the bail applications, learned A.P.P., has submitted that in the complaint specific role is attributed to each of the applicant, whose *prima facie* involvement could be ascertained from the case diary. Learned A.P.P., then urged that the applicants herein have acted hand in glove so as to cause loss to the public exchequer by playing fraud on the democratic institution. According to learned A.P.P., there is *prima facie* involvement of present applicants and as such, bail be rejected.

17. From the record, it appears that the complainant Rajendra filed Criminal Application No. 772 of 2015 before the Court of Judicial Magistrate, First Class, Aurangabad. Learned Magistrate, taking cognizance, has passed order under Section 156(3) of the Code of Criminal Procedure to investigate the matter. Pursuant thereto, the Investigating Officer appears to have registered the Crime No.465 of 2015 vide F.I.R. dated 07/07/2015.

18. It is further required to be noted that the applicants thereafter moved learned Sessions Judge seeking bail which came to be rejected by learned Sessions Judge, as learned Sessions Judge noticed that the custodial interrogation of the accused persons is necessary as there is misappropriation of the public amount, having regard to the seriousness of the charge.

19. In the above referred back ground, when the submissions of the respective Counsel are analyzed with that of submissions made by learned A.P.P., it is required to be noted that the statutory body i.e. Zilla Parishad was directed by the State Government pursuant to Government Resolution dated 20/10/1999 and Government Resolution dated 20/06/2008 to spent 20% of their income on the various schemes meant for backward class people.

20. It is claimed by the accused persons that the purchase of solar lanterns was done in accordance with the guideline mentioned in the Government Resolution dated 20/10/1999 and 20/06/2008, however, from the record, it appears that in the meeting dated 22/05/2012, vide Resolution No. 15 by changing original scheme of 20% grant as is provided, 14 new schemes were approved pursuant to the section 138 of Zilla Parishad and Panchayat Samiti Act, 1961 after re-appropriation. Vide

Resolution No. 4, administrative approval pursuant to section 125 and technical approval pursuant to section 99 came to be granted in the meeting of Social Welfare Committee on 07/06/2012. In the adjourned meeting dated 29/10/2012, notice bear signatures of the President and Social Welfare Officer, who is a Member Secretary. In the adjourned meeting dated 29/10/2012, vide Resolution No. 34, the rates and by Resolution No. 35 the approval to the proposal received from Panchayat Samiti containing 1470 beneficiaries was granted.

21. It is also *prima facie* noted that, after passing of the above referred Resolution Nos. 34 and 35, which deal with the approval of rate contract and approval of list of beneficiaries, the supply order was issued and project incharge of MEDA has approved supply material pursuant to the supply order granting technical approval upon verification of goods on 11/01/2013. It is required to be noted here that, the supplier has given warranty of one year and comprehensive maintenance contract of five years.

22. From the perusal of enquiry report, it reflects that the applicants herein have tried to pass on bugs to each other, in relation to the approval and finalization of the list of beneficiaries, however, same at this stage can be termed as “irregularity” and not “illegality”.

23. The purchase of the solar lanterns from the agency whose rate contracts are approved by MEDA, State Government Undertaking, based on which rate purchase were made. The criminal intention alleged in the present case is that of taking a subject on the agenda of the adjourned meeting for which no statutory embargo was demonstrated. So far as the approval of the list of beneficiaries is concerned, same can be independently looked into at administrative level, as both the resolutions referred supra provide for mechanism of approval of list and verification thereof.

24. In the present case, the offences which are alleged herein are punishable in between one year to ten years, provided disappearance of evidence and forgery is proved.

25. Apart from above, it is required to be noted that the applicants herein are Government officials or public servants and it cannot be inferred that there is every likelihood of they being abscond from the clutches of law. It is also required to be noted that in view of submissions made by Deputy Chief Executive Officer that on 14/08/2015 the entire record is already submitted to the Investigating agency. In my opinion, the applicants are not evading the process of investigation. Apart from above, it is required to be noted here that the amount of consideration was paid to the concerned agency from whom supplies were made and supplies are

duly certified and approved by the officers of the Government Agency i.e. MEDA, on whose approved rate contract basis, purchases are made.

26. In my opinion, the applicants in the above referred back ground, have made out case for pre-arrest bail. In my opinion, appropriate reliance can be placed and support can be drawn from the judgment of the Apex Court in the matter of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others*** reported in ***AIR 2011 SC 312*** and ***Sanjay Chandra vs. Central Bureau of Investigation*** reported in ***(2012) 1 SCC 40***. The role attributed to each of the applicant is arising out of his official position. In addition to above, it is noted that there are no criminal antecedents to discredit to the present applicants and the applicants being public officials cannot flee from the justice. Appropriate support can be drawn from the judgment of the Apex Court in the matter of ***Siddharam Satlingappa Mhetre*** (supra), particularly Paragraphs-122 and 123 and in the matter of ***Sanjay Chandra***, particularly Paragraphs-24,25,36, and 36 and proceed to pass the following order.

27. Criminal Applications stand allowed.

28. In the event of arrest of the applicants, in connection with C.R. No.465 of 2015, registered with Kranti Chowk Police Station, Aurangabad, for offences punishable under sections 109,

120-B, 166, 167, 201 read with sec. 34, 403, 405, 409, 417, 420, 465, 468 and 471 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.15,000/- (Rs. Fifteen thousand) each with one surety in the like amount. The applicants shall attend the concerned police station initially every day for a period of one week from today, between 11.00 a. m. and 12.00 noon and thereafter as and when called by the Investigating Officer. The applicants shall not tamper with the prosecution evidence.

(N.W. SAMBRE, J.)

Tupe/25.8.15