

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2425 OF 2017

Santosh s/o Ramchandra Tenge ...Applicant

versus

The State of Maharashtra ...Respondent

.....
Mr. N.S. Ghanekar, advocate for the applicant
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 applicant is 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 applicant is apprehending his arrest at the hands of police. The application of the applicant, bearing Criminal Bail Application No. 86 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 President of the Municipal Council, Tuljapur, councilors, Accountant, present applicant, contractors and concerned councilors. The applicant was the Chief officer of Tuljapur Municipal Council, at the relevant time.

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.

c) It has been alleged in the complaint that the present applicant, the Accountant, the councilors and 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 and the said grants, disbursed by the Government, shown to have been spent for the said work, 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 councilors and the President of the Municipal Council 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. 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 applicant, the Accountant, President of the Municipal Council 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 the 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 applicant submits that the applicant happened to be the then Chief Officer of Municipal Council, Tuljapur. The applicant is named in the F.I.R. and thus is having reasonable apprehension of his arrest. The allegations are pertaining to 10 works carried out during *Sharidya Navratra Mahotsav* of 2011 and 18 cheques have been issued after completion of said work. After completion of the work and after receiving the material, the bill amounts came to be sanctioned. The Investigating Officer has already taken into custody the relevant documents, including the documents running into 784 pages supplied to the enquiry officer under the provisions of Right to Information Act. Though the said transaction is of the year 2011-12, the F.I.R. came to be lodged belatedly in the year 2017. The informant has not explained the said inordinate delay while lodging the complaint. One Balasaheb Dongre, who was the President at the time of *Shardiya Navratra Mahotsav* of the year 2011-12, during his tenure, had passed a Resolution No. 1176 on 3.9.2011 for inviting tenders for various items as per the directions of the Collector, District Health Officer, Medical

Officer and Tahsildar for the ensuing festival of *Shardiya Navratra Mahotsav* 2011-12. Thereafter, notice was published in daily newspaper "Sangharsha" and "Lokmat" calling upon the tenders. Thereafter various persons have submitted their tenders.

4. Learned counsel for the applicant submits that the applicant being the then Chief Officer, was not knowing about the bogus tenders submitted in the name of *Bachat Gats* (small saving groups). After following due procedure, the work was allotted to the lowest bidders and concerned agencies have completed their work at the time of said festival. However, bills were not paid due to elections of the Municipal Council, Tuljapur, held in the year 2011. Even at that time funds were also not available. There are entries about articles purchased through such suppliers in the stock register and the work carried out by the contractors could have been ascertained from the measurement book, which is prepared by the Junior Engineer of the Municipal Council. The bills against installing of mandap, rest rooms, drinking water, temporary parking, road repairs with hard rock, removal of thorns and shrubs were paid as per the report of the Deputy Superintendent of Police and local Inspector. It is the bounden duty of the President and the councilors to pass resolution in respect of expenditure and as such, no illegality or irregularity has been committed in passing Resolution No.52 on 16.2.2012.

Furthermore, the Collector, Osmanabad has also given approval for the said expenditure by letter dated 18.4.2012 and after receipt of said approval letter from Collector, the payments to various suppliers/contractors have been made through cheques.

5. Learned counsel for the applicant submits that at no point of time the applicant was called by any authority to submit any explanation, even also by the Sub Divisional officer, who has conducted the enquiry, as directed to him by the then Collector. In the writ petition No. 10798 of 2012 challenging the enquiry report of the Sub Divisional Officer, then Collector, Osmanabad had given an undertaking to conduct a fresh enquiry and as such, earlier report cannot be taken into consideration. Learned counsel submits that at the time of processing the tender, the applicant was busy in other works, including preparation of voters list for the ensuing elections. The applicant being the Chief Officer, is supervising authority and the primary responsibility of verification was with the subordinate officers. It was practically not possible for the applicant to go through each and every documents of the tender. Learned counsel submits that in view of above, the custodial interrogation of the applicant, who is public servant is not required. The applicant is not likely to be absconded and he is ready to extend any sort of cooperation to the investigating officer for carrying out investigation into the allegations

made in the complaint.

6. The learned Public Prosecutor submits that entire tender process was doubtful. There is no transparency in the tender process. Furthermore, the proprietors of small saving groups have specifically stated before the police that they never participated in the tender process, however, the false documents came to be prepared in the name of such small saving groups for allotting work to the so called bidders. The learned public prosecutor submits that the special auditor has pointed out so many illegalities and irregularities in the entire tender process and allotment of the work. Serious allegations have been made against the applicant. Learned Public Prosecutor submits that custodial interrogation of the applicant is also required. His application seeking pre-arrest bail therefore is liable to be rejected.

7. Upon hearing and on perusal of record, I find that the applicant being the then Chief Officer had acted in a manner, which is unbecoming on the part of the public servant. 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.

8. Upon careful perusal of investigation papers, available on record, it is difficult to believe that the aforesaid process has been completed behind the back of the applicant. There is strong prima facie case against the applicant. I am shocked to see the special audit report. *Prima facie*, there is evidence about the embezzlement of Government funds, which is public money. The matter needs thorough investigation and the same is not possible unless the custodial interrogation of the applicant is made. The learned Additional Sessions Judge has rightly rejected the application seeking pre-arrest bail. I do not find any substance in this application. Hence, I proceed to pass the following order:-

O R D E R

Criminal application is hereby rejected.

(V. K. JADHAV, J.)

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