

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1210 OF 2017

MANOJ MOTAJI PUROHIT)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

BAIL APPLICATION NO.1211 OF 2017

RATILAL BABHUTMAL JAIN)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Rajiv Chavan, Senior Advocate, a/w. Mr.Sandesh Patil and Mr.C.Y.Shah, Advocate for the Applicants.

Mr.Avinash Khamkhedkar, APP for the Respondent – State.

Mr.Vijay Upale, PSI, Crime Branch, Thane, present in court.

**CORAM : A. M. BADAR, J.
(VACATION COURT)**

DATE : 1st JUNE 2017

P.C. :

1 These are first bail applications after filing of the charge-sheet by both applicants / accused who were arrested on 4th January 2017 in Crime No.201 of 2016 for offences punishable under Sections 420, 467, 468, 470, 471, 120B of IPC read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, moved principally on the ground of parity due to release of the main accused on bail by this court.

2 Heard Mr.Rajiv Chavan, the learned senior counsel, who vehemently argued that on the principle of parity, both applicants / accused are entitled to be released on bail as the principal accused viz. accused no.1 Shyamsunder Radheshyam Agarwal has already been released on bail by this court and that too during pendency of investigation vide order dated 9th December 2016 passed in Bail Application No.2482 of 2016. The learned senior counsel further argued that role of these two applicants before this court who are accused nos.4 and 5 is

inferior to the role attributed to the principal accused no.1 Shyamsunder Radheshyam Agarwal. The charge-sheet reveals that during search of his office in the course of investigation, forged documents, stamp papers, papers having forged rubber seal impressions on them came to be recovered from said accused no.1 Shyamsunder Radheshyam Agarwal. The learned senior counsel pointed out that said Shyamsunder Radheshyam Agarwal was released on bail on 9th December 2016 by this court and now with passage of time the charge-sheet has also been filed in the matter, but applicants / accused are still behind bar. The learned senior counsel argued that the role attributed to accused no.1 Shyamsunder Radheshyam Agarwal is in respect of land bearing Survey No.663 of Mira Bhayander and the said accused was categorically named in the FIR lodged by Milan Gandhi. It is further argued that names of both applicants / accused were not even figuring in the said FIR but their alleged complicity is shown during the course of investigation. The learned senior counsel drew my attention to record page 44 which is a charge-sheet and pointed out that so far as ULC certificates are concerned, role of

present applicants / accused in the crime in question is exactly identical to the role attributed to accused no.1 Shyamsunder Radheshyam Agarwal. Hence, in submission of the learned senior counsel, both applicants / accused need to be released on bail during pendency of the trial on the basis of principle of parity. It is further argued that applicants / accused are not directly concerned with the process of issuance of the ULC Certificates and even on merits of the case, their pretrial detention is not warranted.

3 The learned APP opposed the applications by contending that lands involved in the crime in question are different. Applicants / accused are stated to have used the forged ULC Certificates in respect of other lands. Therefore, principle of parity cannot be made applicable. However, upon being asked, the learned APP has fairly accepted the fact that order dated 9th December 2016 releasing the accused no.1 Shyamsunder Radheshyam Agarwal has attained finality.

4 Undisputedly, accused no.1 Shyamsunder Radheshyam Agarwal has been released on bail by this court even during pendency of investigation vide order dated 9th December 2016 passed in Bail Application No.2482 of 2016 (Coram : N.W.Sambre, J.). It would be apposite to quote paragraphs 2 and 5 to 8 of the said order. They read thus :-

“2 The prosecution story as could be gathered from the investigation papers is certain lands which were covered under the Urban Land Ceiling and Regulation Act were shown to have been in the agriculture zone instead of the residential zone and by procuring forged certificate to that effect, the property was transferred. The said transaction and deeds on the part of the present applicant who purchased it on 19.12.2006 has duped the U.L.C. authority i.e. State Government of its share and revenue.

5 Having bestowed my thoughts to the submissions made, it is required to be noted that in 2012 pursuant to a complaint with the police authorities, the senior Inspector of Naupada Police Station has already carried out an

investigation in the matter and submitted report to the D.C.P. of the concerned zone thereby giving clean chit to the present applicant. It is then to be noted that the said report which was submitted to the D.C.P. perhaps remain dormant and it is subsequent thereto based on the complaint a fresh crime came to be registered. In the investigation it was found that the land in question bearing survey No.663 old 237 new, 664 old 236 new at Mauje Bhyander, Taluka and District Thane, was a marked in the development land for the residential use. The property in question was within urban accumulation and subject to clearance under the U.L.C. authority which is avoided based on the alleged forged certificate.

6 The above referred attributions qua the involvement of the applicant as beneficiary appears to have been already investigated.

7 Looking to the nature of the offence alleged against the applicant, the punishment prescribed thereunder in my opinion, the further detention will be of hardly any necessity. Hence, application needs to be allowed.

8 The applicant be released on bail on furnishing PR. Bond of Rs.1,00,000/- (Rupees One Lakh) with one or two sureties in the like amount. The applicant shall attend police station as and when called for. Two consecutive absence before the Court after filing of the charge sheet will give an liberty to the said Court to proceed with cancellation without being influenced of the above observations. The applicant shall not tamper with the evidence or influence the witnesses in any manner whatsoever.

5 Bare perusal of the charge-sheet goes to show that allegations against accused no.1 Shyamsunder Radheshyam Agarwal were in respect of land bearing Survey No.663. Similar allegations are against present applicants / accused. Applicant / accused Manoj Purohit is said to have used ULC certificate in respect of land bearing Survey No.662/2 whereas applicant / accused Ratilal is said to have used ULC Certificate in respect of land bearing Survey No.661/1, 2. The alleged modus operandi for commission of the crime in question by accused no.1 Shyamsunder Radheshyam Agarwal and present applicants /

accused is exactly identical. It is seen that according to the prosecution case, ULC Certificate is illegally obtained from deceased accused no.6 Bhaskar Wankhade, Additional Collector. Charge-sheet reveals that the ULC Certificate is in the name of Rakesh Manglya Mhatre and not in names of present applicants / accused.

6 Careful scrutiny of the entire charge-sheet shows that infact inferior role is attributed to both applicants / accused in commission of crime than that attributed to the co-accused released on bail by this court. Investigation of the crime in question has already been concluded, resulting in filing of charge-sheet before the competent court.

7 The word parity denotes a state when the person is placed on the same footing as the other person. Such person is entitled for similar treatment. As such, in the case in hand, as main accused viz., accused no.1 Shyamsunder Radheshyam Agarwal with graver accusations has already been released on bail

during pendency of the investigation, I see no reason to refuse similar relief to both applicants / accused and that too after completion of investigation. I see no distinguishable case than that of accused no.1 Shyamsunder Radheshyam Agarwal.

8 Parity alone is not the consideration for releasing the accused persons on bail. However, in the case in hand, public servant against whom provisions of Section 13(1)(d) of the Prevention of Corruption Act is invoked, has already died and abated summary came to be filed so far as he is concerned. The evidence against accused persons comprises of documentary evidence and as such, question of tampering prosecution witnesses does not arise. There is nothing on record to infer that both applicants /accused are having any criminal antecedents or that there is likelihood that they will commit similar crime in future. The prosecution has no such apprehension against them. The ULC Certificate is not issued in name of applicants / accused but it was issued in the name of one Mr.Rakesh Mhatre.

9 The net result of foregoing discussion requires me to adopt the same course of action which is adopted by this court vide order dated 9th December 2016 in Bail Application No.2482 of 2016 while releasing the main accused Shyamsunder Radheshyam Agarwal on bail. As such the following order :

- i) Both applications are allowed.
- ii) Applicants / accused in Crime No.I-201 of 2016 for the offences punishable under Sections 420, 467, 468, 470, 471, 120B of the IPC and Section 13(1)(d) of the Prevention of Corruption Act registered with Thane Nagar Police Station, through Crime Branch, Thane City, be released on bail on their executing PR.Bond in the sum of Rs.1 Lakh each and on furnishing surety in like amount by each of them.
- iii)As a condition of this order, both applicants / accused should attend the trial court on each and every date fixed for hearing unless they are exempted by the trial court from attendance.

- iv) As a condition of this order, the applicant / accused shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against applicant so as to dissuade him from disclosing such facts either to the Court or to any police officer and that he shall not tamper with the evidence.
- v) As a condition of this order both applicants / accused should deposit their passport, if any, with the trial court within one month after their release on bail.
- vi) If applicants / accused desire to leave India then they are at liberty to apply to the trial court for necessary permission and for release of their passport for that purpose.
- vii) Applications stand disposed of accordingly.

(A. M. BADAR, J.)