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

CRIMINAL APPLICATION NO.4613 OF 2015

Raibhan s/o Sukhdeo Tribhuwan ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr S.K. Shaikh, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for respondent No. 2

WITH
CRIMINAL APPLICATION NO.4971 OF 2015

Somnath s/o Bhausaheb Dubale
@ Sominath s/o Bhausaheb Dubile ...APPLICANT

VERSUS

The State of Maharashtra ...RESPONDENT

Mr S. S. Panale, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4793 OF 2015

Piraji s/o Vasant Manal ...APPLICANT

VERSUS

The State of Maharashtra ...RESPONDENT

Mr Sunil B. Jadhav, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH

(2)

CRIMINAL APPLICATION NO.4455 OF 2015

Dattatray s/o Tulshiram Kamble ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr V.D. Sapkal, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO.4641 OF 2015

Vijay s/o Kaduba Khomane ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr V.D. Sapkal, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO.4640 OF 2015

Krushna s/o Devrao Sukashe ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr V.D. Sapkal, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH

CRIMINAL APPLICATION NO.4454 OF 2015

Prakash s/o Yadavrao Dalvi ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr V.D. Sapkal, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

(3)

WITH
CRIMINAL APPLICATION NO.4585 OF 2015

Sambhaji s/o Waghoji Asole ...APPLICANT

VERSUS

The State of Maharashtra ...RESPONDENT

Mr A.K. Bhosale, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4888 OF 2015

Ranjaykumar Pandurang Mainghar ...APPLICANT

VERSUS

The State of Maharashtra ...RESPONDENT

Mr A.K. Bhosale, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4638 OF 2015

Harischandra s/o Ranghnath Sengule ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr Gaurav Deshpande, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4642 OF 2015

Sow. Prayagbai w/o Balu @ Balasaheb Puri ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

(4)

Mr Gaurav Deshpande, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4643 OF 2015

Pralhad s/o Bhanudas Nikam ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr Gaurav L. Deshpande, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4644 OF 2015

Uttam s/o Laxman Nikam ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr Gaurav L. Deshpande, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH
CRIMINAL APPLICATION NO.4899 OF 2015

Manoj s/o Shamrao Dolase ...APPLICANT

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS
Mr Gaurav Deshpande, Advocate for Applicant;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondents/State;
Mr K. D. Jadhav, Advocate for assist to Addl. Public Prosecutor

WITH

(5)

CRIMINAL APPLICATION NO.4364 OF 2015

1. Dr. Arun s/o Damodhar Jarhad
2. Smt. Rupa d/o Vitthalrao Chitrak ...APPLICANTS

VERSUS

The State of Maharashtra & anr. ...RESPONDENTS

Mr Ajinkya Kale, Advocate h/f Mr S.B. Talekar, Advocate for Applicants;
Mr S. Y. Mahajan, Addl. Public Prosecutor for respondent/State;
Mr K. D. Jadhav, Advocate for respondent No. 2

CORAM : N.W. SAMBRE, J.

DATE : 18th January, 2016

ORDER :

By these applications under section 438 of the Code of Criminal Procedure, the applicants are seeking pre-arrest bail, pursuant to an offence registered against them for non-compliance of the requirement of Mahatma Gandhi National Rural Employment Guarantee Act (for short "Act").

2. The allegations against the applicants are that while implementing certain civil work, pursuant to sanction to that effect granted by the competent authority, the applicants, in connivance with each other, have prepared bogus job cards, the amount was shown to have been spent on work, though it was not executed and as such, conspired to cause loss to the public exchequer.

(6)

3. The status of each of the applicants is as under :-

Cri. Appln. No.	Name of the Applicant	Status of the Applicant
4613/2015	Raibhan s/o Sukhdeo Tribuwan	Asstt. Block Development Officer
4364/2015	1)Dr. Arun s/o Damodhar Jarhad 2)Smt Rupa d/o Vitthalrao Chitrak	Tahsildars
4454/2015	Prakash s/o Yadavrao Dalvi	Deputy Engineer
4455/2015	Dattatraya s/o Tulshiram Kamble	Junior Engineer
4585/2015	Sambhaji s/o Waghoji Asole	Junior Engineer
4638/2015	Harischandra s/o Ranghnath Sengule	Grampanchayat Member
4640/2015	Krushna s/o Devrao Sukashe	Grampanchayat Member (now Panchayat Samiti Member)
4641/2015	Vijay s/o Kaduba Khomane	Block Development Officer
4642/2015	Sow. Prayagbai w/o Balu @ Balasaheb Puri	Sarpanch
4643/2015	Pralhad s/o Bhanudas Nikam	Post Master
4644/2015	Uttam s/o Laxman Nikam	Deputy Sarpanch
4793/2015	Piraji s/o Vasant Manal	Contractor
4888/2015	Ranjaykumar s/o Pandurang Mainghar	Gramsevak
4899/2015	Manoj s/o Shamrao Dolase	Gramsevak
4971/2015	Somnath s/o Bhausahab Dubale @ Sominath s/o Bhausahab Dubile	Gram Rojgar Sevak

4. The prosecution story, in brief, is as under :-

One Annasaheb Bhanudas Nikam, an accused for offence punishable under section 307 of the Indian Penal Code, who was acquitted in last week, as is informed by the learned Counsel appearing on behalf of the complainant, has filed Criminal Misc. Application No.261 of 2015, under section 156 (3) of the Code of Criminal Procedure, before the Judicial Magistrate First Class, Gangapur, alleging therein that under the Act, certain works like construction of earthen dam, nursery, plantation of trees on sides of the road, removal of silt from village tank, improvement to internal village roads were executed. According to the complainant and

(7)

the prosecution, while executing the above referred works, instead of hiring labourers, the work was got executed through J.C.B. Machines and forged /bogus job cards were prepared.

5. Pursuant to the above referred application wherein specific instances were mentioned, learned Judicial Magistrate First Class, Gangapur, by order dated 27th July, 2015, directed the concerned police to investigate into the matter for offences punishable under sections 420, 409, 417, 419, 463, 462, 468, 471, 437 read with section 34 of the Indian Penal Code, in view of provisions of section 156 (3) of the Code of Criminal Procedure.

6. As a consequence of the above referred order, C.R. No.I-104 of 2015 came to be registered against the applicants with Waluj Police Station, Aurangabad, for offences punishable under sections 420, 409, 417, 419, 463, 462, 468, 471, 437 read with section 34 of the Indian Penal Code, on 31st July, 2015, for the incidents alleged to have taken place during the period between 2010 and 2014 to 31st July, 2015.

7. It is the case of the prosecution that custodial interrogation of the applicants is necessary, as the amount of defalcation is required to be recovered from them, including investigation also in relation to the *modus operandi* of commission of crime and involvement of the applicants and other accused is to be ascertained.

(8)

8. I have heard learned Counsel appearing on behalf of the applicants and learned Addl. Public Prosecutor, who is ably assisted by learned Counsel appearing on behalf of the complainant.

9. It is the case of the applicants herein that under the Act and the Rules/Government Resolutions framed by the State Government therein, a full proof mechanism is provided, so as to avoid any mismanagement, siphoning away of funds, etc. under the Act.

10. Learned Counsel appearing on behalf of the respective applicants submit that with an intention to achieve the object of the statute, the scheme provides for a final supervision and disbursement by the Tahsildar and the entire scheme is implemented in a pyramid structure, subject to administrative and technical approvals to be granted by the applicants, who are holding responsible posts in the capacity of public servants. Learned Counsel would urge that the amount, if any, disbursed against the work executed, is already recorded and entire record is available in black and white. For the purpose of investigating the aspect of conspiracy as is alleged by the prosecution, custodial interrogation of the applicants is not necessary.

11. While opposing the applications, learned Addl. Public Prosecutor would urge that the job cards are prepared and the accounts are opened with the Post Office and the amounts are withdrawn, which have gone to

(9)

the coffers of the applicants herein, who have hatched criminal conspiracy. According to him, it is only upon custodial interrogation of each of the applicants, commission of the crime could be proved in a proper manner. He would submit that the investigation carried out till today, including the statement of one labourer recorded so far, speak of their participation in the process of opening of accounts, execution of work, etc. Learned Addl. Public Prosecutor then would urge that though the work is shown to have been carried out, in fact, such work was executed by the applicants and the mismanagement of the public funds could be noticed at the threshold. He would then urge that there is a strong *prima facie* case against the applicants and as such, this Court should be slow in granting protection to the applicants herein.

12. Having bestowed my thought to the submissions made and upon perusal of the record, it is noted that the object of the Act is to provide employment to the unemployed labourers. The skilled and unskilled labourers are required to be employed by the Gram Rojgar Sevak under the supervision of Gramsevak and it is upon technical sanction granted by the various technical authorities, the final disbursement authority vests with the Tahsildar, who perhaps is also having supervisory control over the work in question.

13. The allegations against the applicants as are noticed in the complaint under section 156 (3) of the Code of Criminal Procedure speak of non-execution of work, opening of false and bogus accounts with the

(10)

Post Office and drawing of the amount from their accounts, which have gone to the coffers of each of the applicants. Upon perusal of the investigation papers, there is hardly anything on record to *prima facie* connect the applicants herein with the crime in question, particularly requirement for their custodial interrogation.

14. It is to be noted that most of the applicants herein are public servants and they have their permanent place of abode and identity in the society and perhaps also hold immovable property in their respective names. In this background, it is really unbelievable that the applicants herein will run away from the process of law.

15. The work executed and the amount disbursed (if any) is already recorded in black and white and the record to that effect is available either with the Tahsildar, or the Post Office, or the Grampanchayat and such other offices including that of the technical authorities. Once the record is available, in my opinion, custodial interrogation of the applicants is not necessary.

16. A few of the applicants have raised a plea of suppression of fact by the complainant about pendency of the prosecution against him, however, in my opinion, the same will hardly have any bearing over the issue involved.

17. In the above background and having regard to the law laid down by the Apex Court in the matter of **Siddharam Satlingppa Mhetre vs. State**

of Maharashtra & anr., reported in **(2011) 1 SCC 694** and in **Bhadresh Bipinbhai Sheth Vs. State of Gujarat & anr.**, reported in **2015 AIR (SCW) 4988**, particularly observations in paragraph 23 thereof, in my opinion, it will be appropriate to order release of the applicants on pre-arrest bail. Thus, the following order :-

In the event of arrest of the applicants, in connection with C.R. No.I-104 of 2015, registered with Waluj Police Station, Taluka Gangapur, District Aurangabad, for offences punishable under sections 420, 409, 417, 419, 463, 462, 468, 471, 437 read with sec. 34 of the Indian Penal Code, they be released on interim bail, on each of them furnishing P.R. Bond of Rs.25,000/- with one solvent surety in the like amount.

The applicants shall attend the concerned police station as directed by the Investigating Officer.

The applicants shall furnish their mobile numbers, landline numbers, if any, and permanent place of their residence to the Investigating Officer within a period of 72 hours from today. Upon furnishing such details, the Investigating Officer will be free to summon each of the applicants or collectively all of them by giving 24 hours notice to them.

It is expected of the applicants to co-operate with the investigation and if the applicants fail to follow the dictate of the Investigating Officer *qua* their attendance to the investigation, the same shall entail in cancellation of

(12)

their bail upon request to that effect made by the Investigating Officer.

The applicants shall not tamper with the prosecution evidence.

Criminal Applications stand allowed in above terms.

(N.W. SAMBRE, J.)

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