

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 3164 OF 2017

Vaijinath s/o Vishwanath Shete ...Applicant

versus

The State of Maharashtra ...Respondent

.....  
Mr. V.D. Salunke, advocate for the applicant  
Mr. S.B. Joshi, A.P.P. for the respondent  
.....

**CORAM : V. K. JADHAV, J.**  
**DATED : 7<sup>th</sup> 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. 130 of 2017 for similar relief came to be rejected by the learned Additional Sessions Judge, Osmanabad by order dated 13.6.2017. 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.

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, he 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, contractors, 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 applicant, 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 applicant, who is proprietor of Tuljabhavani Enterprises. 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 applicant submits that the informant Rajabhau Mane has belatedly lodged the complaint making wild allegations against everybody, including the applicant. There are general allegations in the complaint and so far as the applicant is concerned, it has been alleged in the complaint that the applicant has quoted excess amount for supply of bleaching powder and Alum (Turati). Learned counsel submits that so far as the allegations about excess amount charged by the applicant is concerned, the same can be directed to be refunded to the Municipal Council, Tuljapur. So far as the general allegations made in the complaint are concerned, the applicant has no concern with it. It is a matter of record that in terms of tender and the price quoted therein, the Municipal Council, Tuljapur has issued work order for supply of bleaching powder and Alum. The applicant has accordingly supplied the same and also received his payment. In view of same, custodial interrogation of the applicant is not at all required. The learned

Additional Sessions Judge has not considered the same and without application of mind, rejected the application seeking pre-arrest bail.

4. Learned counsel for the applicant, in order to substantiate his contentions, placed reliance on the judgment of Supreme Court in the case of ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and Anr. reported in (2016) 1 SCC 152.***

5. Learned A.P.P. for the respondent-State submits that as per record, on one and the same date, three tenders in the different names came to be submitted by the applicant by quoting higher rates compared to earlier rates quoted by other agencies for supply of same goods/material. As per the audit report, there are many irregularities and illegalities committed in allotting the work to the contractors. Even the special auditor has made a remark that the entire tender process is doubtful and huge amount has been paid to various contractors. The learned A.P.P. submits that it is also a part of record that the false documents have been prepared in the names of small saving groups for allotment of work to some of the contractors.

6. Upon hearing and on perusal of the record, more particularly, the special audit report, it appears that on 30.6.2011, all three tenders

came to be submitted for supply of bleaching powder and Alum. There is no inward number on the said tender/application. Special auditor has observed that tender process appears to be false and concocted. The special auditor has also observed many other illegalities and irregularities in the tender process for supply of bleaching power and Alum and further observed that the rates quoted were also in excess and without comparing the same with the market prices, amount has been paid. The special auditor, after considering entire record has specifically made a remark that the possibility of misappropriation of amount in collusion with each other cannot be ruled out. It is also revealed during the course of investigation that letter pads, stamps, false signature of office bearers of small saving groups were used for allotting the work to some of the contractors. It transpired that though the amount has been paid to one of the contractor as per the so called tender work, after deducting some amount, the balance amount was paid to the councilor through his servant.

7. In the case of ***Bhadresh Bipinbhai Sheth vs. State of Gujarat and another (supra)***, relied upon by the learned counsel for the applicant, the Supreme Court has summarized the principles for grant of anticipatory bail.

8. Thus, in view of the principles laid down by the Supreme Court in the aforesaid case and considering the nature and gravity of offence,

accusations, so also the role played by the present applicant, after carefully evaluating the entire material available against the applicant, I do not think that the applicant is entitled for pre-arrest bail. In the given set of allegations, 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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