IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 CRIMINAL APPLICATION NO. 5430 OF 2016

GEETA BHASKARRAO SHEJWAL

VERSUS

THE STATE OF MAHARASHTRA

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Mr. S.R.Ghatge, Advocate for Applicants.
Mr. S.D.Ghayal, A.P.P. for Resp. – State.

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CORAM : A.M.BADAR, J.
DATE : 14th OCTOBER, 2016

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PER COURT :

1. The applicant/accused in Crime No. 59/2016 registered at Anand Nagar police station, Osmanabad for the offences punishable u/ss 409,420,465,468,471,474,477-A,120-B,109,201 of the Indian Penal Code, u/s 190 of the Motor Vehicles Act and u/ss 7, 13 (d) (2) of the Prevention of Corruption Act, 1988, by this application is seeking pre-arrest bail.

2. Heard the learned counsel for applicant/accused. He argued that the applicant is Motor Vehicle Inspector posted at the office of the Dy. Regional Transport Officer, Osmanabad. The learned counsel drew my attention to the duty list of the Motor Vehicle Inspectors issued by the Transport Commissioner, Maharashtra State, Mumbai and argued that as per this duty list, work of the Motor Vehicle Inspector is principally technical in nature. The Motor Vehicle Inspector is supposed to inspect the vehicles met with an accident, issue Fitness Certificate, detect offence under the Motor Vehicles Act, etc. The learned counsel argued that, in this view of the matter, there is nothing wrong if the applicant had issued Fitness Certificates to the vehicles during the course of her duty. It is further argued that it is not the duty of the Motor Vehicle Inspector to collect fees from the owners of the vehicles. This work is entrusted to the clerk working with the office and, therefore, the applicant is not liable for any mis-appropriation. The learned counsel further argued that the applicant was on leave for the period from 20/08/2014 to 20/02/2015. According to the learned counsel, Dy. Regional Transport Officer is duty bound to inspect at least 20 % of vehicles per day randomly and,

therefore, even if there are some irregularities in issuance of the Fitness Certificates, then it was the job of the Dy. Regional Transport Officer to detect this fact. The learned counsel argued that in the office of the Dy. Regional Transport Officer at Osmanabad, some software is privately installed. That software is not approved by the State Government. The same is functioning illegally. With this, according to the learned counsel for the applicant, the applicant is entitled for pre-arrest bail as she has already been suspended from duty and as such there is no question of tampering the record. It is further argued that nothing is to be recovered from the applicant.

3. The learned A.P.P. opposed the application by contending that on earlier occasion, the applicant had approached this Court with same relief vide Criminal Application No. 3531 of 2016 and the same was withdrawn on 03/08/2016. Therefore, according to the learned A.P.P., this application is not maintainable. He further argued that there is enough evidence to show the complicity of the applicant for the offences alleged by the department against her.

4. I have carefully considered the rival submissions and perused the papers of investigation. The Order dated 31/03/2015 issued by the Dy. Regional Transport Officer, Osmanabad categorically shows that specific duties were allotted to present applicant, who was working there as Motor Vehicle Inspector. As per this Order, the applicant was given work of registration of new vehicles, so also issuance of permanent licences. The record of investigation shows that though specific duties were entrusted to the applicant and duty of issuance of Fitness Certificates was not entrusted to the applicant during the period from 24/04/2015 to 31/05/2015, the applicant had issued Fitness Certificates to 830 vehicles. Issuance of Fitness Certificates is governed by Rules 62 and 96-A of the Central Motor Vehicles Rules, 1989. There are some directions issued by this Court while dealing with P.I.L. No. 28 of 2013 in respect of issuance of Fitness Certificates. Fitness Certificate is a certificate showing road worthiness of vehicle. It is sensitive work, as the vehicles which are unfit to ply, may cause accidents. The applicant was never entrusted with the work of issuance of Fitness Certificates. Still she issued Fitness Certificates to 830 vehicles. Fitness Certificates, as per Central Motor Vehicle

Rules, are to be issued after imposing necessary fees for inspection of those vehicles. It is seen that though several Fitness Certificates are issued by the applicant, she had not levied fees for issuance of those Certificates. The statement of Junior Clerk shows that after issuance of show cause notice to the applicant, she had deposited sum of ₹ 4 Lakh towards issuance of Fitness Certificates. According to the informant, in this way, the applicant had mis-appropriated an amount of ₹ 21,48,100/-. The actual work of collection of fees might be the work of the Clerk, but it is for the Officer of the Regional Transport Office to impose necessary fees and penalty while issuing Fitness Certificates. The fact that the applicant, after few months, deposited part of the amount with the State Treasury, by itself goes to show that the applicant had not deposited the amount of charges towards issuance of Fitness Certificates. *Prima facie*, this disclose criminal breach of trust as well as cheating. Considering the fact that the applicant was not entrusted with the duty of issuance of Fitness Certificates and the fact that she issued such Certificates without collecting fees and depositing it with the State Treasury, no case for anticipatory bail is made out. Hence, the following order.

5. The Criminal Application stands rejected.

[A.M.BADAR, J.]