IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2645 OF 2016

Devidas Anandrao Pingle .... Applicant

versus

State of Maharashtra ... Respondent

Mr.Shirish Gupte, Senior advocate a/w Mr. Niteen Pradhan, Senior Advocate, i/b. Aniket Nikam, Advocate for the Applicant.

Mr.Deepak Thakery, APP for the State/Respondent.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 13th FEBRUARY, 2017.

P.C. :

1. This application is moved for bail by the applicant/accused. The applicant/accused is prosecuted for the offence punishable under sections 7,13(1)(a)(d)(e) of the Prevention of Corruption Act, 1988 and under section 109 of the Indian Penal Code in C.R.No.Mhasrul Police Station, Nashik.

2. It is the case of prosecution that one Dyaneshwar Tukaram Dhonde, PI of Anti Corruption Bureau of Nasik, has

received secret information from higher officers, Anti Corruption Bureau that on 25/10/2016 between 16 hours to 20 hours, the officers of Agricultural Produce Market Committee (APMC) would be going by a private car Swift Desire No.MH-15-CM-2180 with cash of Rs.40-50 lakhs from RTO chowk, Pethi Road, Nashik towards Ashwamedh Nagar Road. It was informed that the said amount was disproportionate to their known source of income. The complainant alongwith officers and panchas laid trap and the said car was stopped. They found one plastic bag in the dickey with bundle of J.C. Notes. The persons in the car who were in the employment of APMC were clerk Digamber Hiraman Chikhale, Arvind Hukumchand Jain i.e. the accountant and Vijay Sityaram Nikam, the steno typist. They all were taken to the police station and after counting cash it was were found of Rs.55 lakhs and amount of Rs.2,73,800/- was found with Arvind Jain. Thus total amount of Rs.57,73,800/- was seized by the police under the seizure panchanama. It is the case of prosecution that on enquiry they realized that the co-accused have withdrawn this amount from NDCC Bank and it was a difference of dearness allowance payable due to 6th pay commission to the employees working in APMC Nasik. The persons who were nabbed could not explain why that amount was withdrawn, why they were in possession of the said amount and therefore they were arrested.

3. It is the case of the prosecution that during the course of enquiry it was revealed that nearly 150 employees had received dues of the dearness allowance and bonus and the present applicant/accused who is the Chairman of APMC has pressurized the employees and have demanded a cut in the said difference of the dearness allowance from the persons in the employment of APMC. The employees working in the APMC were succumbed to the pressure of the applicant/accused as they were threatened of harassment, departmental enquiry, suspension and transfer and therefore they agreed to pay him money. Thus the applicant/accused with the help of other accused asked the employees to issue blank cheques and the amount from all these employees was collected. These amounts

were withdrawn by bearer cheques and the said cash was taken by the co-accused when they were arrested. The applicant/accused was arrested on 21/12/2016. He is behind the prison since then. Hence this bail application.

4. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. He has not committed any offence. The main bone of the contention of the learned senior counsel is that the offence registered against the applicant/accused are under the Prevention of Corruption Act, u/s 7,13(1)(a)(d)(e) r/w 13(2)of the Prevention of Corruption Act, 1988 and under section 109 of the Indian Penal Code. The learned senior counsel further submitted that in the case of investigation under the PC Act custody of the applicant/accused is not required. He submitted that most of the investigation by the police is completed. There is no purpose to keep the applicant/accused in the prison. The learned counsel further pointed out the orders of the Division Bench of this Court, wherein in the order dated 31/01/2017 the Court by way of ad-

interim relief has directed that till next date investigation shall be proceeded, but charge-sheet shall not be filed as against the petitioners, as the matter is scheduled on 27/02/2017. The learned Division Bench in the earlier order dated 19/12/2016 has noted that the learned prosecutor has submitted that charge-sheet would not be filed till next date. Thereafter the learned counsel pointed out that the order passed by learned Division Bench dated 31/01/2017 that the amount of Rs.57,73,800/- has been redeposited in the accounts of 117 employees with Nasik District Anti Corruption Central Bureau. The sum of Rs.100 has been refunded to Police.

5. The learned senior counsel further submitted that as on today 54 days are completed and this applicant/accused has thereafter statutory right to move the application for bail u/s 167 (2) of Cr.P.C. and therefore technically there is no point in keeping this applicant/accused in the prison and so also on merit he is entitled to bail. The learned counsel further submitted that in a case of corruption generally the custody of

the accused is not required as it is not the case where severe punishment is prescribed.

6. The learned counsel for the applicant/accused has further relied on the order passed by the learned Sessions Judge and the remand report of the Special Court, wherein the accused was remanded to NCR on 09/01/2017. In the last paragraph the Judge has dealt with statement of one Dinde that as per the case diary that amount of Rs.4,78,000/- was handed over by him to the present applicant/accused. However, Dinde is having vengeance against the present applicant/accused as he had suspended him by order dated 02/01/2017 and therefore he was against him. That statement is not to be given much importance at this stage.

7. The learned prosecutor while opposing the bail has submitted that police yet have to record the statements of some witnesses and investigation is incomplete. He further submitted that there is pressure on the witnesses administered by the associates of the applicant/accused. He further submitted that

the statement of the witnesses to that effect are also recorded. The learned prosecutor relied on the transcription intercepted version of the applicant/accused and other persons so also bank employees, bank manager and the applicant/accused.

8. Perused the FIR and the statements of the witnesses which are produced before me. I have also gone through the transcription of the intercepted conversation between the applicant/accused and bank manger and other persons. Perused the statements of the witnesses which were recorded u/s 164 of the Cr.P.C. It is true that normally in the trap case or in the case of disproportionate assets registered under Prevention of Corruption Act, the prolonged custody is not required. However, in the present case after going through the facts of the case and the allegations made against the applicant/accused and the manner in which the offence was committed I am not inclined to treat this case as a routine case. The applicant/accused was working as a Chairman or APMC and he has misused his authority by putting pressure on the employees of the APMC and

demanded the arrears of the difference and dearness allowance was to be paid to him. He also threatened them of the consequences. He threatened them that if the employees wanted dearness allowance as per 6th pay commission paid thereafter, then they all were to pay him arrears of the difference of dearness allowance. A very peculiar method of collecting arears - money was used. He had directed the person of his confidence to collect blank cheques from the employees and thus many employees gave blanck cheques to those persons and the cheques were deposited in the bank by writing figure of the amounts. Thus by abusing his power and authority the present applicant/accused had bargained with the employees of the APMC for giving them a rise in the payment as per the 6th pay commission and thereafter he through co-accused withdrew the amount. In the statements recorded u/s 164 of Cr.P.C. the witnesses have given all the details of the modus operandi of collecting and withdrawal of money which is shocking. The statement of the employee is also recorded wherein he has stated that he was pressurized by the applicant/accused.

9. Thus, after going through the papers it is revealed that the pressure and threats given by the applicant/accused are apparent. He is holding authority and have influence therefore I am of the view that at this stage I am not inclined to allow this bail application and reject the same.

10. The learned senior counsel submitted that u/s 167(2) of Cr.P.C. the applicant/accused has statutory right to apply for bail after 60 days if the charge-sheet is not filed by the prosecution. The said liberty u/s 167 of Cr.P.C is always available to the accused.

(MRIDULA BHATKAR, J.)