

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2413 OF 2017

1. Nagnath Pandurang Gavali
 2. Dattatray Pandurang Gavali
- ...Applicants

versus

The State of Maharashtra

...Respondent

.....
Mr. S.S. Chapalgaonkar, advocate for the applicants
Mr. A. B. Girase, Public Prosecutor for the respondent
Mr. S.G. Kawade, advocate for assist to public prosecutor.
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CORAM : V. K. JADHAV, J.
DATED : 3rd JULY, 2017

PER COURT:-

1. The applicants are seeking pre-arrest bail in connection with crime No. 98 of 2017, registered with Tuljapur police station for the offences punishable under Sections 406, 409, 420, 465, 467, 468, 471, 477A and 120-B of I.P.C. The applicants are apprehending their arrest at the hands of police. The application of the applicants, bearing Criminal Bail Application No. 73 of 2017 for similar relief came to be rejected by the learned Additional Sessions Judge, Osmanabad by order dated 29.4.2017. Hence, this application.

2. The prosecution case, in brief, is as follows:-

a) On the basis of a complaint lodged by one Rajabhau Digambar Mane, dated 28.3.2017, the aforesaid crime came to be registered at Tuljapur police station against the then Chief Officer of the Municipal Council, Tuljapur, then Accountant, present applicants, contractors and concerned councilors.

b) The Government of Maharashtra had disbursed a grant of Rs.1,50,00,000/- (Rupees one crores and fifty lacs) in the year 2011-2012 for *Shardiya Navratra Mahotsav* (festival for celebration of *Shardiya Navratra* in the honour of Goddess Tuljabhavani at Tuljapur). In the year 2011-12 one Balasaheb Dongre was the President of the Municipal Council, Tuljapur. However, at the relevant time, owing to the death of his father, could not discharge the duties as the President. He had also not handed over the charge to anybody during that period. Consequently, the Municipal Council, Tuljapur has not initiated any tender process for providing health services and facilities to the devotees, who were to be assembled there in large number to celebrate the said festival. However, the Municipal Council, by exhausting its own resources and manpower, provided the said health services and as such, the said grant was not at all utilized during that period. The said festival was however, any how completed. In the year 2011-12 the elections of the Municipal Council were held and 19 councilors came to be elected from one

political party.

c) It has been alleged in the complaint that the then Chief Officer, the Accountant, the councilors and the the President of the Municipal Council, had prepared false and bogus tender forms, letter pads of certain Bachat Gats (small saving groups). Further, various works shown to have been allotted to the different contractors of their choice, including the applicants, and the said grants, disbursed by the Government, shown to have been spent, on paper. The tender forms and letter pads, in the name of small saving groups were placed on record by quoting higher rates compared to those contractors and accordingly, the work under tender shown to have been allotted to the lowest bidders. Furthermore, The President and the councilors, had passed Resolution No.52 on 16.2.2012 for disbursement of the amount to said contractors as per the false record and accordingly, the Municipal Council had issued cheques of huge amounts to those contractors, including the applicants, who are proprietors of Sai Mandap contractors and Trishul Electrical, respectively. It has been specifically alleged in the complaint that the said contractors on record neither worked in the said *Shardiya Navratra Mahotsav* in the year 2011-12, nor supplied any goods, equipments, material to the Municipal council, Tuljapur. It has been further alleged in the complaint that the Chief Officer, the Accountant,

Contractors and the Councilors misappropriated the amount of Rs.1,62,00,000/- by preparing false documents. It has also been alleged that the persons named in the F.I.R. cheated the Government and the public at large by making conspiracy. On the basis of these allegations, the aforesaid crime came to be registered with Tuljapur police station, for the offences, as detailed above.

3. Learned counsel for the applicants submits that the informant Rajabhau Mane has belatedly lodged the complaint making wild allegations against everybody, including the applicants. On 10.9.2011, in response to the letter issued by the police inspector of Tuljapur dated 9.9.2011, the Chief Officer, Municipal Council, Tuljapur had issued tender for the work for devotees arrangement in the festival and also on 25.9.2011 the Deputy Superintendent of Police, Tuljapur had prepared a map of the said work and submitted it to the Municipal Council. On 20.9.2011, the applicant Nos.1 and 2 contractors viz. Sai Madap contractor and Trishul Electrical had submitted their proposal with the Municipal Council, Tuljapur and accordingly the Municipal Council issued receipt to that effect. After calling tenders, and after scrutinizing all proposals, the Municipal Council, Tuljapur has issued work order in their favour. Even after completion of work, the Police Inspector of Tuljapur police station has issued letter/communication to pay the applicants' bills on

satisfactory completion of work. Learned counsel submits that the applicants are small businessmen and they are ready to co-operate the investigating officer and as such their custodial interrogation is not required.

4. The learned Public Prosecutor submits that as per the audit report there are many illegalities and irregularities in allotting the work to applicant No.1 proprietor of Sai Mandap contractor. Entire tender process is doubtful and huge amount has been paid to the applicants. The learned public prosecutor submits that the same case is in respect of applicant No.2 i.e. proprietor of Trishul Electrical. There are many illegalities and irregularities in allotting the work in favour of the applicants, who are proprietors of Sai Mandap contractors and Trishul Electrical, respectively. In this case also, the tender process is doubtful and huge amount of Rs.4,94,500/- and Rs.30,79,580/- has been paid to Sai Mandap contractor and Trishul Electrical, respectively. The learned Public Prosecutor submits that custodial interrogation of the applicants is also required. Their application seeking pre-arrest bail therefore is liable to be rejected.

5. Upon hearing and on perusal of the record, more particularly, the special audit report, it appears that by cheque No. 535159 Rs.4,94,500/- and by cheque No. 535160 Rs.30,79,580/-, has been

paid to applicant Nos. 1 and 2 respectively, who are proprietors of Sai Mandap contractors and Trishul Electrical. Further, no record is available as to where such huge amount has been spent. It is also a part of record that without any direction the arrears shown to have been paid from the grants sanctioned in the year 2011 and no record is available as to the said amount transferred in the account of said two firms i.e. Sai Mandap contractor and Trishul Electrical. Prima facie, it appears that entire process of tender is farce and false documents have been prepared to facilitate the ulterior motive. Letter pads, stamps and false signature of the office bearers of small saving groups were used for allotting the work to so called lowest bidders. In the process, it has been shown that those small saving groups have quoted higher rates in their tenders and accordingly work has been allotted to the so called lowest bidders.

6. In view of above, I do not find any substance in the application. In the given set of allegations and in the light of the aforesaid material available against the applicants, the custodial interrogation of the applicants is required. Hence, I proceed to pass the following order:-

O R D E R

Criminal application is hereby rejected.

(V. K. JADHAV, J.)