

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 787 OF 2016

Subhash Ganpatrao Patil

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

* * * * *

Mr. M.S. Mohite, Advocate for the applicant.

Smt. J.S. Lohokare, APP for respondent, State.

CORAM :- N.W. SAMBRE, J

DATED :- 29TH NOVEMBER, 2016.

P.C. :-

1). The present applicant has entered into an agreement with the Kalyan Dombivli Municipal Corporation for implementation of the Central Government Scheme which is recognised as JNNURM (Jawaharlal Nehru National Urban Renewal Mission).

2). It is claimed that the applicant is a professional i.e. an Architect and a Developer. His services were hired for carrying out plane table, socio-economic survey, numbering the huts, collection

of ownership documents, list of basic facility, Project Report etc. for the Corporation under the scheme JNNURM and to carry out further development which amount will be reimbursed to the applicant in the form of professional fees, the cost of development etc. by the Corporation.

3). FIR came to be lodged against the applicant alleging that the work which was entrusted to him as a professional, has failed to execute the same to the satisfaction of the Corporation, the implementing agency and while doing so, has practised fraud and has drawn substantial amount from the Corporation without executing the work. As a consequence, Crime-I-60 of 2016 for an offence punishable under Section 13(1)(c),(d),(ii) and (iii) read with Section 13(2) of the Prevention of Corruption Act, 1988 and Sections 109, 120(B), 420 of the Indian Penal Code came to be registered.

4). There is one more facet to the matter and that is, the applicant was slapped with show cause notice on December 12, 2011 stating that the persons who were not entitled for benefit, the applicant is shown to have extended the amount of rent facility to 92 and 148 persons which amount was required to be recovered from the applicant since he has practised fraud. The said show cause notice has resulted into termination of his agreement with the Corporation which issue, I am informed at bar, is subjudiced in arbitration proceedings. It is also brought to my notice that the Principal District Judge, Thane vide its interim order dated October

19, 2016 restrained the Corporation from engaging the services of any other consultants and use the drawings prepared by the petitioner for giving effect to the agreement entered into between the Corporation.

5). In this background, Mr. Mohite, the learned Counsel appearing for the applicant, would strenuously urge that the applicant is a professional whose services are hired and not adequately compensated in terms of the agreement entered into. He is tried to be made a scapegoat of the inability and inefficiency of the Corporation employees and its officers in not co-ordinating and extending their assistance in implementing the scheme.

6). According to him, the allegation in the FIR are based on such issues for which no duty was imposed on the applicant and it is because of the failure in performance of the duty by the Corporation employees, the scheme was not taken to its logical end for which the applicant is blamed. According to him, the entire matter is arising out of the contractual obligations for which the proceedings under the Arbitration Act are already pending and since the injunction is operating in favour of the applicant, prima-facie, the Court is required to believe that the applicant is not involved in the crime in question. Last submission is that, loss, if any, monetary could be looked into and liability thereof can be decided in the arbitration proceedings.

7). Per-contra, the learned APP submits that, custodial interrogation of the applicant is very much necessary as the

applicant has caused substantial loss to the public ex-chequer by not implementing the Scheme as per the terms agreed to and has drawn undue financial benefits. A submission is also made that the benefits are tried to be passed on to undeserving persons under the above referred scheme for which the applicant could be inferred to be a monetary beneficiary. According to the learned APP, custodial interrogation as such is must.

8). Perused the investigation carried out till date, the orders passed by the learned District Judge, Thane in the proceedings taken out by the present applicant arising out of the dispute in question.

9). In the arbitration proceedings at the behest of the present applicant, the learned District Judge having noticed *prima-facie* case, has ordered an ad-interim protection thereby restraining the complainant from hiring the services of any other persons for implementing the scheme in question for which there was an agreement with the applicant. As such, the said proceedings will take care of the financial interest of the parties hereto as the rival claims by the applicant and the Corporation for recovery of the amount from the defaulted party, could be gone into in appropriate adjudication before the Arbitrator.

10). The next submission of the learned APP is that, custodial interrogation is necessary so as to find out the monetary benefits which were derived by the present applicant by taking recourse to undue practice by extending benefits to undeserving

candidates while implementing the scheme. In my opinion, same will be of hardly any consequences particularly when the applicant is very much available for investigation being an Architect by profession as civil dispute is already pending before the Competent Authority in arbitration proceedings.

11). In this background, in my opinion, custodial interrogation is not required. The application needs to be allowed.

12). In the event of arrest in Crime No. 60 of 2016, the applicant be released on P.R. Bond of Rs.1,00,000/- (Rs. One Lakhs only) with one or two sureties in the like amount.

13). The applicant shall attend the Investigation Officer on 5th, 8th and 15th December, 2016 between 10 to 12 pm and thereafter as and when called.

14). The applicant shall not tamper the evidence and/or influence the witnesses.

(N.W. SAMBRE, J)