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

CRIMINAL APPLICATION NO. 3546 OF 2016

Vitthalrao S/o Rangnathrao Ambarwadikar,
Age : 73 years, Occu.: Business,
R/o 212, Samartha Nagar,
Aurangabad ..APPLICANT

VERSUS

The State of Maharashtra
Through Police Inspector,
Police Station, Kranti Chowk,
Aurangabad,
Tal. and District Aurangabad ..RESPONDENT

**WITH
CRIMINAL APPLICATION NO.3547 OF 2016**

Prakash S/o Narayanrao Gaikwad,
Age 61 years, Occu. : Pensioner,
R/o Plot No.09, Rishikesh,
Prabhat Nagar, Opp. Shahanoormiya Dargah,
Shahnoorwadi,
Aurangabad ..APPLICANT

VERSUS

The State of Maharashtra,
Through Police Inspector,
Police Station, Kranti Chowk,
Aurangabad,
Tal. and District Aurangabad ..RESPONDENT

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Mr S.S. Thombre, Advocate for applicants;
Mr A.B. Girase, Public Prosecutor for respondent
Mr. S.V. Adwant, Advocate to assist Public Prosecutor

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CORAM : N.W. SAMBRE, J.

DATE : 28th July, 2016

ORAL ORDER :

The applicants are seeking pre-arrest bail, in connection with C.R. No.476 of 2016, registered with police station, Kranti Chowk, Aurangabad, for offences punishable under sections 420, 465, 468, 471 read with section 34 of the Indian Penal Code, registered on 6th May, 2016 for an incident alleged to have taken place between 3rd December, 2012 and 5th May, 2016.

2. The complainant claims to be Vice-Chairman of M/s Chhatrapati Sambhaji Sakhar Udyog Ltd., Chittepimpalgaon, Tq. & Dist. Aurangabad (for short "Sambhaji Sakhar Udyog").

3. Karmaveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd., Ranwad, Tq. Niphad, Dist. Nashik (for short "co-operative sugar factory"), a co-operative sugar factory went in liquidation and Sambhaji Sakhar Udyog, being one of the bidders, was permitted to run the said co-operative sugar factory. Sambhaji Sakhar Udyog of which applicant Vitthalrao in Criminal Application No.3456 of 2016 was one of the directors, vide resolution dated 13th October, 2012, submitted its tender for running the said factory and thereafter vide resolution no.8 of even date, resolved that in case if the co-operative sugar factory is permitted to be run by Sambhaji Sakhar Udyog, the same will be permitted to be run by M/s Ambarwadikar Industries Pvt. Ltd., (for short "Ambarwadikar Industries") through its Managing Director Vitthalrao Rangnath Ambarwadikar. By the said resolution it was resolved that the co-operative sugar factory will be run by Ambarwadikar Industries,

by incurring all profit and loss including that of expenses to be incurred on human resources, government taxes, working capital, etc.

4. Accordingly, co-operative sugar factory on 27th November, 2012, executed a lease agreement for a period of six years in favour of Sambhaji Udyog, which pursuant to resolution no.8, passed on 13th October, 2012, executed a sub-lease agreement on 3rd December, 2012 in favour of Ambarwadikar Industries. It is the case of the complainant that after the sub-lease was executed, applicant Vitthalrao got executed corporate guarantee on the letter head of Sambhaji Sakhar Udyog, as director, by using the seal and stamp of said Sambhaji Sakhar Udyog. It is also claimed that by using the above referred stamps a pledge agreement was also executed, though no such authority was given to applicant Vitthalrao to do so and obtained loan of Rs.30 Crores from Punjab National Bank by pledging sugar. It is also claimed that in addition to above, an amount of Rs.20 Crores, was obtained on similar lines from Dombivali Nagari Sahakari Bank Ltd. It is then claimed that without making payment of the lease money, the dues of the farmers, the government dues, VAT, service taxes, excise and other dues, a fraud is practiced by the applicants on Sambhaji Sakhar Udyog.

5. In the above background, while seeking pre-arrest bail, learned Counsel appearing on behalf of the applicants would urge that the applicants are falsely implicated in the crime in question. According to him, the applicants stand by their liability to pay the dues in accordance with the

terms of sub-lease agreement and the resolutions passed by Sambhaji Sakhar Udyog, from time to time. He would then urge that at the relevant time, the applicant Vitthalrao being director of Sambhaji Sakhar Udyog, in view of the resolutions passed on 5th November, 2013 by Sambhaji Sakhar Udyog, vide resolution nos.6 and 13, passed on 10th August, 2015, was given every authority to sign such documents as will be necessary for running the co-operative sugar factory by executing lawful documents.

6. Mr Thombre, learned Counsel then would urge that everything went smooth from the date of execution of the sub-lease agreement till this date, however, suddenly Sambhaji Sakhar Udyog has proceeded to lodge a false complaint against applicant Vitthalrao so as to take possession of the sugar factory of which the applicant was in possession and which was managed and administered by him till 2015. He would then submit that assuming that whatever has been alleged in the first information report is correct, still the entire allegations are based on the documents which are very much available for the purpose of investigation and prosecution of the applicant. According to him, applicant Vitthalrao enjoys a goodwill and a positive identity in the society, particularly in the industrial circle and owns substantial property within the jurisdiction of this Court. There is hardly any likelihood that the applicant Vitthalrao will run away from the law or the prosecution. He would submit that the applicant Vitthalrao be released on pre-arrest bail.

7. While towing the said points of argument in Criminal Application No.3547 of 2016, moved at the behest of applicant Prakash, the Manager of the Punjab National Bank, learned Counsel would add that he is a public servant and is working with a Nationalized Bank without any past criminal history or any default. According to him, it is out of dispute between the applicant Vitthalrao and the managing committee of Sambhaji Sakhar Udyog, applicant Prakash is made a scapegoat and falsely implicated in the crime in question. He would submit that the applicant Prakash be released on pre-arrest bail.

8. Mr Girase, learned Public Prosecutor would strenuously urge that fraud practiced by both the applicants acting hand in glove on the Government and also Sambhaji Sakhar Udyog, as is apparent from the various resolutions passed by Sambhaji Sakhar Udyog. He would invite my attention to the resolutions dated 13th October, 2012 being resolution nos. 7 and 8, the terms of the lease agreement executed on 27th November, 2012 and the terms of the sub-lease agreement executed on 3rd December, 2012, so as to substantiate his contention that the applicant Vitthalrao was not having any authority to obtain or discharge the loan in favour of Ambarwadikar Industries by pledging sugar. He would then submit that the applicants have also tried to tamper with the evidence, as the documents which were seized during investigation and which were found in the custody of the bank differ. According to him, in view of the fraud as has been noticed, custodial interrogation of the applicants is very much necessary and prayed for rejection of the applications. He would

then add that the permission from the Commissioner of Sugar was a condition precedent for leasing the property in question. However, the lease and sub-lease agreements, referred supra, were executed subject to the permission from the Commissioner of Sugar, which was rejected by the Commissioner of Sugar, still the applicant Vitthalrao continued to administer the sugar factory by pledging sugar stock. He would then invite my attention to certain clauses of the agreement so as to substantiate his contention that the applicant was not authorized to mortgage or pledge sugar. The learned Public Prosecutor then would submit that execution of the corporate guarantee and various no-objection certificates, which are submitted to the Bank of Baroda, are signed by applicant Vitthalrao without any authority and as such there is a fraud practiced by him on the Government Exchequer as also the bank.

9. Shri Adwant, learned counsel appearing on behalf of the complainant has supported the arguments advanced by the learned Public Prosecutor by towing the same line.

10. After having bestowed my thoughts to the submissions made, it is required to be noted that execution of sub-lease agreement between Sambhaji Sakhar Udyog and Ambarwadikar Industries of the applicant, is not in dispute. Clauses 3, 4, 5, 11 and 15 of the said agreement read as under :-

> “3. The sugar manufactured by the Sub-Lesee as well as all bye-products (viz. Molasses, press-mud, bagasee,

Spirit/alcohol etc.) shall be of the ownership of the Sub-lessee and as such the Sub-lessee would be entitled to dispose off the said sugar and all other allied bye-products during the period covered by this agreement subject to statutory compliances as may be required.

4. The liabilities, arising during the course of any crushing season of the lease period, under any tax laws like the Sales Tax Act, Service Tax Act, Income Tax Act, Excise & Customs Duty Act, Cane Purchase Tax Act and all other eligible taxes shall be discharged by the Sub-lessee out of it's own funds.

5. The landlord or the Principal Lesee shall not have any right or interest in the sugar and bye-products manufactured by the sub-lessee during the existence of the period under this agreement.

11. Any grievances of the sugarcane suppliers during the period of the agreement shall be looked into by the Sub-lessee and it shall be liable to pay the legitimate dues of the cane growers who have supplied the sugarcane to the Sub-lessee during the period of this agreement.

15. The sub-lessee shall not lease, sub-lease, assign, let, sub-let, or create/transfer any right, title and/or interest including mortgage, hypothecation, pledge or transfer in any manner or grant leave and license to any person or persons, whether incorporated or not, or otherwise part with the possession in any manner of the immovable & movable properties of the landlord including plant & machinery, other allied equipments and assets

> and any other properties of the landlord Sugar Factory. Any property of the landlord shall not be mortgaged or given as a security to any financial institution or others by the Sub-lessee under any circumstances."

11. The cumulative effect of the above referred clauses gives a *prima facie* impression that applicant Vitthalrao, who has run the co-operative sugar factory, was the owner of sugar that was pledged. It is also required to be noted that resolution no.8, passed on 13th October, 2012, authorizes the complainant to sub-lease the co-operative society to applicant Vitthalrao.

12. It is also to be noted that vide resolution dated 5th November, 2013, being resolution no.6, applicant Vitthalrao was appointed as the Chairman of the co-operative sugar factory and was given all authority to sign for running the said industry. The power to sign given to applicant Vitthalrao vide said resolution was not qualified, but overall powers were conferred on him. Apart from above, it is required to be noted that vide resolution no.5.13, passed on 10th August, 2015, by Sambhaji Sakhar Udyog, the authority to sign, as was given to applicant Vitthalrao, was cancelled. The later resolution fortifies the stand taken by the applicant that he was authorized to sign or execute all the documents for the purpose of running the sugar factory. Both these resolutions, i.e. resolution no.6 of 5th November, 2011 and resolution no.5.13 of 10th August, 2015 are not disputed by Mr. Adwant, learned counsel appearing on behalf of the complainant or the learned Public Prosecutor. The reason for cancellation

of the power of signature, appears to be outcome of refusal of the permission by the Commissioner of Sugar for sub-leasing the co-operative sugar factory vide communication dated 23rd January, 2014.

13. It is required to be noted that the complainant was knowing that sub-lease is subject to the approval by the Commissioner of Sugar. Once the Commissioner of Sugar has refused to accord the approval to the agreement of lease or sub-lease, in my opinion, the option that was available with the complainant, was to challenge the order of Commissioner of Sugar by communicating the same to applicant Vitthalrao. There is hardly any material on record to demonstrate that the complainant, at any point of time, resisted the order of Commissioner of Sugar or has served the same on applicant Vitthalrao. The Commissioner of Sugar, vide his communication dated 23rd January, 2014, has informed the complainant Sambhaji Sakhar Udyog about disapproval for sub-leasing the sugar factory. The complainant thereafter, till August, 2015 kept mum, which speaks volumes about his conduct. The Court is required to read between the lines as regards the conduct of the complainant, particularly, when in January, 2014 itself he was put to notice as regards refusal of permission to sub-lease the sugar factory.

14. Rather, the conduct of the complainant and applicant Vitthalrao, from the date of sub-lease till the cancellation of permission to sign i.e. 10th August, 2015, depicts that the applicant was permitted to run Karmaveer Kakasaheb Wagh Sahakari Sakhar Karkhana Ltd. by pledging sugar or by

signing such documents as were necessary for running the said sugar factory.

15. Apart from above, it is required to be noted that the entire allegations in the first information report are based on documents which could be seen from the record of the Investigating Officer, which are already seized. Apart from above, the fact remains that both the applicants are very much available for the investigation and one of the applicants is a public servant.

16. It is then required to be noted that the Apex Court, in the matter of **Sanjay Chandra v. Central Bureau of Investigation and connected matters, reported in 2011 AIR SCW 6838,** in paragraphs 14, 15 and 25 has observed thus:

> "14) In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should

be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances. 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.

15) In the instant case, as we have already noticed that the "pointing finger of accusation" against the appellants is `the seriousness of the charge'. The offences alleged are economic offences which has resulted in loss to the State Exchequer. Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather "recalibration of the scales of justice." The provisions of Cr.P.C. confer discretionary

jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. This Court, in Kalyan Chandra Sarkar Vs. Rajesh Ranjan - (2005) 2 SCC 42, observed that "under the criminal laws of this country, a person accused of offences which are non-bailable, is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 of the Constitution, since the same is authorized by law. But even persons accused of non-bailable offences are entitled to bail if the Court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the Court is satisfied by reasons to be recorded that in spite of the existence of prima facie case, there is need to release such accused on bail, where fact situations require it to do so."

25) Coming back to the facts of the present case, both the Courts have refused the request for grant of bail on two grounds :- The primary ground is that offence alleged against the accused persons is very serious involving deep rooted planning in which, huge financial loss is caused to the State Exchequer ; the secondary ground is that the

possibility of the accused persons tempering with the witnesses. In the present case, the charge is that of cheating and dishonestly inducing delivery of property, forgery for the purpose of cheating using as genuine a forged document. The punishment of the offence is punishment for a term which may extend to seven years. It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. 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. This Court in Gurcharan Singh and Ors. Vs. State AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing.“

17. In view of above, in my opinion, case for grant of pre-arrest bail is made out. I, therefore, pass following order :-

In the event of arrest of the applicants, in connection with C.R. No.476 of 2016, registered with police station, Kranti Chowk, Aurangabad, for offences punishable under sections 420, 465, 468, 471 read with section 34 of the Indian Penal Code, they be released on bail, on each of them furnishing P.R. Bond of Rs.25,000/- with two sureties in the like amount.

Applicant-Vitthalrao shall attend the Investigating Officer from 3rd to 6th August, 2016, between 10.00 am and 12.00 noon and, thereafter, as and when called.

Applicant Vitthalrao shall not tamper with the prosecution evidence or influence the witnesses.

Applicant Prakash shall attend the concerned Police Station initially on 6th and 7th August, 2016, between 9.00 am and 10.00 am and, thereafter, as and when called by the Investigating Officer.

Applicant Prakash shall not tamper with the prosecution evidence or influence the witnesses.

Criminal Applications stand allowed in above terms.

(N.W. SAMBRE, J.)

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