

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.179 of 2018

Kishor Namdeorao Bhagat

vs.

State of Maharashtra, through P.S.O. Parwa, Tahsil Ghatanji, District Yavatmal

*Office notes, Office Memoranda of
 Coram, appearances, Court's orders
 or directions and Registrar's orders.*

Court's or Judge's Orders

*Shri A.A. Naik, Advocate for the Applicant.
 Ms. Ritu Kalia, A.P.P. for the Non-Applicant/State.*

CORAM : S.B. SHUKRE, J.
DATE : 19th APRIL, 2018.

Heard.

Perused the reply of the prosecution and the case-diary. Two kinds of allegations are made against these applicants. One is that they utilized a portion of financial assistance given to them, it was of Rs.1.00 crore by the State Government for setting up a flour mill, for the purpose not intended by the scheme floated in this regard by the Government. The other allegation is that the crime has been registered on the basis that the land mortgaged in favour of the Government was agreed to be transferred to society under a backdated agreement and, therefore, there was a cloud over the creation of the charge in favour of the Government.

On going through the case diary, however, I could not come across any Government Resolution or Circular clearly laying down that the financial assistance made available to the beneficiaries cannot be utilized by the beneficiaries, even in portion, for purchase of land. The learned A.P.P. for the State has pointed out to me that there is a pre-requisite that the beneficiaries must possess adequate land and this would indicate that the financial assistance cannot be utilized for purchase of the land. The condition of possession of the adequate land is certainly there. But, nowhere it is mentioned in any of the Government Resolutions, perused by me with the assistance of the learned A.P.P., that the financial aid cannot be used for purchasing the land and that there is a complete prohibition in this regard. So, it is doubtful, whether this would be a case of deliberately using Government funds with dishonest intention.

As regards the submission of a backdated agreement confirming possession of the land mortgaged by the society in favour of the Government, I find that the mortgage-deed is also signed by Kishor Namdeorao Bhagat, the original owner of the land (applicant no.1), about which there is no dispute. I

also find that in the allotment letter dated 31/03/2011, the State Government has mentioned that the society of the applicant did not submit any certificate about the society being the owner in possession of certain land and thereafter, the concerned authority of the Government disbursed the financial assistance of Rs.1.00 crore in favour of the society. This would mean that on the one hand, the competent authority was aware that the certificate of ownership and possession of the requisite land had not been submitted by the society of the applicant to the Government and that was the reason, why till 31st March, 2011 no actual disbursement was made and on the other, the non-compliance with this condition was got removed after submission of necessary certificate resulting in actual disbursement of Rs.1.00 crore in favour of the society of the applicant. This would suggest, while disbursing the land amount to the society, the competent authority of the State Government was satisfied that the society had complied with all the conditions or otherwise it would not have disbursed the amount.

Now, the audit report says that this condition has not been complied with, but at the same time, it does not hold responsible the competent authority for

the non-compliance, if any. It appears that no enquiry in this regard has been made by the State Government. At least, the competent authority's explanation in this regard is required and if it is found that there is no irregularity committed by these applicants, the initiation of a criminal action against these applicants would be considered as an exercise in futility. In any case, at this stage, without knowing the side of the competent authority actually giving sanction for disbursement, it would be too early to say that something criminal has been done by these applicants.

In the circumstances, I am of the view that at this stage, the applicants can be granted anticipatory bail.

The application is allowed and the interim bail granted to the applicants by this Court on 19th March, 2018 is confirmed on the same conditions with clarification that now the applicants shall attend the concerned police station only when they are required to do so by the Investigating Officer.

The application is disposed of as such.

JUDGE