IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 1462 OF 2018

Rajesh Prabhakar Pagare. ..Applicant.
V/s.
The State of Maharashtra. ..Respondent.

Mr. Aniket Nikam a/w. Mr. Sachin Chandan I/b. Mr. Aashish Satpute, advocate for applicant.

Ms. P.P. Shinde, APP for State.

Mr. Uttam Kadlag, S.D.P.O., Nashik, Rural present.

WITH

CRIMINAL BAIL APPLICATION NO. 2387 OF 2018

Ratan Bhika Aasan. ..Applicant.
V/s.
The State of Maharashtra. ..Respondent.

Mr. Abhishek Yende, advocate for applicant.

Ms. P.P. Shinde, APP for State.

Mr. Uttam Kadlag, S.D.P.O., Nashik, Rural present.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : OCTOBER 29, 2018.

P. C. :

1 Heard the learned Counsel for the applicants and the learned APP for State.

2 These are subsequent applications under section 439 of the Code of Criminal Procedure, 1908. The earlier applications were withdrawn before this Court on 22/12/2016, when the Court was not inclined to grant them bail at that stage. The applicants herein are public servants. All the applicants are arrested in March, 2016 in Crime No. 19 of 2015 registered at Wadivarhe Police Station, Nashik. The applicants herein were working as godown keeper. The investigation is completed and preliminary charge-sheet is filed against all the accused under provisions of Section 3(1)(ii), 3(2), 3(4), 3(5) of the Maharashtra Control of Organised Crime Act, 1999.

3 Initially, the original accused Arun Ghorpade and two others were enlarged on bail by this Court vide order dated 22/12/2016 and by an order dated 21/2/2018, accused Sampat Ghorpade was enlarged on bail by this Court. In the present case, proceedings under section 173(8) of the Code of Criminal Procedure, 1973 are in progress. Principal accused Jitubhai Thakkar is still absconding. Learned APP upon instructions submits that an application under section 82 of the Code of Criminal Procedure, 1973 is filed against Jitubhai Thakkar in May, 2018 and the same is still pending. It is apparent that the said application has neither been persuaded nor prosecuted by the investigating agency. Another absconding accused Suresh Thakkar has filed an application in

this Court under section 438 of the Code of Criminal Procedure, 1973 and the same is pending. There is no interim protection. The learned APP upon instruction submits that Suresh Thakkar is not traceable. It is also pertinent to note that the investigating officers in this case have been changed from time to time i.e. either by way of transfer or promotion and therefore, the investigation is pending, in as much as six investigating officers have dealt with the investigating in the present case.

4 It is also submitted by the learned APP that the investigating agency has recorded statements of some public servants and the question as to whether District Supply Officer, Tahasildar and other concerned public servants need to be prosecuted in the present case and that is pending consideration.

5 As far as the present applications are concerned, the role attributed to the applicants is that they were godown keepers and that at the instance of one Deepak Shrishrimal, they had allowed so-called principal accused to lift the goods from the godown without any authority and the same was sold in open market. This Court had observed in the earlier application that prima facie, the principal accused i.e. Ghorpade brothers were being prosecuted for the offence under the

Essential Commodities Act. More than 2 charge-sheets were filed against them under the Essential Commodities Act and thereafter, they have been arrested in the present case.

6 The learned Counsel for the applicants has drawn attention of this Court to a communication dated 5th May, 2016 sent by the Deputy Superintendent of Police to Collector, Nashik, stating therein that taking into consideration the complexity of the investigation and voluminous record of about 5786 pages, it would be appropriate to send the charge-sheet against all accused simultaneously and therefore, the investigating agency did not have sufficient time to seek sanction for prosecuting as contemplated under section 19 of the Prevention of Corruption Act, 1988 against the present applicants and therefore, they have presumed that there is deemed sanction to prosecute and hence, charge-sheet was sent to the court on 6/5/2016.

7 In fact, the investigating agency has treated the sanction to prosecute as an idle formality and had sent the charge-sheet to the court. There is no such concept as deemed sanction. It is pertinent to note that this communication is made under section 19 of the MCOC Act, which reads as follows :

"**19. Previous sanction necessary for prosecution.—**
(1) No court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 alleged to have been committed by a public servant, except with the previous sanction,—
(a) in the case of a person who is employed in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;
(b) in the case of a person who is employed in connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;
(c) in the case of any other person, of the authority competent to remove him from his office.
(2) Where for any reason whatsoever any doubt arises as to whether the previous sanction as required under sub-section (1) should be given by the Central Government or the State Government or any other authority, such sanction shall be given by that Government or authority which would have been competent to remove the public servant from his office at the time when the offence was alleged to have been committed.
(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—
(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby;
(b) no court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;
(c) no court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.
(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings. Explanation.—For the purposes of this section,—
(a) error includes competency of the authority to grant sanction;
(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

8 Upon perusal of the papers of investigation and the role attributed to the present applicants, it can be prima facie stated that they would be liable for prosecution under section 13(1)(a) of the Prevention of Corruption Act, 1988. The concept of deemed sanction is unknown to the provisions of Prevention of Corruption Act. The learned APP upon instructions from the Investigating agency submits that the present applicants would be prosecuted for the offence punishable under section 420 read with section 119 of the Indian Penal Code. It is in these circumstances and the fact that there is prolonged investigation, the applicants deserve to be enlarged on bail.

9 The above observations are prima facie in nature and are restricted to the applications under section 439 of the Code of Criminal Procedure, 1973 and the same shall not be taken into consideration at the time of trial.

10 Hence, following order is passed :

ORDER

(i) Both the applications are allowed.

(ii) The applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- each and one or more solvent surities in the like amount.

(iii) The applicant shall report to the Investigating officer on the 1st

Monday of each month commencing from 3/12/2018 till framing of charge.

(iv) The applicants shall maintain a diary of attendance. Upon failure to attend any 3 consecutive dates, the prosecution would be at liberty to file an application under section 439 (2) of the Code of Criminal Procedure, 1973.

(v) The applicants shall not tamper with the evidence.

(vi) The applicants shall furnish their contact numbers as well as the address of residence to the concerned Investigating Officer.

11 The applications are disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]