

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1449 OF 2015

Bhalchandra Vasant Gosavi	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1396 OF 2015**

Tukaram Nagoji Mandekar	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

**CRIMINAL APPLICATION NO. 823 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO. 1396 OF 2015**

Kulgaon Badlapur Vikas Samiti	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1403 OF 2015**

Ashok Hari Pednekar & Ors.	...	Applicants
Vs.		
The State of Maharashtra	...	Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 1463 OF 2015**

Sunil Murlidhar Dusane	...	Applicant
Vs.		
The State of Maharashtra	...	Respondent

Mr. Mahesh Jethmalani, Senior Advocate a/w. Chaitra Pawar and S. Saxena i/b. Mr. Mandar M. Goswami for the applicant in ABA/1449/2015 and ABA/1463/2015.

Mr. Uday P. Warunjikar a/w. Siddhesh Pilankar and B. Deshmukh, Advocate for the applicant in ABA/1396/2015.

Mr. A.P. Mundargi, Senior Advocate i/b. Mr. Viresh V. Purwant, Advocate for the applicant in ABA/1403/2015.

Mr. Ashish Mehta a/w. Mr. Amit Ghurye, Avani Rathod, Shivani Jadeja, S. Chatterjee, Advocate for the applicant in APPP/823/2015.
 Mr. S.K. Shinde, Spl. P.P. a/w. Mrs. P.P. Shinde, APP for the State.
 Mr. Nagesh V. Jadhav, P.I., EOW, Thane.

CORAM: **MRS.MRIDULA BHATKAR, J.**
 DATE: **4th May, 2016.**

P.C.:

All the applicants/accused are involved in the offences of misappropriation of the property, criminal breach of trust, cheating and forgery, corruption, so they are facing charges under sections 166(A), 167 406, 408, 409, 418, 420, 468, 120B r/w. Section 34 of Indian Penal Code and under section 13(1)(D)(2) of the Prevention of Corruption Act. The offence is registered at the instance of Kakasaheb Barge, Assistant Police Inspector, EOW in C.R. No. I-155/2015. In this case, 7 public servants and 8 private builders are made accused. The applicants/accused in other 3 Anticipatory Bail Applications, except in Anticipatory Bail Application No. 1449 of 2015, are erstwhile Engineer, Deputy Engineer, Deputy Town Planner etc. The applicant/accused in Anticipatory Bail Application No. 1449 of 2015 is erstwhile Chief Executive Officer of Kulgaon Badlapur Municipal Council. The offence has taken place between span of 2010 to September, 2013 within the jurisdiction of Badlapur Municipal Council.

2. It is the case of the prosecution that during the specified period, CEO Bhalchandra Gosavi along with other applicants/accused, who are the public servants, carried out illegal construction work giving complete go-

bye to the rules of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965, Maharashtra Regional Township Plan Act and Development Control Rules. It is the case of the prosecution that as per the D.C. Rules, standing order and the resolution passed by the Municipal Council, the roads and gardens in the city were to be developed by giving contracts to private persons and those persons were to bear the expenses of the development of roads and gardens in the city. In lieu of these expenses borne by the developers, a provision was made in the rules of granting TDR to the extent of 25% of the work of the roads done, so also 15% TDR to the extent of construction or the area of gardens to be given to the developer. The applicant/accused Bhalchandra Gosavi in Anticipatory Bail Application No. 1449 of 2015 has misused his powers and gave contracts of the work to the private persons on pick and choose basis without following the procedure laid down under the Act and rules. The Investigating officer found that there are 55 instances of such illegal work in Kulgaon Badlapur Municipal Council which were carried out by the co-accused, who are the developers, with the help of public servants, who are also the applicants/accused. Thus, the TDR given to these private developers in these matters is approximately 40000 sq. mts. and valued approximately Rs.111 crores. This has caused wrongful gain to the developers and public servants and wrongful loss to the Corporation. Therefore, the case is filed against the applicants/accused.

3. Learned APP, at the outset, has submitted that the prosecution is not pressing for arrest of the applicants/accused who have moved Anticipatory Bail Application Nos. 1396 of 2015, 1403 of 2015 and 1463 of 2015. Hence, pre-arrest bail is granted to all the applicants/accused in these three Anticipatory Bail Applications. The applicants/accused in Anticipatory Bail Application Nos. 1396 of 2015, 1403 of 2015 and 1463 of 2015 are already on interim pre-arrest bail, hence the orders of interim pre-arrest bail passed in these three Anticipatory Bail Applications protecting the respective applicants/accused is hereby confirmed and the applicants/accused are directed to attend the concerned police station as and when called.

4. The learned senior counsel for the applicant/accused Bhalchandra Gosavi has submitted that no offence is committed by the applicant/accused much less the offence of cheating, criminal breach of trust and forgery. He submitted that there is a provision of giving the work to the private persons of construction of roads and gardens. This provision was made to uphold the financial burden of the Corporation, so also the city should be benefited by the construction of good roads and gardens. He relied on the resolution dated 20th February, 2010 and submitted that this resolution and contracts given by the applicant/accused to the private developers is in conformity with the D.C. Rules. He submitted that applicant/accused Gosavi joined Badlapur Municipal Council on 17th

August, 2010 and he was transferred from Badlapur to Ambernath Municipal Council on 11th August, 2013. He submitted that in the construction of the roads and gardens, no funds of the Corporation were used and therefore, there is no loss to the Corporation but the Corporation has gained the roads and gardens which were constructed at the cost of private developers. He submitted that the procedure is validly followed. The learned senior counsel submitted that lands in most of the matters belonged to Corporation and there was no question of payment of compensation to the owners. The learned senior counsel relied on Section 77 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, which states about the powers and duties of Chief Officer. He submitted that it is the duty of the Chief Officer to give effect to all the decisions and resolutions of the Council. He submitted that when the resolution was passed by the Council on 20th February, 2010 of giving contracts to the private developers and stating the transfer of TDR 25 % to 15% as per their entitlement, then Mr. Gosavi has acted pursuant to the said resolution within his powers stated under section 77 of the Act. He also relied on section 15 and its sub-section of the said act in respect of F.S.I. and the developmental rights. He submitted that as per D.P. Plan in all 55 cases, measurements were followed and the roads were constructed as per the D.P plan. He further submitted that total area in all the 55 cases is 40000 sq. mtrs. as per the case of the prosecution and the

valuation of the said area as per the market rate is Rs.28 crores and not Rs.111 crores as claimed by the prosecution. He submitted that the applicant/accused is cooperating the police. The applicant Bhalchandra Gosavi has attended the police station and he is also ready to attend the police station. Hence, his custody is not required.

5. Learned Special Prosecutor while opposing Anticipatory Bail Application no. 1449 of 2015 has submitted that the applicant/accused Bhalchandra Gosavi is a main culprit, as he was the person who took decisions and abused the powers as CEO of the Kulgaon Badlapur Municipal Council. He submitted that the Planning Authority of Kulgaon Badlapur Municipal Council is MMRDA and, therefore, the development rules of MMRDA is required to be followed. He relied on Section 93 of Maharashtra Municipal Councils, Nagar Panchayats and Industrial Township Act, 1965. He submitted that this section relates to the provisions of contracts and tenders. Every contract which will involve expenditure is to be given by inviting the tenders. However, in the present case, no tenders were called by the CEO. He submitted that not in all 55 cases, the land belonged to Corporation but some lands were acquired from the private persons. The work which is to be carried out ought to have been done by following section 126 and 126(b) of the Maharashtra Regional Town Planning Act, 1996. He further submitted that if at all the land is acquired from the private persons, then he is entitled to extra TDR

for surrendering the land. He further submitted that if at all the land belongs to Corporation, then it was necessary to follow the provisions of calling tenders. He further submitted that the roads which were constructed by private builders, no exact measurements were carried out. The application for extra TDR, i.e., 25% or 15% of TDR, were made by the private builders and within a day or two, the applicant/accused Mr. Gosavi has issued the certificate of entitlement. Learned PP further relied on resolution dated 12th June, 2010 about cancellation of contracts which were given without tenders except under the three categories, i.e., for women and children welfare, about the Scheduled Castes and Scheduled Tribes, so also the development work which is carried out from the Government grants. He submitted that the work of construction of roads and gardens were not falling under either of these three categories and therefore, the contract should not have been given without inviting tenders. He further submitted that a question was raised in the Legislative Assembly about the illegal procedure followed by Kulgaon Badlapur Municipal Council while allotting TDR in gardens and roads development work. While answering this question, learned APP submitted that the Chief Minister has mentioned about the report of Director of Town Planning, State of Maharashtra and in the said report it was concluded that illegality is found in the work of roads and gardens and the allotment of TDR given to the private developers. He further presented a chart of the persons to

whom the contracts were given and he pointed out that 80% of the contracts were given to Ganraj construction and Bhairavnath Construction of Tejas Sante, Samarth Enterprises of Tejas Mengal and Shahuraje Enterprise of Tushar Bembalkar. The measurement of TDR were allotted without any specific measurement. No document of allotment of tender is maintained. It is submitted that in this case, the custody of the applicant/accused is necessary to find out that how many persons and who are benefitted out of this illegal work, so also how much money was transacted illegally. He submitted that the police have sent 14 reminders to the applicant/accused by putting a questionnaire to him in respect of giving details of illegal construction work, however, the applicant did not answer to any of the reminders.

6. Perused the FIR and the documents produced herein. It appears that submission was made by the learned senior counsel for the applicant that the construction of roads and gardens is to be made without burdening the treasury of the Corporation and, therefore, this work can be done by giving contracts to private developers. However, this is a public work and it should be carried out as per the D.C. Rules and law and rules laid down in the M.R.T.P. Act, so also the standing orders passed by the Corporation. Assuming the submissions of learned senior counsel that all the lands where roads and gardens were constructed, belonged to the Corporation, still it does not permit CEO to give contracts to any person of his choice

without calling tenders. This is a public work which requires complete transparency in the allotment of the contract. Though the contractor is going to carry out the work for the Corporation from the money out of his pocket and going to bear the expenses, he is benefitted by grant of 25% and 15% TDR, which is his profit. It was necessary for the applicant/accused Gosavi to call the tenders, maintain proper record of the progress of the work and scrutiny and the measurement of the area constructed. In the absence of this record, the entire process *prima facie* appears illegal. Learned APP has produced 2 files in respect of two projects, where under his signature he has allotted TDR to private developers. As per the certificates of allotment of TDR, it was to be given to person who had surrendered the land, the same format is used by the applicant/accused Gosavi while issuing the certificates. My attention was drawn to the letters given by private developers, one is Shahuraje and other is Sadguru Group which reveal that after completion of the work, within a day or two, the TDR was allotted. There is no file showing the work of measurement of the area of road or garden where the actual construction work was carried out. It is also pointed out that TDR given to M/s. Sadguru Group is of 660 sq. mtrs. on 6th August, 2014 which is signed by Chief Officer and the police, on enquiry, found that said Sadguru Group does not exist. So, it is a fictitious entity. It is necessary to find out who consumed 660 sq. mtrs TDR which was allotted to Sadguru Group. My

attention was drawn to the list of contractors to whom the contracts of development of roads and gardens were given. The list discloses that 80% of the work is given to Shahuraje and Ganraj Constructions. The police have also produced a list of 5 companies wherein the wife of the applicant/accused is shown as one of the directors of those construction companies. Thus, after going through this record and the submissions made by the learned APP and learned senior counsel for the applicant/accused, I am of the view that custodial interrogation of the applicant/accused is necessary as prayed by the prosecution. The offence of cheating and criminal breach of trust is blatant. The applicant/accused Bhalchandra Gosavi is not entitled to protection under section 438 of Cr. P.C. Hence the Anticipatory Bail Application No. 1449 of 2015 is rejected.

7. The learned senior counsel Mr. Jethmalani submitted that interim protection granted to applicant/accused be extended by three weeks, as he wants to challenge this order before the Hon'ble Supreme Court.

8. Learned APP opposed this prayer. However, as the applicant/accused wants to test this order before the Hon'ble Supreme Court, interim order granted earlier to continue till 25th May, 2016.

9. All the Anticipatory Bail Applications are disposed of on above terms.

(MRIDULA BHATKAR, J.)