IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 5585 of 2016

District : Nanded

Sanganbai w/o. Digambar Mundkar,
Age : 70 years,
Occupation : Household,
R/o. Atkali, Taluka : Biloli,
District : Nanded. .. Applicant.

versus

1. The State of Maharashtra,
   Through In-charge Police
   Station Officer,
   Shivajinagar Police Station,
   Nanded.

2. The Superintendent of Police,
   Nanded, Dist. Nanded. .. Respondents.

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Mr. P.R. Katneshwarkar, Advocate, for the applicant.

Mr. S.D. Ghayal, Addl. Public Prosecutor, for respondent nos.1 and 2.

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With

Criminal Application No. 5767 of 2016

District : Nanded

M.A. Shahed s/o. M.A. Majid,
Age : 45 years,
Occupation : Business,
R/o. Narsi,
Taluka : Naigaon,
District : Nanded. .. Applicant.

versus

The State of Maharashtra,
Through In-charge Police
Station Officer, Shivajinagar
Police Station, Nanded. .. Respondent.

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Mr. S.S. Thombre, Advocate, for the applicant.

Mr. S.D. Ghayal, Addl. Public Prosecutor, for the respondent.

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CORAM : A.M. BADAR, J.

DATE : 24TH OCTOBER 2016

ORAL ORDER:

Applicants in both these applications are accused in Crime No. 172/2016 registered with Shivajinagar Police Station, Nanded, for offences punishable under Sections 420, 467, 468, 471 read with Section 34 of the Indian Penal Code. By these applications under Section 438 of the Code of Criminal Procedure, both these applicants are seeking pre-arrest bail.

2. Heard the learned Counsel appearing for applicant Sanganbai w/o. Digambar Mundkar in Criminal Application No. 5585 of 2016. He argued that the applicant is an old lady aged about 70 years. Her husband expired on 18.01.2015 and thereafter name of

the applicant was introduced in the license. The lealrned Counsel further argued that the applicant is unable to write anything except putting her signature. It is further argued that the applicant had engaged a Chartered Accountant and on 27.06.2016 a notice was received by her which was replied by her Chartered Accountant Mr. A. Sai Prakash. According to the learned Counsel for the applicant, dues of the Sales Tax Department were in respect of period when the shop was managed by her husband. The applicant had filed an application for administrative relief and she has even changed the Tax Consultant. It is further argued that the applicant has paid Rs. 4,98,887/- towards dues of the sales tax and the departmental appeal is still pending. The matter is pertaining to tax liability and therefore custodial interrogation of the applicant is not warranted.

3. I have also heard the learned Counsel for applicant M.A. Shahed s/o. M.A. Majid in Criminal Application No. 5767 of 2016. He argued that every document is prepared by the Chartered Accountant and as assessment was not correct, departmental appeal was filed and stay is operating in that appeal till date. The learned Counsel further argued that the applicant himself on 26.09.2016 made a complaint against the Chartered Accountant to the Police Inspector of Police Station, Shivajinagar, Nanded, in respect of this matter. It is further argued that

amount of about 3,56,700/- towards dues of this sales tax has already been paid by the applicant and the applicant would pay the entire amount as determined by the appellate authority. The learned Counsel further argued that it is not disputed that the Tax Clearance Certificate is forged but every document was prepared by the Chartered Accountant.

4. The learned Addl. Public Prosecutor opposed applications by contending that the applications for Tax Clearance Certificate were submitted under signatures of both applicants and ultimately photo-copies of forged Tax Clearance Certificates were submitted to the State Excise Department for getting the license renewed. Therefore custodial interrogation of both applicants is required as the investigator wants to recover originals of those photo-copies. The learned Addl. Public Prosecutor pointed out that in economic offences, anticipatory bail cannot be granted.

5. I have carefully considered the rival submissions and also perused papers of investigation.

6. The FIR of the crime in question came to be registered at the instance of the Sales Tax Officer of the Sales Tax Department at Nanded, namely Anand Rajaram Mudholkar on on 04.07.2016. Informant - Sales Tax Officer reported Police that holder of

license of liquor shop is required to renew that license in the month of March of every year. For renewal of the license of the liquor shop, the Excise Department insists for no dues certificate from the Sales Tax Department. The informant further reported that both applicants are licensees of CL-III country liquor shops, one located at Naigaon and another at Harnala in Biloli Taluka. According to the informant, applicants in both these applicants have separately applied for no dues certificate from the Sales Tax Department on 31.03.2016. The informant further reported that there were arrears of sales tax amounting to Rs. 1,71,00,000/- in respect of shop of applicant M.A. Shahed (applicant in Cri. Application No. 5767/2016) and that of Rs. 2,16,00,000/- against applicant applicant Sanganbai (applicant in Cri. Application No. 5585/2016). Therefore, according to the informant, no dues certificates in Form No.415 in respect of both these shops owned by applicants herein were not issued by the Sales Tax Department. What was issued to them were dues certificates in Form No. 416. According to the informant, he made enquiry with the Excise Department of the State and found that forged no dues certificates by putting his false signature and forged seals and stamps of the Sales Tax Department were prepared by applicants and these forged certificates were submitted to the State Excise Department for getting renewal of CL-III license by both applicants. With these material averments, a report was lodged which has resulted in registration of Crime No. 172/2016 against both applicants.

7. Prior to adverting to merits of the case, it would be apposite to refer to the relevant provisions of the Maharashtra Value Added Tax Act 2002. Section 32 of this Act mandates a registered dealer furnishing return to pay into the State Treasure, the amount of tax due from him for the period covered by return. He is also required to pay amount of interest and other sum payable by him while furnishing return. Sub-Section 3 of Section 32 requires that registered dealer furnishing a revised return shall pay into the Government Treasure the extra amount of tax first. Sub-Section 8 of Section 32 enables a dealer to apply in prescribed form for Tax Clearance Certificate. The Maharashtra Value Added Tax Tax Rules 2005 prescribes necessary forms for making application for Tax Clearance Certificate and for issuance of Tax Clearance Certificate. Application for Tax Clearance Certificate is to be made under Form No. 414 and Tax Clearance Certificate is required to be issued in Form No. 415 as per these Rules.

8. In the case in hand, record of investigation shows that applicant M.A. Shahed had applied for Tax Clearance Certificate under Section 32(8) of the

Maharashtra Value Added Tax Act, 2002, under his own signature and in similar manner applicant Sanganbai Mundkar had applied under her own signature for Tax Clearance Certificate under the said provision. Record of investigation further shows that no Tax Clearance Certificate under Form No.415 was ever issued to both applicants by the Sales Tax Department of the State. However, it is seen from record of investigation that photo-copies of forged Tax Clearance Certificates were submitted by both applicants before the State Excise Department for obtaining renewal of their license to run CL-III country liquor shops at village Harnala in Biloli Taluka as well as at Naigaon

9. As applications for issuance of Tax Clearance Certificates under Form No. 414 prescribed by Maharashtra Value Added Tax Rules, 2005, were submitted under signatures of both these applicants, it does not lie in their mouth that entire process right from submitting applications for renewal of CL-III license was undertaken by their Chartered Accountant. It cannot be said that applicants are in no way concerned with preparation of forged no dues certificates in Form No.415 which were to be submitted for purpose of renewal of CL-III license hold by both applicants. Ultimately it is the duty of the licensee to apply for renewal of license to run country liquor shop and therefore by attempting

to pass the buck on the Chartered Accountant, both applicants cannot escape their liability. There is nothing on record to infer that the Chartered Accountant of applicants has undertaken the work to obtain the Tax Clearance Certificates for applicants even by moving applications in prescribed forms to the Sales Tax Department under signatures of the Chartered Accountant himself.

10. Prima facie record of investigation shows that with fraudulent and dishonest intention, false document was prepared by putting forged signature of the Sales Tax Officer as well as putting rubber stamp and seal of Sales Tax Department on those documents i.e. certificate of tax clearance under Form No.415. In fact perusal of pleadings of Criminal Application No. 5767 of 2016 and particularly para 12 thereof goes to show that the applicant was well aware about arrears of dues of Sales Tax Department. Para 12 of the said Application reads thus :-

> " The applicant states that in the year 2014 also, the NIL certificate was issued for the year 2013-2014 in form No.415 by the Sales Tax authorities under clause (a) of Sub-Section (8) of Section 32 of the Maharashtra Value Added Tax Act, 2002, at that time also, there was dues outstanding against the applicant of Rs. 1,71,00,000/- and therefore, the applicant thought that, as like the year 2013-2014,

the NIL certificate is issued by the authorities and therefore, the applicant had not inquired it with his tax consultant and acted upon the form no.415 handed over to him by his tax consultant. Copy of the form No.415 issued on 26.03.2014 is annexed herewith and marked as **Exhibit "K"**. "

11. In the wake of this knowledge of the applicant, the applicant should have taken precaution in getting Tax Clearance Certificate in Form No.415 even if contention of the learned Counsel for the applicant is accepted. Prima facie it is seen that even in past, applicants have indulged in similar *modus operandi* of using forged Tax Clearance Certificate of the Sales Tax Department for getting renewal of their CL-III license from the State Excise Department. At record page 149 of Criminal Application No. 5767 of 2016, there is photo-copy of the Tax Clearance Certificate in the Form No.415 dated 26.03.2014. From pleading of the applicant in the said application, it is obvious that the said certificate is also a forged certificate. The scam as such appears to be of a large magnitude resulting in large scale evasion of Sales Tax dues by country liquor shop owner requiring detailed investigation. In order to recover forged documents viz. Tax Clearance Certificates in Form No.415, custodial interrogation of both applicants is required which will result in qualitative investigation in order to

elucidate facts constituting the offence.

12. Dues of the Sales Tax Department and departmental appeals challenging those dues are of no consequence in the instant case. That liability and the departmental action will take its own course as per law. What is relevant is preparation of forged Tax Clearance Certificate and making use of it for obtaining renewal of CL-III license from the State Excise Department. Prima facie it is seen that dues of Rs. 1,71,00,000/- are there so far as applicant M.A. Shahed is concerned, whereas dues of Sales Tax Department against applicant Sanganbai Mundkar are amounting to Rs. 2,16,00,000/-. Without paying those dues and without clearing them, forged documents were prepared for benefiting them by both applicants for getting their CL-III license renewed. Thus, the case is that of tax evasion and forgery for the purpose of getting the CL-III license renewed.

13. Somewhat similar matter was dealt with by the Hon'ble Delhi High Court in **Crl.M.C.198/2011 - *State Vs. Sumeet Suri & others***, decided on 27.08.2012. It was an application under Section 439(2) of the Cr.P.C. for cancellation of bail granted to accused persons wherein there was evasion of Sales Tax dues to the tune of Rs. 1.9 Crores with some other allegations. In that matter, reliance was placed on order of the Hon'ble Supreme Court dated 07.05.2007

in SLP (Crl.) No. 6139/2006 wherein amount involved was Rs. 1.3 Crores in offence punishable under Section 420 read with Section 120B of the IPC. Relying on this order of the Hon'ble Supreme Court, Hon'ble Delhi High Court set aside the order of bail in the matter where there was evasion of Sales Tax dues amounting to Rs. 1.9 Crores. It was held that primary consideration for grant of bail is examination of gravity and nature of offence.

14. In the case in hand, primary object of production of forged Tax Clearance Certificate appears to be evasion of Sales Tax dues and obtaining renewal of CL-III license. Forgery for non-payment of Sales Tax dues to the State is an economic offence. In the case of **Nimmagadda Prasad Vs. Central Bureau of Investigation [(2013) 7 Supreme Court Cases 466]** in paras 23 & 25 of the judgment, the Hon'ble Supreme Court has observed thus :-

> "23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In *State of Gujarat v. Mohanlal Jitamalji Porwal [(1987) 2 SCC 364]* this Court, while considering a request of the prosecution for adducing additional evidence, inter

alia, observed as under :-

> "5. .... The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

24. ....

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

15. The instant case is a case relating to grave and serious economic offence. The outcome of investigation may be exposure of big scam of evading of Sales Tax dues and submitting forged no dues certificate to the other Departments of the State for getting benefits. This is even reflected from the pleadings in one of the instant case which are reproduced in foregoing para.

16. At this stage, the learned Counsel appearing for the applicant in Criminal Application No. 5767 of 2016 submitted that it may also be noted that the applicant had not signed Form No.414 for seeking Tax Clearance Certificate.

17. For the foregoing reasons, no case for anticipatory bail is made out.

18. Both Applications are accordingly rejected.

(A.M. BADAR)
JUDGE

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