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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1563 OF 2017

HEMANT M. JADHAV **..APPLICANT**

Vs

THE STATE OF MAHARASHTRA & ANR. **..RESPONDENTS**

Mr. C.G. Gavnekar a/w Suhas Shivaji Deokar for Applicant.
Ms. J.S. Lohokare, APP for State.
Mr. Sandesh Inamdarshinde and B.A. Lawaate for respondent No.2.
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CORAM : A.S.GADKARI, J.

DATE : 2nd August 2018.

P.C.:

1] By an Order dated 7th September 2017, the applicant was granted interim relief and was directed to attend the Investigating Officer of the concerned Police Station on stipulated dates to join the process of investigation.

2] Heard the learned counsel for the applicant, the learned counsel for the first informant/respondent No.2 and the learned APP. Perused the record annexed to the application and the record of investigation.

3] At the outset, it is to be noted here that, the first informant as a matter of right cannot be heard in the matter in view of the ratio laid down by the Supreme Court in the case of Sundeep Kumar Bafna Vs. State of Maharashtra, reported in (2014) 16 SCC 623. However, at the consistent insistence of the learned counsel for the first informant he was granted an opportunity to be heard in the matter and to make his submissions.

4] The first information report is lodged by Shri Anil Zite, a member of the Sai Shakti CHS Ltd of which the applicant was the Chairman. The prosecution case in brief is that, the applicant during his tenure as a Chairman of the said Society, committed defalcation of funds of the said Society. That he allegedly issued cheques in favour of certain contractors and got those cheques realized in his favour and siphoned off the funds. In pursuance of the complaint lodged by the members of the Society with the Competent Authority appointed under section 83 of the Maharashtra Co-operative Societies Act (for short MCS Act), the Inquiry Officer indicted the applicant as guilty and it is the basis for lodging the present first information report. The period of alleged defalcation of the funds of the Society is between January 2012 to December 2012. The record indicates that, the report dated 19.1.2015 submitted under section 83 of MCS Act by Shri Bilolikar was challenged by the applicant before the Government of Maharashtra under section 152 of the MCS Act by way of appeal and the Honourable Minister by its Order dated 10.7.2015 was initially pleased to grant stay to the said report. The Honourable Minister by subsequent Order dated 23.11.2015 allowed the said appeal and was pleased to set aside the said Enquiry Report submitted by Shri Bilolikar. By the said Order dated 23.11.2015, the Honourable Minister directed the concerned Department to initiate fresh enquiry into the matter. Accordingly an Officer under section 83 of the MCS Act namely Shri Deepak Khandekar was appointed by the concerned department who after recording fresh statements of the witnesses, submitted his report to the Co-Operative Department on 11.1.2017. The said Shri Khandekar (Competent Authority) came to the conclusion that the members of the said Society namely Shri Kashinath Kundal and other members in conspiracy with each other crated forged documents/evidence and submitted it with the department to indict the applicant herein in the proceedings under section 83 of the MCS Act. The said Authority had recorded its finding that, the statement of the Electrical Contractor Shri Brij Bhushan Pandey is not bonafide.

Mr. Gavnekar, the learned counsel for the applicant fairly pointed out the fact that, the said report dated 11.1.2017 has now been set aside by the Divisional Joint Commissioner on the basis of the various complaints received against the said Officer from various sectors of the Societies and a fresh enquiry under section 83 of the MCS Act has been initiated in the present matter.

5] This leads me to deal with the another aspect of the present case. It is to be noted here that, on the basis of source information received by the C.B.I. A.C.B. Mumbai, the C.B.I had instituted proceedings under section 13(2) read with 13(1)(e) of the Prevention of Corruption Act for disproportionate assets acquired by the applicant during the period from 1.09.2009 to 13.12.2013. It is to be noted here that, the allege period of defalcation of funds in the present case was from January 2012 to December 2012. The C.B. I. after concluding the investigation in the said case, submitted its final report before the Competent Authority seeking sanction to prosecute the applicant under section 19 of the Prevention of Corruption Act.

The record indicates that, the said sanction was not accorded by the Competent Authority and therefore the said report reached finality of closure. The said fact can clearly be discerned from the Order dated 16.6.2016 passed by the learned Special Judge (CBI), Greater Mumbai in Misc. Application No.64 of 2016. Thus it is that the C.B.I has taken into consideration the allegations made against the applicant of defalcation thereby allegedly acquiring disproportionate assets than known sourcese of income.

6] The learned counsel for the first informant submitted that, the applicant has in fact defalcated huge funds of the Society for his personal benefit and the report submitted by Shri Khandekar has been set aside by the Divisional Commissioner and therefore the statement recorded by the concerned Authority of the Electrical Contractor need not be taken into consideration. As noted earlier, a fresh enquiry has already been initiated by the Co-Operative Department under section 83 of the MCS Act and an Officer has been appointed in that behalf.

7] Even otherwise, the record indicates that the investigation of the present crime is being carried out since October 2015. All the documents alleged to have been either forged and/or fabricated have already been seized by the Investigating Agency and/or are in possession of the concerned persons which can be seized by the Investigating officer.

It prima facie appears to this Court that, the present crime as registered against the applicant is an outcome of the dispute between two groups of the members of the Society for gaining control over the affairs of the Society. Lesser little to say that, it is a bogous crime prima facie it appears that the present crime as registered against the applicant is full of malafide.

8] After taking into consideration the aforesaid facts and the record of investigation, this Court is of the view that the custodial interrogation of the applicant for further investigation of the present crime is not necessary.

9] In view thereof, interim relief granted by Order dated 7th September 2017 is hereby confirmed. However, the condition to attend the Investigating Officer is waived.

10] Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)

Anil Chandrakant Dond

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