

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1138 OF 2016

JITENDRA V. KIKAVAT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

AND

ANTICIPATORY BAIL APPLICATION NO.1156 OF 2016

MANISH NARENDRA KASLIWAL)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Amit Desai, Senior Counsel, a/w. Mr.Pranav Badheka a/w. Mr.Viraj Maniar, Mr.Nakul Jain, Mr.Harsh Behany i/b. Maniar Srivastava Associates, Advocate for the Applicant in A.B.A. No.1138 of 2016.

Mr.Subhash Jha a/w. Ms.Rushita Jain i/b. Law Global Advocates, Advocate for the Applicant in A.B.A. No.1156 of 2016.

Mr.S.K.Shinde, Public Prosecutor, a/w. Mrs.Rutuja Ambekar, APP for the Respondent – State.

Mr.Rajendra Chavan, Asst. Commissioner of Police a/w. Mr.Vijay Waghmare, Inspector of Police, present in court.

CORAM : P N. DESHMUKH, J.

DATE : 12th JULY 2016.

P.C. :

1 Both these applications are arising out of Crime No.166 of 2016 registered at Azad Maidan Police Station on 27th April 2016 for the offences punishable under Sections 420, 197 read with Section 120-B of the Indian Penal Code, at the instance of one Mr.Manohar Sukhdev Pawar, Chief Engineer (Roads and Traffic), attached to Municipal Corporation, Greater Bombay, and as such both the applications are considered together for a limited aspect of grant of pre-arrest bail to the applicants herein, pending their application for grant of anticipatory bail before the learned Sessions court. As such, at the outset it is made clear that these applications are considered for a limited purpose of grant of protection to applicants pending their applications for anticipatory bail before the learned Sessions court, Mumbai. Accordingly, both the applications are decided by this common order.

2 On perusal of the impugned order dated 5th July 2016 passed by the learned Additional Sessions Judge, Greater Mumbai, ad-interim protection claimed by applicants came to be refused on

the ground that investigation is in progress and custodial interrogation of applicants is necessary and as such no relief as sought for was granted.

3 Learned counsel appearing for applicant in Anticipatory Bail Application No.1138 of 2016 had produced on record copy of police report filed by prosecution before the learned Sessions court in applicants anticipatory bail application seeking time to advance submissions and has contended that from this report there is nothing which could reflect that for the purpose of investigation, custodial interrogation of applicant is necessary and inspite of this, learned Sessions court while refusing interim relief in the impugned order specifically noted that no case is made out for grant of interim relief of pre-arrest bail as custodial interrogation is necessary and rejected the same.

4 It is further contended that, infact, applicant having been summoned by the Investigating Officer, had on four occasions attended and had co-operated in the investigation and

that apart from present applicant, there are as many as 22 other co-accused involved in this crime who are already arrested and after grant of four days PCR, their PCR was rejected and are all released on bail.

5 Learned senior counsel Shri Amit Desai for the applicant has further relied on a document filed along with the application which is a show cause notice and contended that at the most what is claimed vide this document is the amount to the extent of Rs.12.56 Lakhs only and in these circumstances, had contended that limited prayer of applicant as of now to protect him, pending his application for pre-arrest bail, before the learned Sessions court be granted, as applicant has roots in the society, having permanent residence, and thus there is no question of his fleeing from justice.

6 Learned counsel Mr.Subhash Jha appearing for applicant in Anticipatory Bail Application No.1156 of 2016 on similar lines advanced his arguments and had from the documents

filed in support of the application, demonstrated as to how no liability can be fastened against the applicant alone, as applicant had entered into a joint venture with other company, having major liability as his partner, with regards to deficiencies if any found in construction of roads carried out by applicant's firm. In short, it is the case of the applicant herein that applicant's firm not being leading partner, in its joint venture, no liability can be fastened upon the applicant alone, and has further contended that inspite of such clear understanding between the firm and its partners, by referring to certain documents filed along with the application has demonstrated as to how applicant's firm has infact made substantial payments as called for by the officials of Municipal Corporation of Greater Bombay, and in the background of above said facts has prayed that applicant needs to be protected by grant of interim relief, pending his application for anticipatory bail before the learned Addl. Sessions Judge, Mumbai.

7 Learned Public Prosecutor has strongly opposed the applications for grant of interim protection as claimed, contending

that applicants are involved in a serious crime, which was initially registered for the offences punishable under Sections 420, 197 read with Section 120-B of the IPC, in which during the course of investigation, offences punishable under Sections 464, 467 and 468 of IPC came to be added and has thus, contended that the gravity of the crime is much larger than what is seen at this stage, as applicants in connivance with co-accused and Officials of Municipal Corporation of Greater Bombay had played fraud and had cheated the Corporation by claiming false bills of which no work is executed, to the extent of crores of rupees. Learned Public Prosecutor had thus opposed to grant interim relief as claimed, as custodial interrogation of applicants is necessary.

8 In the light of submissions advanced as aforesaid, on perusal of police report filed before the learned Sessions court for time to advance submissions in anticipatory bail applications filed by applicants, it appears that there is no any ground put forth therein opposing said application, on the ground of requirement of custodial interrogation of applicant, as such, finding of the

learned Sessions court at that stage that custodial interrogation of applicant is necessary, does not stand for any reason.

9 One of the aspect which needs consideration is that crime involved in these applications is admittedly registered on 27th April 2016, and in pursuant to the directions of Investigating Officer, applicant on 14th May 2016 had attended the Investigating Officer and had provided documents running into 700 pages and thereafter on 19th May 2016 in response to notice from Investigating Officer, had further attended on four occasions. As such, it is found that applicant is co-operating the investigation and thus, it cannot be said that applicants are fleeing from justice.

10 It is contended that no provisions of Section 41(a) of Code of Criminal Procedure are complied by the investigating agency with this aspect, on considering the documents filed in support of the application, one of the document appears to be notices issued under the provisions of Sections 91, 160 of Cr.P.C., however this aspect need not be considered at this stage, since the application is considered for the limited relief.

11 Moreover, on perusal of the order passed by learned Magistrate, while considering further remand of 8 co-accused involved in this crime, it is noted that for grant of further PCR, as there was nothing to establish involvement of said co-accused, refusing PC co-accused came to be released on bail by subsequent orders.

12 On perusal of show cause notice issued by the authorities of Municipal Corporation of Greater Bombay, which forms part of application being A.B.A. No.1138 of 2016 on record, prima facie it appears that Inquiry Committee found amount of Rs.12.56 Lakhs only to be recovered from applicant's firm. In that view of the matter and on considering that applicant has made himself available to Investigating Officer on 14th May 2016 and had produced number of documents in support of his case and has further attended the Investigating Officer as many as on four occasions, and also on considering the fact of release of co-accused on bail, prima facie there appears no reason for the learned Sessions court to hold that custodial interrogation of

applicant is necessary. More particularly when there was nothing placed on record to establish need of custodial interrogation of applicant.

13 So far as case of applicant involved in Anticipatory Bail Application No.1156 of 2016 is concerned, learned counsel Mr.Jha has relied upon certain terms of agreement entered into by applicants with their counterpart in a joint venture. One of the recitals of their agreement as has been brought to the notice of the officials of Municipal Corporation of Greater Bombay has been reproduced below:

“One of the partners, who is responsible for performing a key function in contract management or is executing a major component of the proposed contract, shall be nominated as being in charge during the post qualification and bidding periods and, in the event of a successful bid, during contract execution. The partner in charge shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the JV.”

14 Learned Public Prosecutor with regard to said contents of agreement had submitted that this by itself does not absolve the liability of applicants, as this arrangement is only for the administrative convenience of the applicant with their lead firm, however this submission put forth for applicant cannot be ignored and can be duly considered as from the same document it is further revealed that the work of construction of road by the applicant's construction firm has not been done by applicants firm as a lead partner, but some other firm was the lead partner and partners in-charge of applicants.

15 It is further revealed from the correspondence entered into by applicant with the authorities of Municipal Corporation, that the sole liability and responsibility of the work remains with the lead partner alone and infact applicants have thus prayed to the authorities of Municipal Corporation that they be granted relief in accordance with the tender conditions referred to above. No submissions are advanced on this aspect as to what investigation is carried out with regard to applicants liability as per tender conditions.

16 Infact, in the event of finding of any defects or defecations in the work carried out by the applicant's firm, there appears to be certain condition fixing liability upon the firm, and according to it one such condition is that the contractor has undertook to forthwith rectify or remove or reconstruct the work so specified, in whole or part, as the case may be.

17 Similarly, from the statements placed on record showing total recovery proposed by the Municipal Corporation of Greater Bombay in respect of six roads is to the extent of Rs.7,21,18,000/-. As against this applicant's firm has deposited Rs.7,42,08,000/-. So also, from the statement of recovery in respect of work consisting of improvement of various major roads in cement concrete in K/East, P/South and P/North Wards in westerns suburbs, the proposed recovery shown is to the extent of Rs.4,99,76,773.00/- against which Rs.5,04,48,617/- has been recovered. There are also documents on record establishing payments made by the applicants as per above statements.

18 No doubt, on considering the Vigilance Committee Report, copy of which is tendered at bar by learned Public Prosecutor, there appears substance in the contents of report on the basis of which present offence came to be registered and since it also appears that the crime involved has been carried out not by a single firm but by various firms which were allotted work of construction of roads in connivance with the officials of Municipal Corporation, this aspect by itself does not preclude applicants for being protected from pre-arrest bail for a limited period, more particularly, when their applications are supported with documents which establish their bona fides of their assisting the investigating agency as and when called and as there is also no possibility of their fleeing from justice.

19 Learned counsel Mr.Amit Desai in support of his submissions has relied upon the ratio laid down by the Apex Court in the case of **Bhadresh Bipinbhai Sheth vs. State of Gujarat and Another** reported in **(2016)1 Supreme Court Cases 152**, wherein the Apex Court while considering anticipatory bail

application in paragraph 25.3 of said judgment has observed as under :

“25.3. It is imperative for the courts to carefully and with meticulous precision evaluate the facts of the case. The discretion to grant bail must be exercised on the basis of the available material and the facts of the particular case. In cases where the court is of the considered view that the accused has joined the investigation and he is fully co-operating with the investigating agency, and is not likely to abscond, in that event, custodial interrogation should be avoided. A great ignominy, humiliation and disgrace is attached to arrest. Arrest leads to many serious consequences not only for the accused but for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-conviction stage.”

20 In that view of the matter and having considered facts as aforesaid, applicants in both these applications, need to be protected by pre-arrest bail pending their applications for grant of anticipatory bail before the learned Sessions court, as per order below :

- i) In the event of arrest of applicant Jitendra V. Kikavat in Anticipatory Bail Application No.1138 of 2016 and applicant Manish Narendra Kasliwal in Anticipatory Bail Application No.1156 of 2016, both arising from Crime No.166 of 2016 registered with Azad Maidan Police Station, they shall be released on bail on their executing P.R.Bond in the sum of Rs.1 Lakh each, with one or two sureties each, in like amount.
- ii) The applicants, on being released on bail, shall attend the Investigating Officer from 20th July 2016 to 23rd July 2016, between 12.00 noon to 4.00 p.m., and thereafter, as and when called by the Investigating Officer.

21 Needless to say that the learned Sessions court shall not be influenced by the observations made hereinabove and shall independently decide the applications for grant of anticipatory bail on its merits.

22 Both the applications stand disposed of in above terms.

(P N. DESHMUKH, J.)