IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1171 OF 2017

Prashant Rangrao Pawar ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

CRIMINAL APPLICATION NO.628 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.1171 OF 2017

Yashwant Ramchandra Patil ... **Applicant/Intervenor**

<u>In the Matter in Between</u> :

Prashant Rangrao Pawar ... **Appellant**
V/s.
The State of Maharashtra ... **Respondent**

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Mr.A.H.H.Ponda with Mr.Datta Mane, Advocate for the Applicant.

Mr.Shirish Gupte, Senior Counsel with Karnansingh B. Rajput & Mr.Dinesh P.Dhumal, Advocate for the Applicant/Intervenor.

Mr.S.V.Gavand, APP for the Respondent/State.

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CORAM : A.M.BADAR J.

DATED : 23rd JANUARY 2018.

<u>P.C.</u> :

1 The applicant/accused in Crime No.413 of 2016 registered with Police Station, Karad City at the instance of

Yashwant Ramchandra Patil for offences punishable under Sections 406, 409, 420, 465, 467, 468, 470, 471, 474 read with Section 34 of the Indian Penal Code, by this application, is seeking his pre-arrest bail.

2 Heard Shri.Ponda, the learned Advocate appearing for the applicant/accused. He vehemently argued that even if the prosecution case is accepted as it is, then also, it is seen that not a single pie from the allegedly misappropriated money went to the account of present applicant, who is totally stranger to the entire transaction between the the Sugar Factory and it's Seva Sangh as well as the Bank of India. To substantiate this contention, the learned counsel relied on the FIR lodged by the Yashwant Ramchandra Patil and submitted that papers of investigation show that loan amounting to Rs.58.63 Crore was obtained by Krishna Shetkari & Shetmajoor Seva Sangh (hereinafter referred to as 'Seva Sangh' for the sake of brevity) under the guaranty of Yashwantrao Mohite Krishna Cooperative Sugar Factory Limited (hereinafter referred to as 'Sugar Factory' for the sake of brevity) for disbursing advances to the Harvesting and Transporting Contractors, who were members of the Seva Sangh. The learned counsel further argued that after release of this amount, Rs.Six Crore was added to it and the amount of about Rs.66 Crore was then transferred to the account of the Bank of India for refund of earlier loans advanced to the Harvesting and Transporting

Contractors of the Seva Sangh. In this manner, previous loan accounts of about 735 Harvesting and Transporting Contractors were cleared by adding an amount of Rs.Six crore by the Sugar Factory. There is no loss to the single contractor by this act on the part of Seva Sangh as well as the Sugar Factory. The learned counsel further argued that in all 11 Harvesting and Transporting Contractors had lodged private criminal complaints against the office bearers of the Sugar Factory and the Seva Sangh. Name of the present applicant is not figuring in any of the complaint.

3 The learned counsel argued that the present applicant is in no way concern with the affairs of the Sugar Factory or the Seva Sangh. He had only headed the campaign for the purpose of election to the Board of Directors of the Sugar Factory. He had campaigned for the Sansthapak Panel which won the election after the year 2010.

4 The learned counsel further argued that records of the Sugar Factory as well as Seva Sangh in the form of minutes of meetings and resolutions passed by the Board are not disclosing presence of the present applicant in any of those meetings.

5 The learned counsel for the applicant further drew my attention to statements of Hemant Kolhapure, Branch Manager of Bank of India, Ashish Kumar, General Banking Officer of the said

Bank as well as Suhas Sardeshmukh, Chief Manager of Bank of India to point out that the Directors and office bearers are shown to be responsible for the loan transactions as per these statements. The learned counsel further drew my attention to copies of various Orders passed by the learned Additional Sessions Judge and submitted that 10 Directors of the Sugar Factory and Trustees of the Seva Sangh are granted pre-arrest bail and some of the employees of the Sugar Factory and Bank of India are also granted pre-arrest bail. With this, it is argued that the applicant, who is in no way concern with the affairs of the Sugar Factory or the Seva Sangh is also entitled for the same treatment.

6 The learned counsel further argued that first version of Ashok Patil – Assistant Accountant, Shivaji Babar – Secretary of the Seva Sangh does not reflect complicity of the present applicant in the alleged offence. However, their supplementary statements on the basis of pre-prepared statements came to be recorded on 29/12/2016 along with statements of Satish Karvekar, clerk and Dattaji Patil another clerk of the Sugar Factory. In these identical statements, which are after thought, name of the present applicant is shown as the person, who directed the Board of Directors and members of Trust. This second version of the prosecution witnesses, in submission of the learned counsel, is not supported by the contemporaneous documents in the form of resolutions of the Board of Trustees and Board of Directors of the Seva Sangh

and Sugar Factory respectively. With this, the learned counsel argued that custodial interrogation of the present applicant is not at all warranted.

7 I heard the learned Additional Public Prosecutor appearing for the State. He argued that charge of conspiracy is also levelled against the accused persons in the case in hand. According to the learned APP, the present applicant is the mastermind behind the crime in question and he is virtually acted as remote control to guide and inspect the Board of Directors and Board of Trustees. He led the Sansthapak Panel which ruled the Sugar Factory and the Seva Sangh from the year 2011 to 2015. The learned APP further argued that several litigations were initiated at the instance of the present applicant as leader of the Sansthapak Panel even before this Court, which substantiate the charge of criminal conspiracy in association with the office bearers. The learned APP relied on statements of Uttamrao Patil, Ashok Patil, Rohit Salunkhe, Ajay Dupte, Ranjeet Yadav, Dhanaji Virkar and Anandrao Gawade to demonstrate that the present applicant was virtually running the affairs of the Sugar Factory as well as the Seva Sangh. The learned APP further argued that loan was taken in the name of some of the contractors to reimburse the amount of loan taken by different contractors and in this manner, the contractors, by all means are cheated by the office bearers at the instance of the present applicant.

8 I also heard Shri.Gupte, the learned Senior Counsel appearing for the First Informant. He argued that the conspiracy is never hatched in public place and several witnesses are naming the present applicant, who is also named in the FIR as the mastermind behind the conspiracy.

9 I have carefully considered the rival submissions and also perused the entire material placed on record as well as the papers of investigation.

10 The FIR of the crime in question came to be lodged by Yashwant Ramchandra Patil on 04/08/2016. He is an agriculturist, who is owner of a tractor and trolleys. He alleged that on previous occasion, he had entered into an agreement with the Seva Sangh for harvesting the sugarcane as well as transporting of sugarcane to the factory premises and for that purpose, he had handed over documents of his identity including copies of R.C. book, ration card and Identity Card to the Seva Sangh. However, he had not done any work as no advance was sanctioned in his favour. Still, on 26/11/2015, he had received notice from the Bank of India for recovery of loan amounting to Rs.7,00,000/- allegedly taken by him. First Informant further averred that he came to know that office bearers of the Yashwantrao Mohite Krishna Co-operative Sugar Factory Limited as well as office bearers of the Krishna Shetkari &

Shetmajoor Seva Sangh along with the Head of Sansthapak Panel i.e. the present applicant had cheated the several agriculturists by moving loan proposals under their forged signatures. The First Informant averred that proposals for loan in respect of 273 persons came to be moved by the office bearers of the Sugar Factory as well as the Seva Sangh by forging signatures of those persons and by preparing false documents. In this manner, loans were obtained and instead of disbursing the loan amount to those persons, it was misappropriated.

11 Papers of investigation reveals that in the year 2014-15, proposal for loans in respect of 784 farmers, who were Harvesting and Transporting Contractors came to be moved under their forged signatures on the loan applications, which were accompanied by the documents of their identity and those proposals were submitted to the Bank of India.

12 The loan amounting to Rs.58.63 Crore came to be sanctioned by the Bank of India under guarantee of the Sugar Factory and the amount came to be disbursed in the Bank account of the Seva Sangh. It is seen from the papers of the investigation that this entire amount of Rs.58.63 Crore by adding some amount to it is utilized for the purpose of refund of previous loan amount of 735 farmers, who were Harvesting and Transporting Contractors. The transfer of funds was through bank transactions. It is thus seen

that fresh loan was procured for clearing of the earlier loan in respect of advance to the Harvesting and Transporting Contractors. The amount was not disbursed in individual account of the Harvesting and Transporting Contractors, but it was released in the account of Seva Sangh, which in turn again went to the account of Bank of India towards clearing of the earlier dues in respect of loans.

13 Undisputedly, the present applicant was not the Director of the Sugar Factory or the Trustee of the Board of Trustees of the Seva Sangh. His name is not figuring as an invitee, who attended meeting of either Board of Directors of the Sugar Factory or the meeting of the Trustees of the Seva Sangh.

14 How the Sugar Factory as well as the Seva Sangh was operating can be seen from statements of witnesses recorded by the prosecuting agency. They are mostly the employees of both these Organizations. Statement of Ashok Patil recorded on 25/10/2016 shows that Seva Sangh used to request the Sugar Factory to allot to it the work of Harvesting and Transporting sugarcane. Accordingly, such work was used to be allotted to the Seva Sangh. The Sugar Factory used to act as guarantor and Seva Sangh use to procure loan for advancing it to the Harvesting and Transporting Contractors. The Sugar Factory used to assure the Bank that the loan amount will be deducted from the payable dues of the

Harvesting and Transporting Contractors. It appears that this *modus operandi* for procuring the loan was going on right from the year 2011-12. However, it is seen that instead of clearing the dues regarding loan taken for a particular year, in the next year fresh loan used to be obtained for clearing all the dues of the loan of the previous year. In that process, loans taken in the name of one agriculturist i.e. Harvesting and Transporting Contractor was used to be utilized for clearing the dues of previous loan of some another Harvesting and Transporting Contractor.

15 Uttamrao Patil is an ex-employee of the Sugar Factory as well as the Seva Sangh. His statement goes to show that his suitability for the job was first verified by the present applicant and then under his direction said Uttamrao Patil got employment as 'Agriculture Officer' with the Sugar Factory as well as the Seva Sangh. Statement of Uttamrao Patil goes to show that entire affairs of the Sugar Factory as well as the Seva Sangh used to be managed by the present applicant, who was the *de facto* Head of both these institutions. Similar are statements of other employees such as Ashok Patil, Shivaji Babar, Dattaji Patil, Rohit Salunkhe, Ajay Dupte, Ranjeet Yadav, Dhanaji Virkar and Anandrao Gawade. It is seen from statements of witnesses that being the Panel Head of the Ruling party, the present applicant used to call the office bearers of the Sugar Factory to his office at Karad and used to impart instructions regarding managing the affairs of the factory

to them at his office. It is not disputed that loan applications which are 784 in numbers are not signed by the persons in whose names those are moved. Undisputedly, the loan amount sanctioned in pursuant to those applications did not come to the account of those persons, but it was credited to the account of Seva Sangh from which it was utilized for clearing the earlier loans taken in the name of some other agriculturist. According to the learned APP, loans were procured in the names of some different persons for clearing the arrears of loans taken in the name of some other persons. This, as per the version of the employees of the Sugar Factory and the Seva Sangh, was used to be done by the office bearers of the Sugar Factory and the Seva Sangh at the instance of and under the advice of the present applicant by taking instructions from him. He was leading the Directors and Trustees of the Sugar Factory and the Seva Sangh.

16 Effect of non-appearance of the name of the applicant in the contemporaneous official record will have to be construed at the time of the trial, but at this stage, looking to the statements of several employees of the Sugar Factory and Seva Sangh, it cannot be said that the applicant has no role to play in the entire transaction. The offence alleged is an economic office, which is affecting large number of farmers in commission of which the present applicant has played a pivotal role. In this view of the matter, no case for pre-arrest bail is made out.

17 The application is, therefore, rejected.

18 In view of disposal of this Anticipatory Bail Application, the intervention application therein bearing No.628 of 2017 also stands disposed of.

(A.M.BADAR J.)