

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

CRIMINAL APPLICATION NO. 4620 OF 2017

Jaishri Vijay Kandale
VERSUS
The State of Maharashtra

...

Mr. Girish K. Thigale (Naik), Advocate for Applicant.
Mr. A. B. Girase, P.P. for Respondent/State.

...

WITH

CRIMINAL APPLICATION NO. 4077 OF 2017

Manjusha D/o. Diliprao Magar
VERSUS
The State of Maharashtra

...

Mr. S. S. Jadhav, h/f Mr. Sushant B. Choudhari, Advocate for Applicant.
Mr. A. B. Girase, P.P. for Respondent/State.

...

WITH

CRIMINAL APPLICATION NO. 4584 OF 2017

WITH

CRIMINAL APPLICATION NO. 4621 OF 2017

Archana Vinod Gangane
VERSUS
The State of Maharashtra

...

Mr. N. B. Khandare, h/f Mr. Patil Kishor J. Ghute, 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 these applications, the applicants are 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. Their applications 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, sponsored 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 the 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 the 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 the Government Polytechnic College, Osmanabad to conduct an inquiry into the said allegations. Accordingly, the said committee has conducted inquiry and submitted a 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 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 of remaining amount, with interest, by 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 been also alleged in the complaint that M/s. Pandhe Infracons Private Limited though given cheques of remaining amount 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 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 applicants, who are Ex-president of Municipal Council, Tuljapur have also conspired in the said misappropriation of funds. 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 the applicant Jaishri Kandale is ex-President of Municipal Council, Tuljapur and her tenure was from 17.7.2014 to 03.12.2015. The applicant Archana Gangane is elected President of Municipal Council, Tuljapur and her

tenure was from 2012 to 2017. In so far as applicant Manjusha Magar is concerned, she was elected as the President of Tuljapur Municipal Council on 15.12.2015 till 14.12.2016. Prior to the said tenure, she was the councilor since 15.12.2011. There are no allegations made in the F.I.R. against the present applicants and only under the garb of investigation, the investigating officer impleaded the present applicants in the aforesaid crime. Learned counsel for the applicants submit that the Maharashtra Housing and Area Development Authority (for short "MHADA") is a nodal agency for the said project and M/s. Pandhe Infracons Private Limited has been appointed as contractor for execution of said construction work. The work order came to be issued on 31.3.2012 in favour of said contractor. As per the terms of contract, the construction of 920 houses was to be completed within 11 months. In spite of conditions of contract and the notices given to the contractor for completion of work, the said contractor failed to complete the work within stipulated period. The Municipal Council, in its general body meeting held on 17.11.2015, passed Resolution No. 849 and cancelled his contract. The substantial amount has been recovered from the security deposit of the contractor and further the amount of Rs.7,70,361/- has been recovered from the materials, which were on the site placed by the contractor. Learned counsel submits that the

Collector, Osmanabad has considered the report submitted by the Sub Divisional Officer dated 21.11.2012, the report submitted by the Chief Officer, Municipal Council, Tuljapur dated 4.9.2014, then the report of the Chief Executive Officer of Aurangabad Housing and Area Development Authority, Aurangabad dated 18.11.2014, the report of the District Project Officer dated 9.6.2014 and the enquiry report of the committee consisting of Sub Divisional Officer and Principal, Government Polytechnic College, Osmanabad dated 2.2.2013 and by order dated 24.2.2016 has concluded that in terms of communication by the Nodal Agency, MHADA, Tuljapur Municipal Council has appointed the contractor from the list and after taking prior permission from Nodal agency MHADA, the mobilization advance has been paid to the contractor. The learned Collector has concluded to the effect that there is no irregularity in granting mobilization advance to the contractor, however, since there was no progress towards completion of work and as such, departmental inquiry is required to be initiated against the then Chief Officer, Shri Santosh Tenge and the then Town Planner, Shri Liladhar Talekar. Learned counsel submits that the applicants have not played any role in entire work and without any basis, they have been impleaded as accused in the present crime. The antecedents of the applicants are clear. The relevant documents

are already seized and the said documents were also part of enquiry conducted by various authorities and ultimately submitted to the Collector, Osmanabad. In view of the same, the custodial interrogation of the present applicants is not required in any manner. The applicants are respectable persons. The applicant Manjusha has delivered a baby recently.

4. Learned Public Prosecutor has resisted the applications on the ground that on 15.5.2012 the first mobilization advance to the tune of Rs.1,10,00,000/- was paid to said M/s. Pandhe Infracons Private Limited when the present applicants were holding their respective posts. Though there is specific mention in the directives issued about the payment of advance in two installments, it was for the applicants to verify whether the first mobilization advance has been utilized properly. Though the bank guarantee was expired, on 3.11.2012 second installment of mobilization advance amount to the tune of Rs.90.00 lacs has been paid to the contractor by the cheque signed by Shri Santosh Tenge, the Chief Officer, Municipal Council, Tuljapur and the applicant Smt. Archana Gangane, the then President of Municipal Council, Tuljapur. Learned Public Prosecutor submits that prima facie, it appears that the work was commenced without any specifications

and the appointment of the contractor is against the rules and directives. The present applicants and Chief Officer misused their position and committed said irregularities. The learned Public Prosecutor submits that there is prima facie case against the applicants and their applications seeking pre-arrest bail are required to be rejected.

5. 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 contractor of said M/s. Pandhe Infracons Private Limited. The directors of M/s. Pandhe Infracons Private Limited also filed Criminal Application No.2483 of 2017 seeking pre-arrest bail and in the said application, both the directors have shown their willingness to deposit the remaining amount of Rs.81,84,545/- shown as balance amount. This Court (Coram: K. K. Sonawane, J.) by order dated 18th July, 2017, allowed M/s. Pandhe Infracons Private Limited to deposit the said balance amount being an amount recoverable from them.

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 M/s. Pandhe Infracons Private Limited, prosecution has no any objection to pass suitable order in the interest of justice, without prejudice to the rights of the prosecution.

6. 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. On careful perusal of entire investigation papers, the orders passed by the authorities, *prima facie*, I do not find any incriminating evidence against the present applicants. The investigation is over and the charge sheet has been

submitted. In view of above, I am inclined to grant pre-arrest bail to the applicants. Hence, the following order:-

ORDER

- I. Criminal Application Nos.4620, 4077 and 4584 of 2017 are hereby allowed.
- II. In the event of arrest of Applicant Jaishri Vijay Kandale in Criminal Application No.4620 of 2017, Applicant Manjusha D/o. Diliprao Magar in Criminal Application No.4077 of 2017 and Applicant Archana Vinod Gangane in Criminal Application No.4584 of 2017, 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, 471 and 120-B of the Indian Penal Code, they 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. All the criminal applications are accordingly disposed of.

IV. In view of disposal of criminal application No. 4584 of 2017, criminal application No. 4621 of 2017 is also disposed of.

(V. K. JADHAV, J.)

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