

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

CRIMINAL APPLICATION NO.:3692 OF 2017

Soheb Sikandar Kazi
VERSUS
The State of Maharashtra

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Mr. R. N. Dhorde, Senior Counsel, i/b Mr. V. R. Dhorde, Advocate for
Applicant.

Mr. A. B. Girase, P.P. for Respondent/State.

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CORAM : V. K. JADHAV, J.
DATED : 07th SEPTEMBER, 2017.

ORDER:

1. By this application, the applicant is seeking pre-arrest bail in connection with crime No. 87 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. His application with similar prayer came to be rejected by the learned Additional Sessions Judge, Osmanabad.

2. Brief facts giving rise to the present applications 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 mainly against the contractor M/s. Pandhe Infracons Private Limited, Tuljapur to the effect that though mobilization advance of Rs.2.00 Crores was paid to said contractor 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 M/s. Pandhe Infracons Private Limited. Though M/s. Pandhe Infracons Private Limited has 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.81,84,545/-, excluding the interest, is still outstanding against the said contractor.

d) It has also been alleged in the complaint that M/s. Pandhe Infracons Private Limited 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 said contractor has given false promises, committed breach of trust and further deceived the Municipal Council, Tuljapur as well as the Government. During the course of investigation, it was revealed that the said contractor has claimed the amount under the head of running account bill for excavation work and other construction work on the site as per the measurement to the tune of Rs.51.00 lacs and out of which, Rs.22.00 lacs have been paid to it. 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. It has been also revealed during the course of investigation that the present applicant was appointed as consultant for the said project and also conspired with other co-accused in misappropriation of funds. On the basis of these allegations, the present applicant apprehends his arrest at the hands of police.

3. Learned senior counsel for the applicant submits that applicant Soheb Kazi was appointed as consultant in pursuance to the Integrated Housing Slum development programme introduced for slum dwellers by the Central Government in the year 2005. The applicant being proprietor of Legent consultant, Osmanabad, was appointed as a consultant for the said project. Since the earlier consultant has not carried out any work for more than a period of six months his appointment was cancelled. The present applicant was assigned with the said work by Resolution dated 2.4.2008 at the rate of 2% of the sanctioned costs of Rs.25.05 Crores for preparation of detailed project report etc. The applicant being consultant Engineer has undertaken the work for preparing detail survey project report and also presentation before the appropriate authority. Pursuant to the said

resolution passed by the Municipal Council, Tuljapur the applicant has been given work order on 14.5.2008. In pursuance of said work order, the applicant has made survey of all slums in Tuljapur Town and submitted three development plans to Tuljapur Municipal Council. As per the agreement, the applicant has also sent the said report to the MHADA, Aurangabad Office and comply with all requirements and documentation, design, estimate, drawing etc.

4. Learned senior counsel for the applicant submits that the agreement was entered into on 8.5.2008 for preparation of detail project report (D.P.R.). There was no agreement entered into for the purpose of supervision of work. On 31.10.2011, Tuljapur Municipal Council had initially given the said work to Navnirman Mahila Bahuuddeshiya Sanstha and also appointed the present applicant as project management consultant and by resolution dated 16.2.2012 the work was again assigned to M/s. Pandhe Infracons Private Limited. The said work order in favour of Navnirman Mahila Bahuuddeshiya Sanstha was cancelled. Learned senior counsel submits that no amount of money has been paid to the applicant for supervision charges till 2015 and only amount of Rs.55,223/- has been paid to him on 4.7.2016 by cheque. The applicant has undertaken the said work by

appointing the necessary staff and submitted various plans to various authorities, like MHADA and HUDCO and ultimately those plans came to be submitted to the Central Government, which has sponsored the same scheme.

5. Learned senior counsel for the applicant further submits that from Maharashtra, there were two proposals, one of Tuljapur Municipal Council and second of Umari Municipal Council. The applicant as representative of Tuljapur Municipal Council before the sanctioning committee Central Government and other authorities and accordingly the scheme was approved by the sanctioning committee to the tune of Rs.25.05 Crores. Learned senior counsel submits that as per the agreement dated 14.5.2008, he had completed his work and he has received the amount of Rs.46.00 lacs as per the clauses in the aforesaid agreement at the rate of 2% of the project costs. Learned senior counsel submits that there is absolutely no illegality in the payment of fees of present applicant and the applicant came to be impleaded as an accused in this crime without any basis.

6. Learned Public Prosecutor has resisted the application on the ground that as per the agreement dated 14.5.2008 the mode of

payment to the consultant has been prescribed and the payment to the consultant was required to be made only after prior permission of the Government. Learned Public Prosecutor submits that as per the resolution passed by the Municipal Council Tuljapur, the present applicant was supposed to supervise the work. Even though the work of construction of said houses was not complete, the huge amount of Rs.46.00 lacs has been paid to the present applicant towards the consultation fees without any approval. There is strong *prima facie* case against the applicant and his application seeking pre-arrest bail is thus liable to be rejected.

7. On careful perusal of the investigation papers and the documents submitted alongwith the application, it appears that the work has been assigned to the present applicant under an agreement dated 14.5.2008 and the amount at the rate of 2% of project costs has been paid as per the directives issued by Nodal agency MHADA. It further appears from the communication of MHADA to the Chief Officer of Municipal Council, Tuljapur dated 7.8.2012 and pursuant to the directions, the said consultation charges have been paid to the applicant. It also appears from the said communication that Nodal agency MHADA further directed the Chief Officer, Municipal Council

Tuljapur to submit reimbursement proposal so far as the consultation charges paid to the applicant. It appears from the record that the applicant has prepared a detail project report with all efforts and made representation before the Central Sanctioning committee for approval of the scheme. In the minutes of the resolution passed by the Central sanctioning committee, there is reference about presence of the applicant. Though subsequently, nodal agency MHADA has pointed out the flaws in the reimbursement proposal submitted by the Municipal Council, Tuljapur in respect of the amount paid to the applicant consultant, however, there is no whisper in the entire report submitted by the various authorities to the Collector about alleged illegalities in the payment of consultation fees of the applicant.

8. In view of above discussion, I am inclined to grant pre-arrest bail to the applicant. Hence, the following order.

ORDER

- I. Criminal Application is hereby allowed.
- II. In the event of arrest of Applicant Soheb Sikandar Kazi in connection with Crime No.87 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, he be released on bail on furnishing personal bond of Rs.20,000/- with one solvent surety of the like amount on the following conditions:

- a) The Applicant shall not tamper with the prosecution evidence in any manner.
- b) The Applicant shall make himself available as and when required by the Investigating Officer.
- c) The Applicant 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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