

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 2483 OF 2017

1. M/s. Pandhe Infracons Pvt. Ltd.
Through its Director
Ankur s/o Anil Pandhe

2. Rohini w/o Anil Pandhe ...Applicants

versus

The State of Maharashtra and another ...Respondents

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Mr. R.S. Deshmukh, Advocate for Applicant.
Mr. A.D. Namde, A.P.P. for Respondents.

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CORAM : V. K. JADHAV, J.
DATED : 28th SEPTEMBER, 2017.

ORDER:

1. By this application, the applicants, who are director of M/s. Pandhe Infracons Pvt. Limited, are seeking pre-arrest bail in connection with crime No. 0087 of 2017 registered with Tuljapur police station, District Osmanabad, for the offences punishable under Sections 406, 420, 166, 167, 177, 409, 418, 464, 467, 471, 120(B) of I.P.C. Their application with similar prayer bearing criminal bail application No. 62 of 2017 came to be rejected by the learned Additional Sessions Judge, Osmanabad by order dated 29.4.2017.

2. Brief facts giving rise to the present application are as follows:-

a) This is about incomplete housing project meant for lower income group of the society, funded by the Central Government, to be completed by Tuljapur Municipal Council. One Mr. Rajabhau @ Rajendra Digambar Mane has filed Writ Petition No.3004 of 2015 in this Court pointing out therein that there were large scale irregularities committed by the President of the Municipal Council alongwith other persons in connection with the work of aforesaid construction of houses under the Integrated Housing and Slum Development Programme of the Central Government. The Government has sanctioned the funds of Rs.25.05 Cores for construction of 920 houses under the aforesaid scheme. It has also been contended in the said writ petition that the said work was allotted at the estimated costs of Rs.23.00 Crores without inviting tenders and without entering into proper agreement and further huge amount has been given to the contractor, as mobilization advance and even then the work of construction of houses under the said scheme was not complete.

b) The petitioner Rajabhau had initially approached the Collector, Osmanabad and the Collector, Osmanabad had constituted a

committee, consisting the Sub-Divisional Officer, Osmanabad and the Principal of Government Polytechnic College, Osmanabad to conduct an inquiry into the said allegations. Accordingly, the said committee has conducted the inquiry and submitted the report. It has been further contended in the said writ petition that though certain irregularities found to have been committed, the Collector has not taken any cognizance. In the said writ petition, the Collector has filed his affidavit and undertaken that if the contractor fails to reimburse the amount, criminal action will be taken against him without fail. Thus, the Division Bench of this Court, in the said writ petition, expressed hope and trust that the Collector would take further steps as undertaken in the affidavit and also directed the Collector to take steps proposing departmental enquiry against the erring officials.

c) Consequently, the Collector, has directed Rajiv Shankar Bubane, the Chief Officer, Municipal Council, Tuljapur to lodge a complaint. Accordingly, on the basis of the complaint lodged by the said Chief Officer, the aforesaid crime came to be registered. The said complaint came to be lodged with the allegations against the applicants who are directors of M/s. Pandhe Infracons Private Limited, Tuljapur to the effect that though mobilization advance of Rs.2.00 Crores was paid to

the said company in the year 2012, the work was not completed within stipulated period and as such, the Municipal Council, Tuljapur was constrained to cancel the contract and further to recover the amount to the extent of Rs.1.10 Crores from the security deposit and available materials, outstanding bills. It has been further alleged in the complaint that an amount of Rs.91,84,545/- excluding the interest, remained to be recovered from the applicants. Though the applicants have assured for refund the remaining amount, with interest, of monthly installments of Rs.10.00 Lacs each and a cheque of Rs.10.00 lacs though encashed by RTGS, however, remaining amount of Rs.81,84,585/-, excluding the interest, is still outstanding against the applicants.

d) It has also been alleged in the complaint that the applicants though given cheques of remaining amounts and even though the Municipal Council, Tuljapur has presented the said cheques in the bank, those cheques came to be bounced for insufficiency of funds. It has been thus alleged in the complaint that the applicants have given false promises, committed breach of trust and further deceived the Municipal Council, Tuljapur as well as the Government. Consequently, the investigating Officer has also impleaded the

complainant Chief Officer of Municipal Council, Tuljapur as one of the accused and also effected his arrest on 30.06.2017. On the basis of these allegations, the present applicants apprehend their arrest at the hands of police.

3. Learned counsel for the applicants submits that applicants are the directors of the company. The said company is for executing the housing projects under various housing schemes including Integrated Housing and Slum Development Programme (IHSDP) undertaken by the Central Government with the aid of local authorities and the Maharashtra Housing and Area Development Authority (MHADA) and its nodal agency. Learned counsel submits that on 31.10.2011, Tuljapur Municipal Council had initially given the said work to Navnirman Mahila Bahuuddeshiya Sanstha, Pune. However, subsequently, it transpired that the said Sanstha was not eligible for the said work in view of the conditions laid down by the Central Government, and therefore, by resolution dated 16.2.2012, the said work was again assigned to M/s. Pandhe Infracons Private Limited, a company of which present applicants are the directors. The work order initially issued in favour of Navnirman Mahila Bahuuddeshiya Sanstha was cancelled. The applicants after receipt of the work order on

31.3.2012, had mobilized the machineries with a view to implement the work on the site, it realized that the area for which the layout plan was sanctioned, was not available at the site, as the Collector, had allotted about 70-R less area than the required area though the area was available with the State. However, the applicants had no other option but to proceed with the work as they have mobilized the machineries and labours on the construction site by consuming the mobilization advance disbursed to the said company.

4. Learned counsel submits that the Central Government in the survey carried out in respect of IHSDP programme has noted that the project at Tuljapur was reported as incomplete, as the Government has not transferred the land to the said Council and also to the contractor. Even the applicants were consistently persuading the matter for sanction of the revised plan with the said Council, as the applicants were proceeding with the work at the representation by the said Council, however, due to the failure on the part of the Municipal Council, the applicants were unable to complete the work within stipulated period. The Collector, failed to allot the required land, though available and failed to remove the encroachments and fixation of the boundaries of the allotted area. Learned counsel submits that the

Collector, Osmanabad was aware of this fact and inspite of this the Collector, Osmanabad declared his intention to recover mobilization advance from the applicants. Learned counsel submits in the aforesaid writ petition this Hon'ble court accepted submissions in regard with the reports by accepting statements at bar without assessing actual reports.

5. Learned A.P.P. submits that though the applicants have shown their bonafide by depositing the amount of Rs.81,84,585/-, however, for making detail investigation in the matter, the custodial interrogation of the applicants is required. Even though the work of construction of said houses was not complete, the huge amount from the public exchequer has been misappropriated by the present applicants and others. There is strong *prima facie* case against the applicants and their application seeking pre-arrest bail is thus liable to be rejected.

6. On perusal of complaint and the charge-sheet, it appears that one Rajiv Shankar Bubane, the then Chief Officer of the Municipal Council, Tuljapur has lodged the said complaint pursuant to the directions given to him by the Collector, Osmanabad. The Collector, Osmanabad in tune with the undertaking submitted by him in the

aforesaid writ petition, has directed Rajiv Shankar Bubane to lodge the complaint against the present applicants, who are directors of M/s. Pandhe Infracons Private Limited. Accordingly, the present applicants have filed this application seeking pre-arrest bail and both the directors have shown their willingness to deposit the remaining amount of Rs.81,84,585/-. This Court (Coram: K. K. Sonawane, J.) by order dated 18th July, 2017, allowed the applicants to deposit the said balance amount being an amount recoverable from them and directed not to take any coercive action against the applicants. Even in para 6 of the said order, this Court has also recorded the statement of learned Public Prosecutor. The learned Public Prosecutor has fairly conceded that if the balance amount of Rs.81,84,585/-, as referred in the FIR, is deposited by the applicants, prosecution has no any objection to pass suitable order in the interest of justice, without prejudice to the rights of the prosecution.

7. On careful perusal of order passed by the Collector, it appears that after considering the report submitted by various authorities, including the committee appointed for enquiry into the allegations, concluded to the effect that there is no irregularity in appointing the contractor as well as in making the payment towards mobilization advance to the contractor. Learned Collector has concluded in his

order dated 24.2.2016 that the mobilization advance has been paid to the contractor as per the directives issued by the Nodal agency, MHADA. The learned Collector, has directed that the departmental enquiry to be initiated against the then Chief Officer, Municipal Council, Tuljapur and the Town Planner of the Municipal Council, Tuljapur for certain irregularities, as detailed in the said order. Learned A.P.P. has placed on record the report of the investigating officer. The investigating officer has mentioned certain grounds in his report for custodial interrogation of the present applicants. On careful perusal of the said grounds, I do not think that the custodial interrogation of the applicants is required. Furthermore, in view of order 18.7.2017, the applicants, to show their bonafides, have deposited an amount of Rs.81,84,585/- on 19.08.2017, in this Court.

8. In view of above discussion and the fact that investigation is over and the charge sheet has been submitted, I am inclined to grant pre-arrest bail to the applicants. Hence, the following order:-

ORDER

- I. Criminal Application is hereby allowed.

II. In the event of arrest of Applicant No.1 Ankur Anil Pandhe and applicant No.2 Rohini Anil Pandhe, in connection with Crime No.0087 of 2017 registered at Tuljapur Police Station, District Osmanabad for the offences punishable under Sections 420, 406, 166, 167, 177, 409, 418, 464, 467, 468, 471 read with 120-B of the Indian Penal Code, be released on bail on furnishing personal bond of Rs.20,000/- each with one solvent surety each of the like amount on the following conditions:

- a) The Applicants shall not tamper with the prosecution evidence in any manner.
- b) The Applicants shall make themselves available as and when required by the Investigating Officer.
- c) The Applicants shall attend the concerned police station once in a week on every Sunday between 09:00 am to 11:00 am for a period of three months from today.

III. The criminal application is accordingly disposed of.

[V. K. JADHAV, J.]

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