

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1648 OF 2016

Javed Ahmed Babalal Momin

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ganesh Sovani Advocate for Applicant.

Mr. R. M. Pethe APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 28, 2016.

PC :

1) Heard. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 269 of 2016 registered at Shivaji Nagar police station, Kolhapur for offence punishable under sections 406, 420 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 03/09/2016, Vyankatesh Kulkarni, who was working as an auditor of the Co-operative societies, lodged a report at the police station, alleging therein that he was directed to conduct the audit of Shubham Magasvargiya Audyogik Sahakari Sanstha

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Maryadit, Ichalkaranji, Tal. Hatkanangale, Dist. Kolhapur (Hereinafter referred as 'The society') for the period of 01/04/2011 to 31/03/2013. A revised audit was also conducted and a supplementary audit report was filed on 11/07/2016. The audit report would indicate that the Government of Maharashtra had floated a scheme for the upliftment of the Scheduled Caste people by making efforts to assimilate them in the general society. The said scheme was to be executed through Social Welfare Department of the State of Maharashtra. The scheme was floated in the year 2009. As per the scheme, the society would get the subsidy of Rs. 50 Lakhs and term loan of Rs. 50 Lakhs for initiating the activities and opportunities for the upliftment of the people of the Scheduled Caste. That the society had received Rs. 1 Crore i.e. 50 Lakhs towards subsidy and Rs. 50 Lakhs towards term loan. The auditor had then lodged the F.I.R. that present applicant was a beneficiary of the said scheme and hence, has committed an offence of cheating and breach of trust in connivance with the society.

3) On 11/05/2011, the society had floated a tender for the purpose of electrification, installment of transformer and other electrification. There were two tenders, one was for a civil work and the other was electrification.

4) Applicant herein happens to be the proprietor of JM Light House. The said firm has a Shop Act licence. It appears that the said shop act licence was issued on 02/12/2011 and it was shown that the firm is functioning since 11/10/2009 and the first Shop Act licence was issued on 16/11/2011 i.e. admittedly after the tenders were floated for the said scheme. The tender was given to present applicant by the society.

5) The learned counsel for the applicant submits that while allotting the tender, 5 blank signed cheques were obtained by the Chairman of . The learned counsel for the applicant submits that on 14/03/2013, the society had issued a letter in favour of JM Light House that the entire amount of Rs. 48,77,000/- which was deposited in his account was withdrawn and was received by the society. According to the learned counsel, applicant is not a beneficiary of the funds of the Government and hence, he deserves to be protected.

6) Papers of investigation would reveal that itself was not in existence. A panchanama was drawn to that effect which shows that 4 ft brick walls are erected. The society itself is not in existence. There is a tin shed. Electric main switch is installed of 32 ampiers and 415 volts. It is clear from the

papers of investigation that in fact, the society was established only on paper. This society had received the amount which was allotted by the State of Maharashtra for the purpose of upliftment of Scheduled Caste people. A tender was floated but only one tender was received that was of JM Light House i.e. of the applicant's. It is clear that applicant was working in connivance with Chairman and the Secretary of . He was fully aware that the society is not in existence at all and yet he had received the amount which was then refunded to the society. It cannot be said for a moment that the applicant must have obliged the Chairman and Secretary of the society without there being any agreed consideration. It is unfortunate that the Government floats welfare schemes and the societies like Shubham Magasvargiya Audyogik Sahakari Sanstha Maryadit in connivance with people like applicant siphon off the said amount for their own benefit and the whole purpose of having a welfare society and assimilation of people from all categories fails miserably. It is in these circumstances that the applicant does not deserve the discretionary relief in the form of pre-arrest bail.

7) Application, being sans merits, stands rejected.

(SMT. SADHANA S. JADHAV, J.)