

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.723 OF 2017

Mr. Milan C. Mehta

... **Applicant**

V/s.

The State of Maharashtra

... **Respondent**

Mr. Ashok Mundargi, Sr. Advocate at, Mr. Pratap Nimbalkar for the Applicant.

Smt. J.S. Lohokare, APP for the Respondent State.

CORAM : A.S.GADKARI, J.

DATE : 23rd JULY 2018

P.C.:

1. By an Order dated 24.04.2017 the applicant was granted interim relief and was directed to attend the Investigating Officer on stipulated dates.
2. Heard Mr. Mundargi, Sr. Counsel appearing for the applicant and the learned APP. Perused the record of investigation.
3. The FIR is lodged by Mr. Tushar Samant, Sub-Engineer working with Municipal Corporation of Greater Mumbai (MCGM) in

its Maintenance Department, "A" Ward, Fort Mumbai. The prosecution case in brief is that the applicant was entrusted with the work of contracts relating to Pay and Park of motor vehicles and despite the fact that the cheques issued by the concerned contractors were dishonoured and the MCGM did not get its revenue, the applicant continued to extend their tenders from time to time, thereby causing monetary loss of Rs.3,83,17,100/- to the exchequer of MCGM.

4. A perusal of record indicates that the e-tender dated 27.02.2018 was issued under the signature of Assistant Commissioner, "A" Ward, MCGM, thereby calling tenders from the interested parties for accepting contracts for Pay and Park Scheme in "A" Ward of the Corporation.

The record further indicates that, the first informant Mr. Tushar Samant, Sub-Engineer (Maintenance) by an Administrative Order dated 19.03.2014 was also directed to look after the work of Pay and Park Scheme in "A" Ward in addition to his own work. The period of alleged defalcation is stated to be 19.01.2012 to 16.11.2015. The record further indicates that the applicant was appointed as an

Election Officer from 12.03.2014 to 02.04.2014 for the elections of Colaba Legislative Assembly, Mumbai.

5. It is the contention of the prosecution that, the applicant was relegated with all the powers to grant/refuse tenders and look after the entire work of Pay and Park scheme of the MCGM in “A” Ward. The record of investigation and the documents annexed to the application *prima facie* belies the said contention of the prosecution. As noted earlier, the basic process of tender was initiated under the signature of Assistant Commissioner, “A” Ward, MCGM.

6. It further appears that, in the hierarchy of Officers of Corporation, applicant is the lowermost officer being a Sub-Engineer of “A” Ward and it *prima facie* appears that with a view to make a scapegoat, the applicant has been implicated in the present crime. It is to be noted here that it was the equal responsibility of the first informant Mr. Tushar Samant to look into the affairs of the said process of renewal of contracts as he was also entrusted with the work of Pay and Park in “A” Ward of the MCGM by office order dated 19.03.2014, and therefore, the higher officers of the applicant cannot be permitted to shrug of their responsibilities and put the entire

burden of the said mismanagement/defalcation on the applicant, who is the lowermost officer in rank in the hierarchy of the MCGM.

7. In view thereof, interim relief granted by an order dated 24.04.2017 is hereby confirmed.

However, the condition to attend the Investigating Officer is waived.

8. Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)