

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2428 OF 2017

1. Archana Vinod Gangane
 2. Vidyabai w/o Dileep Rao Gangane
(already disposed of)
 3. Mahantabai w/o Kishor Sathe
(already disposed of)
 4. Narayan s/o Vitthal Rao Gavali ...Applicants
- versus
- The State of Maharashtra ...Respondents

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Mr. N.B. Khandare, advocate for the applicants
Mr. A.B. Girase, public prosecutor, for respondent-State
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 Nos. 1 and 4 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 applications of the applicants, bearing Criminal Bail Application No. 79 of 2017 and 89 of 2017, respectively, for similar relief came to be rejected by

the learned Additional Sessions Judge, Osmanabad by orders dated 13.4.2017 and 29.4.2017, respectively. 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. The applicant No.4 Narayan was the councilor of Tuljapur Municipal council.

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. On 27.12.2011, applicant No.1 Archana came to be elected as President by the Councilors.

c) It has been alleged in the complaint that the then Chief Officer, the Accountant, the councilors and present applicant No.1, who happened to be 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, including the applicant Nos. 1 and 4 herein, 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 Chief Officer, the Accountant 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 applicants submits that the complainant Rajabhau Mane is a self-proclaimed social worker and the externment proceedings have been initiated against him and other persons. Even an externment order also came to be passed against him externing him from Latur, Solapur and Osmanabad districts. The informant Rajabhau is in the habit of making frivolous complaints against the applicants and others, without any substance. Learned counsel submits that the said festival was organized, managed and performed by the management of Tuljabhavani Trust,

for which the Collector, Osmanabad is the President. In order to provide the facilities to the devotees, who assembled there in large number, several works were required to be done, such as electric work, erecting sheds and sanitation, repairing of roads, providing drinking water facilities, colouring contract, contracts for keeping hygienic conditions, barricades etc., It was the responsibility of the Trust, police authorities and the health department and not of the Municipal Council. The said amount of the grants is received by the Collector and only for the purpose of execution of the said work, the said amount came to be released in favour of the Municipal Council.

4. Learned counsel for the applicants submits that said Dasara festival 2011 was between the period from 28.9.2011 to 6.10.2011. One Balasaheb Dongre was the President of the Municipal Council till December, 2011 and the applicants were never the members of the Municipal Council prior to December, 2011. The elections were held on 13.12.2011 and results were declared on 14.12.2011. On 26.12.2011 the election for the post of President was held and the applicant No.1 was elected as the President. In the general body meeting held on 3.9.2011, presided over by Shri Balasaheb Dongre, a resolution No. 1176 was passed for awarding the contracts by inviting tenders. Accordingly, tender notice was issued in two newspapers under the order and signature of then President.

Accordingly, the tender process was completed and work order was issued to the successful bidders. Actual work was executed and completed by those bidders/contractors before commencement of festival. Learned counsel submits that the meeting of the general body of newly elected councilors was held on 16.2.2012, wherein resolution No.52 was passed for making payment of the works which was already completed in the year 2011. Learned counsel submits that the informant Rajabhau Mane has lodged the complaint after such an inordinate delay, without offering any explanation as to the cause of such delay in lodging the complaint.

5. Learned counsel for the applicants submits that on 29.2.2012, the complainant has filed the complaint before the authority, alleging therein the illegality and irregularity committed in awarding the tenders. An enquiry was held on the basis of said complaint by the Sub Divisional Officer, which was completely in violation of the principles of natural justice. The Chief Officer did not give response and no record was submitted before the Sub Divisional Officer. Thus, the Sub Divisional Officer has recorded some adverse finding without verifying the record. Consequently, applicant No.1 herein challenged the proceedings of the said enquiry and the report of Sub Divisional Officer, by filing writ petition No. 10798 of 2012 in this Court. During the course of hearing, it was ensured by making a

statement that no adverse action would be taken without following due process. This Court has accepted the said statement and accordingly applicant No.1 herein had withdrawn the said writ petition. The authority did not find any adversity so far as the present applicants are concerned and as such, no further action was taken in the said enquiry and the said enquiry was dropped. Learned counsel submits that the informant Rajabhau Mane, any how wanted to see that the applicants should be implicated and therefore, filed false complaint in the police station at Tuljapur vide crime No. 98 of 2017, as above. Learned counsel submits that the F.I.R. came to be registered with malafide intention to implead the applicants in the crime, falsely. The wife of complainant Rajabhau Mane had contested the elections of the Municipal Council and she lost the election. Even the statement made in the F.I.R. about the then President Balasaheb Dongre, to the effect that he was not attending the office due to death of his father, is palpably false. On the contrary, as per the death certificate, the father of said Rajabhau Dongre was died on 28.1.2012 i.e. after the elections held in the year 2011.

6. The learned counsel for the applicants submits that in the given set of allegations, custodial interrogation of the applicants is not required. In the subsequent elections of the Municipal Council,

when the Government has changed the policy to elect the President directly from the public/voters, applicant No.1 herein got elected by the voters as the President of Municipal Council. The applicants therefore, are apprehending their arrest at the hands of police in connection with the aforesaid crime.

7. Learned counsel submits that during pendency of this application and other similar applications filed by other councilors, seeking pre-arrest bail in the matter, the respondent State has made a statement before this Court about holding a preliminary enquiry against those councilors for their involvement in the crime and further submitted that in case, during the course of enquiry, their involvement reveals in the crime and their custodial interrogation is needed, 48 hours' notice shall be given to them for effecting their arrest. Thus, this Court has disposed of those applications by granting liberty to those applicants to approach the Sessions Court, in case if such notice is issued to them. Learned counsel submits that the present applicants are also entitled for the same treatment under the principles of parity. Learned counsel submits that considering the nature of allegations and the status of the present applicants, their custodial interrogation is not required into the allegations, which are made so belatedly.

8. Learned public prosecutor for the respondent State submits that the applicants hatched the conspiracy. The Chief Officer and other staff members of the Municipal Council have misappropriated the huge government money. The small saving groups have specifically denied their participation in the tender process. As per the directions given by the authorities, the special audit for the period from 1.4.2011 to 31.3.2012 of the Municipal Council was carried out and the auditor has not only reported various illegalities/irregularities in the tender process but also made observation that the possibility of misappropriation of the amount cannot be ruled out. Learned public prosecutor submits that after making payment by cheque to the so called contractors, the present applicant No.4 handed over the cheque of Rs.8,71,196/- to one contractor, who is in police custody and further, the said contractor has given the cheque of Rs.8,60,000/- in favour of servant of applicant No.4. The learned public prosecutor submits that after passing of resolution No. 52, necessary correspondence was made to the Collector, Osmanabad for according sanction and even though the Collector has directed to make payment to the concerned by verifying process of tender and after inspecting the record, applicant No.1 herein, has issued cheques under her signature to the so called various contractors. Learned public prosecutor submits that the case of applicant Nos. 1 and 4 differs from other councilors and the other councilors are mere

signatories of resolution No.52. Therefore, there is no question of applying the principles of parity and custodial interrogation of the applicants herein is required to investigate into the serious allegations made in the F.I.R.

9. Learned public prosecutor, in order to substantiate his contentions, placed reliance on the judgment of Supreme Court in the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation, reported in 2013 AIR SC 2821.***

10. Upon hearing and on perusal of the entire record, I find that there is *prima facie* case against the present applicants and the prosecution would be able to collect evidence against the applicants in respect of the charges. I am shocked to see the special audit report of the Municipal Council, prepared as per the directions of the Collector for the period of 1.4.2011 to 31.3.2012. It appears that the special auditor has considered each and every allotment of the work during the said *Shardiya Navratra Mahotsav* of the year 2011 and found that the entire tender process appears to be false and concocted. There is no transparency in the so called process and there are many irregularities and illegalities committed in the entire tender process, as detailed in the special audit report. It further appears from the statement of the concern persons of the small saving groups that they never submitted any tender for any work for

that period and false letter pad and bogus stamp seals of their small saving groups came to be prepared and used. Their participation in the tender process was deliberately shown by quoting higher rates in their so called tenders and accordingly, the work was allotted to the lowest bidder as per the choice.

11. Learned counsel for the applicants has repeatedly made submissions that these two applicants are not responsible for the said tender process and as such, they cannot be held responsible merely on the basis of the passing of resolution No. 52. Learned counsel for the applicants has also vehemently submitted that the Collector, Osmanabad has accorded sanction in terms of the said resolution No.52. However, on perusal of the record, particularly, the sanction letter issued by the Collector, Osmanabad, I find that the Collector has specifically directed the Chief Officer, Municipal Council, Tuljapur to make payment as per resolution No. 52 only in respect of the works in which tender process was legally completed. The applicant No.1 herein, who happened to be the President of the Municipal Council, Tuljapur, has issued a cheque under her signature to the concern contractors and applicant No.4, who is also a councilor, had received back the said payment from the contractor. Said contractor is in police custody and he confessed before the police that he refunded the amount to the applicant No.4 herein by

issuing the cheque in favour of his servant. The police statement of the said servant is recorded during the course of investigation and he has accepted the same. Further, the investigating officer has also collected the extract of the bank account which *prima facie* supports the allegations made in this regard. It is difficult to believe that applicant No.1, being the President, had no opportunity to inspect the record in the light of the direction issued by the Collector, Osmanabad, before issuing the cheques.

12. In the case of ***Nimmagadda Prasad vs. Central Bureau of Investigation***, (supra), relied upon by the learned public prosecutor, in para 27 and 28 of the judgment, the Hon'ble Supreme court has made the following observations:-

“27. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the Legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in

support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

28. *Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”*

13. In the instant case, *prima facie*, I find substance in the allegations made against the present applicants. In the given set of allegations, custodial interrogation of the present applicants is required. The learned Additional Sessions Judge has rightly rejected the applications of the applicants praying similar relief. 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 rejected.

(V. K. JADHAV, J.)