IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 2500 OF 2017

Amar s/o Shriram Naik ...Applicant

versus

The State of Maharashtra ...Respondent

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Mr. R.S. Deshmukh, 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 then Chief Officer of the Municipal Council, Tuljapur, then Accountant, present applicant, contractors and concerned councilors. The applicant is the proprietor of Sapna Electricals.

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 Navratha 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 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 suppliers 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/suppliers. 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 is sole proprietor of M/s. Sapna Electric Stores and his firm had supplied electric goods and water supply goods, within time schedule, as per the purchase order throughout the year in 2008-2009. However, the payments of the said goods were not released by the Municipal council for years together. The applicant was in great financial crunch and therefore, ultimately the Municipal Council released the part payment to the tune of Rs.34,69,219/-. Learned counsel submits that the applicant is small businessman and he has no concern with any of the alleged illegalities and irregularities committed during the *Shardiya Navratha Mahotstav* of the year 2011. The Municipal Council, Tulajpur has paid its arrears from the said grants and as such the concern police is behind the applicant for effecting his arrest in connection with the aforesaid crime. He has been duly paid his long standing arrears by the Municipal Council, after a period of more than four years, however, he has no knowledge regarding said payment under the specific heads. The applicant has a fixed place of residence and as such, he is not likely to be absconded. The applicant is ready to co-operate with the investigating officer. In the given set of facts, the custodial interrogation of the applicant is not required.

4. The learned Public Prosecutor submits that as per the own admission of the applicant, if the amount of Rs.34,69,219/- has been

paid towards arrears of his bills against the goods supplied in the year 2008-2009, the record shows that the present applicant has been paid total amount of Rs.69,69,219/- by four cheques of different denominations during the period from 10.4.2012 to 25.12.2012. The special auditor has specifically observed that so far as the goods/equipment/material purchased from Sapna Electricals is concerned, the invoices, stock register, the tender documents are not at all available for inspection. Furthermore, there is no record available to find out that the entire amount has been transferred in the account of Sapna Electrical as per the aforesaid four cheques. The learned Public Prosecutor submits that the custodial interrogation of the applicant is required and his 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. 535161 for Rs.17,0,000/-, cheque No. 535162 for Rs.17,69,219/-, cheque No. 118692 for Rs.20,00,000/- and cheque No. 662985 for Rs.15,00,000/-, totaling Rs.69,69,219/- has been paid to the applicant, who is proprietor of Sapna Electrical.

6. Learned counsel for the applicant has repeatedly submitted that the applicant has received the amount of Rs.34,00,000/- and some odd amount only towards arrears of the goods supplied during the period of

2008-2009, however, the record shows that near about Rs.69,69,219/- has been paid to Sapna Electrical of which the applicant is sole proprietor. Further, no record is available as to where such huge has been spent. It is also a part of record that without any direction the arrears shown to have been paid from the grants of the year 2011 and no record is available whether the said amount has in fact been transferred in the account of Sapna Electricals. 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.

7. In view of the 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 applicant, the custodial interrogation of the applicant is required. 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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