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

BAIL APPLICATION No. 3298 OF 2018

Sanjay Kacharu Waman

...Applicant

Vs.

The State of Maharashtra

...Respondent

Mr. A.P. Mundargi, Senior Counsel i/b. Mr. Amey Deshpande
for Applicant

Mr. S.S.Pednekar, APP for the State

Mr. Shitalkumar J. Naik, PSI Uttam Kadlag Police Station

CORAM : SMT.SADHANA S. JADHAV, J.

DATE : DECEMBER 20, 2018

P.C.:

1. Heard. This is a subsequent application under section 439 of the Code of Criminal Procedure, 1908 seeking enlargement on bail in Crime No. II 19/15 registered at Wadivarhe Police Station, Nashik.

2. The Applicant herein was working as godown keeper at the government godown situated at Nashik Road. At the threshold, the learned Senior Counsel for the Applicant submit that by virtue of doctrine of parity, the Applicant deserves to be enlarged on bail.

3. The incriminating material against the present Applicant is in the form of the confessional statement of one Mr. Ghule. According to him, he is used to transport the food-grains to the licensed

rationing shops. He was also posted at Ambad Central Warehouse and then government godown. That he used to receive Rs.10/- for each bag of food-grains. According to him, Sampat Ghorpade was in contact with the present Applicant. That at the behest of Sampat Ghorpade, the food-grains from the government godown were being transferred and were sold in the open market. Mr. Ghule has also stated in his confessional statement that the license holders had illegally supplied the food-grains to Sampat Ghorpade. He has named about 39 licensed fair prize shop owners, who had regular transactions with Sampat Ghorpade or Ghorpade Brothers. Most of them are witnesses in the present case. This Court had observed in the earlier order also that it is pertinent to note that the investigating officers in this case have been changed from time to time either by way of transfer or promotion and, therefore, the investigation is pending. As on today, the final chargesheet is not yet filed.

4. The Investigating Officer is present. The learned APP, upon instructions, submits that the investigation is in progress under the provisions of section 173(8) of the Criminal Procedure Code. The learned APP, upon instructions, also submits that it had transpired in the course of investigation that some of the revenue officers,

who were posted at Nashik at the relevant time, are also involved in the present case and the Investigating Officer has submitted a proposal/draft sanction before the government, seeking sanction to prosecute them. The learned APP submits that the accused Suresh Thakkar has withdrawn his application, seeking pre-arrest bail. However, he is not yet arrested.

5. As far as the present application is concerned, the role attributed to the Applicant is that he is godown keeper and that at the instance of one Deepak Shrishrimal, he 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 Senior Counsel for the Applicant 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 Prevention of Corruption Act.

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 applicant deserves 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) Bail application is allowed.
- (ii) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- and one or more solvent sureties in the like amount.
- (iii) The Applicant shall report to the investigating officer on the 1st Monday of each month commencing from 7th January, 2019.
- (iv) The Applicant shall maintain a diary of attendance. Upon failure to attend any three 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 applicant shall not tamper with the evidence.

(vi) The applicant shall furnish his contact number as well as the address of residence to the concerned investigating officer.

11. The application is disposed of accordingly.

[SMT.SADHANA S. JADHAV, J.]

V.A. Tikam