

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1967 OF 2016

Mr. Sonu @ Bhushan Vijay Ausarkar ... **Applicant**

V/s.

The State of Maharashtra ... **Respondent**

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Mr. Shirish Gupte, Senior Advocate with Mr. M.G.Kocharekar, Advocate for the Applicant.

Mr. N.B.Patil, APP for the Respondent/State.

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CORAM : N.W.SAMBRE, J.

DATED : 2nd December, 2016.

P.C.

1 The applicant is seeking pre-arrest bail in Crime No.71 of 2010 for the offence punishable under Sections 420, 467, 409, 177 and 120B of the IPC.

2 Prosecution case as appears is, under Integrated Tribal Development Project, tender was floated for construction of Mangal Karyalaya for the financial year 2014-2015 under Thakkar Bapa Adivasi Vasti Sudharna Yojna for a consideration of Rs.9,99,530. Without carrying out any construction, the bills were submitted, amount was withdrawn as such is the crime in question.

3 It is claimed by the prosecution that the first panchanama was drawn on September 12, 2016, there was no construction. As such,

FIR came to be lodged on October 4, 2016. The Mangal Karyalaya was constructed on October 6, 2016 for which amount was withdrawn much in advance i.e. on 17.3.2016 by the contractor who executed contract in favour of the department.

4 Mr. Gupte the learned Senior Counsel for the Applicant submits that execution of the work of the construction of Mangal Karyalaya is not disputed by the present applicant. He has also not disputed payment of consideration for construction. However, according to him, there is no privity of contract between the present applicant and the Government and the applicant never received amount prior to the execution of work i.e. 6.10.2016 from any of the sources including that of Government, Tribal Development Department, PWD, the main contractor in whose favour there is an agreement to execute the work in question and who has received the amount without execution of the work.

5 The learned APP opposed the application on the ground that the Investigating Officer has invoked Section 120B as there is a criminal conspiracy. He would then submit that custodial interrogation is very much necessary.

6 Applicant came into picture only after he was given sub-contract by the main contractor and was called upon to execute the work. It is not in dispute that the applicant received the order amount after the construction work was executed by him i.e. after October 6, 2016 and not in between 17.3.2016 and 5.10.2016.

7 In view of above, the claim that the applicant was a part of conspiracy in the absence of any material to that effect cannot be accepted. Case for bail is made out. Hence, the following order:

- (1) In the event of arrest, the applicant shall be released on executing PR bond in the sum of Rs.25,000/- with one or two sureties in the like amount.
- (2) He shall attend the Investigating Officer on 16th and 19th December, 2016 between 10 a.m. to 12 noon and thereafter as and when called.
- (3) He shall not tamper with the prosecution evidence and/or influence the prosecution witnesses.

8 Application stands disposed of as allowed.

(N.W.SAMBRE, J.)