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

CRIMINAL APPLICATION NO. 4317 OF 2015

Jagannath Nathu Wani
Age 76 years, Occu. Nil,
Permanent R/o. "Pitru-Chhaya"
Nehru Chowk, Jalgaon,
District Jalgaon. **....Applicant**

Versus

The State of Maharashtra
Through Investigating Officer,
Jalgaon City Police Station,
Jalgaon, District Jalgaon. **....Respondent.**

Mr. Harshad Nimbalkar h/f. Mr. N.B. Suryawanshi, Advocate for applicant.
Mr. P.P. Chavan, Special Prosecutor for State.

CORAM : T.V. NALAWADE, J.
DATED : 28th August, 2015.

ORDER :

1) The application is filed for bail. This is the fourth application filed for bail in this Court. The last previous application filed for bail was rejected on merits by this Court on 29.7.2013. In the Hon'ble Apex Court the orders made by this Court of refusal of bail were challenged by the present applicant, but he failed to get the relief in the Apex Court also. The last such proceeding filed in the Apex Court by the applicant was disposed of on 7.10.2013.

2) The Hon'ble Apex Court has transferred the case filed against the present applicant and other accused from the Court of Special Judge, Jalgaon to the Court of Special Judge, Dhule in view of the peculiar circumstances and facts of the case. Recently, bail is granted to some accused by the Hon'ble Apex Court, to whom bail was refused by this Court, but condition is imposed on them not to enter district Jalgaon. In view of these circumstances, it was necessary for the applicant to show that there has been change in the circumstances.

3) The applicant came to be arrested on 29.1.2013. The charge is framed against the applicant for offences punishable under sections 120-B, 109, 34, 409, 406, 405, 466, 468, 471 etc. of Indian Penal Code. The charge is also framed for offences punishable under sections 13 (1) (d) r/w. 13 (2) of the Prevention of Corruption Act, 1988 against the public servants who are involved in the crime. The recording of evidence is started and the complainant is under examination in chief.

4) The main accused Shri. Jain was a Cabinet Minister for Housing in the State Government at the relevant time. Though he belonged to a particular political party of national

level, he had his own group in Jalgaon and his group was in power in Local Body, Jalgaon Municipal Council. The applicant was a Director of M/s. Khandesh Builders. The material collected by the investigating agency shows that the connected concerns of M/s. Khandesh Builders and Khandesh Builder were under the direct control of Shri. Jain. In view of these circumstances and fact that the Local Body was under the control of Shri. Jain, most of the work of Municipal Council was allotted to Khandesh Builders from prior to project in question. A conspiracy was hatched by Shri. Jain and his associates to make money by starting housing project of local body for lower income group and as Shri. Jain was Minister in the State Government of concerned department, he used his influence and got sanction to loan from HUDCO for this project.

5) The modus operandi used by the conspirators for giving work of the project to Khandesh Builder is already discussed by this Court in previous orders. The ways by which the money was siphoned from the funds of Municipal Council to Khandesh Builder and then to the present applicant and Shri Jain are also discussed. The amount was shown to be given to the present applicant as advance from Khandesh Builders after receipt of the money from Local body. This amount was

misappropriated.

6) Though the amount was misappropriated in the year 1999 but the work of project was not done and loss of more than Rs. 169 Crores was caused to the Municipal Council, due to acts of Shri. Jain and his group and due to the fact that his party was also in power, nobody dared to give complaint against Shri. Jain and his associates. In the year 2006, the then Commissioner of Jalgaon Municipal Corporation (the Municipal Council was then converted in to Municipal Corporation) showed courage and gave report. The said Commissioner suffered a lot for taking such action and even the crime was registered against him. After registration of the crime in the present matter, police machinery was also harassed and pressurized. Thus, even after registration of the crime in the year 2006, nobody showed courage to take action against Shri. Jain and his associates till the year 2011. When one police officer of rank of I.P.S. showed courage and started making investigation, threats were given to him to implicate him in false case. Due to this influence of Shri. Jain and his associates and their conduct of interference in the machinery, bail was refused to Shri. Jain and his associates. This Court has already observed in previous orders that present applicant was a trusted man of Shri. Jain. Shri. Raisoni was also a

trusted man of Shri. Jain. The relevant material is discussed in previous orders which shows that Khandesh Builders was practically under control of Shri. Jain. That is why the work was given to this concern and the money could be diverted to Shri. Jain. As only trusted men were selected by Shri. Jain and the money was diverted to Khandesh Builders, it needs to be observed that there is prima facie sufficient material to show that the money had come in to the hands of the present applicant from the Local Body and he misappropriated that money.

7) The application is filed mainly on the ground that Shri. Raisoni who was also trusted man of Shri. Jain, is granted bail by the Apex Court and so, the applicant is also entitled to get bail. Though it is true that Shri. Raisoni was trusted man and he was working inside the Municipal Council, the fact remains that the present applicant actually received money from Local Body and the said money is misappropriated. The other circumstances which distinguish the case of the present applicant from Shri. Raisoni and Shri. Devkar are hereinafter mentioned.

8) One more ground was argued by the learned counsel

for the applicant and that is, ill health and old age of the applicant. This Court has already considered this ground while rejecting the previous applications. Further, necessary treatment can be given to the applicant and in that regard also the Hon'ble Apex Court has given directions and guidelines. When it was noticed that Shri. Jain was kept in a hospital, which was not meant for under trial prisoners, some observations came to be made in the Apex Court and the directions are given to see that the accused are given treatment in the Government Hospital. In spite of that, it appears that present applicant was taken to Rubi Hospital, Pune where he was examined.

9) The following circumstances distinguish the case of the present applicant from Shri. Deokar and Shri. Raisoni.

i) Shri. Jain and applicant were apparently doing the business of Khandesh Builders together. Though Shri. Jain was not a Director, there is material to show that this concern was directly under control of Shri. Jain and the business was being done in the property of Shri. Jain. It is already observed that there is convincing evidence against Shri. Jain and present applicant to show that the money which came from the Local Body went to the pockets of Shri. Jain and present applicant.

ii) The applicant was always with Shri. Jain even after filing of the case. When Shri. Jain filed one proceeding in the Apex Court for getting some relief, pursis was filed by the present applicant in the trial Court to inform the Court that he was not ready to conduct the matter unless and until the matter filed by Shri. Jain in Supreme Court was decided. Thus, when Shri. Jain was avoiding the trial and he was creating hurdels, the present applicant was supporting in all possible ways to Shri. Jain.

iii) Present applicant had given notice to District Superintendent of Police that he will start contempt proceeding. It was pressure tactics and it was apparently done at the instance of Shri. Jain.

iv) There is specific allegation against the present applicant that he created false record for getting allotment of work when he was Director of Khandesh Builders.

v) The applicant is businessman, he has money power and he can influence anybody.

10) The learned counsel for applicant submitted that present applicant has resigned from the post of Director and so, this circumstance can be considered. This circumstance cannot be considered in view of the material already available and when they are in position to show that the business is being done by others when actually they are controlling the things.

11) The learned counsel for applicant submitted that as per the list submitted by the prosecution, the prosecution will be examining around 125 witnesses and so, it is not possible that in near future the trial can be concluded. Though there is such circumstance, there are other circumstances which are against the applicant. They have tried from the beginning as discussed above to see that the investigation is not done, charge is not framed and the trial does not make progress. There is material to show that they tampered with the prosecution witnesses. There are more circumstances like advocates from different stations have been appointed by so many accused and their convenience is required to be taken in to consideration. The applicant has not admitted any document shown in the

application filed under section 294 of Cr.P.C. It is a matter of record and many panchanamas are in respect of seizure of documents from local body. The hearing of the matter could not take place for many months due to proceeding which was filed by Shri. Jain and only when the Division Bench of this Court disposed of the proceeding, the recording of the evidence was started. Thus, the blame for delay caused in conducting the trial can be put on the accused.

12) It can be said that the Corporation must be in financial crunch due to the situation created by the accused by misappropriating money in the year 1999 and the year 2000. Not a single paisa is recovered during the investigation when the misappropriated money could have been treated as stolen property under secton 410 of I.P.C. It is unfortunate that when huge loss was caused to the corporation and the amount was misappropriated, nothing is recovered during investigation. In view of these facts and circumstances of the case, this Court holds that bail cannot be granted to the applicant on the aforesaid grounds.

13) The learned counsel for the applicant placed reliance on the following reported cases :-

i) (2015) 7 Supreme Court Cases 291 [Ajay Kumar Choudhary Vs. Union of India through its Secretary and Anr.],

ii) (1995) 1 Bom.C.R. 334 Bombay High Court [Menino Lopes Vs. State of Goa],

iii) 2012 (1) SCC 40 [Sanjay Chandra Vs. Central Bureau of Investigation],

iv) 2012 (2) SCC 680 [Sushanta Ghosh Vs. State of Bengal],

v) 2012 4) SCC 134 [Dipak Subhashchandra Mehta Vs. CBI],

vi) Criminal Appeal No. 790/2012 dated 9.5.2011 [Siddhartha Behura Vs. CBI].

The facts and circumstances of each and every case are always different. There cannot be precedent as such for granting bail. The facts and circumstances of the present case are very peculiar. This Court holds that in view of the facts and circumstances of the present case, bail cannot be granted.

14) In the result, the application stands rejected.

[T.V. NALAWADE, J.]

ssc/