

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.745 OF 2020

Jagdish s/o Kashinath Teli

... Applicant

Versus

The State of Maharashtra

... Respondent

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Mr. A. B. Girase and Mr. Y. B. Bolkar, Advocate for applicant.

Mr. S. Y. Mahajan, APP for respondent – State.

Mr. Govind Kulkarni h/f Mr. U.S. Patil, Advocate for Informant.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 09-12-2020

ORDER :

. Present applicant is the original accused who is apprehending his arrest in connection with Crime No.259 of 2020 registered with Pachora Police Station for the offences punishable under Sections 420, 464, 465, 467, 468, 471 read with Section 34 of Indian Penal Code and, therefore, he has filed present application under Section 438 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. B. Girase and Mr. Yogesh Bolkar for applicant, learned APP Mr. S. Y. Mahajan for respondent – State assisted by learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. U. S. Patil for original informant.

3. It has been vehemently submitted on behalf of the applicant that the allegations against the applicant are that he has forged certain documents. However, it is to be noted that those documents have undergone the scrutiny by this Court in Criminal Writ Petition No.8407 of 2019, at that time, no such contention was raised by the informant. The said writ petition was disposed of by this Court on 11-09-2019 by observing that petitioner given written consent for award of tender in favour of applicant's society. That means on the written consent given by the society of the informant, the tender was allotted to the present applicant. The FIR has been lodged after the lapse of more than 10 months, that too when the applicant refused to bestow more than 50% share to him. It was agreed by the applicant and such proposal was given to the informant that he is ready to share 50% of the profit or income generated from the said tender with him. No forgery has been committed by the applicant. In fact, alleged documents were purchased and got typed by the informant himself. In pursuance to the tender floated by Collector, the applicant's society and other societies including the society of the informant had taken part. Being the lowest bidder, the applicant's society got the tender. When the fact was challenged before this Court, as aforesaid, the settlement was arrived at and, therefore, there was no room for the informant now to challenge the said fact once again. The persons, in whose presence those documents were prepared and executed, have filed affidavit stating about the said fact, therefore, there is no question of

forgery or cheating by the present applicant. The applicant has attended the police station in view of the interim protection granted and conditions imposed. He has cooperated the Investigating Officer and given all the documents which he possesses. Therefore, further physical custody of the applicant for the purpose of investigation is not required when the substantial part of the investigation is over. Learned Advocate for the applicant, therefore, prayed for anticipatory bail.

4. Per contra, learned APP well assisted by learned Advocate Mr. Govind Kulkarni holding for learned Advocate Mr. U. S. Patil representing the informant submitted that the society of the applicant got the registration certificate on 04-09-2018, yet, he managed to get certificate of experience that the members of the said society have experience of one year. That certificate was issued on 03-11-2018. The tender was floated on behalf of the Collector, Food and Civil Supplies Department, Jalgaon on 17-12-2018 for handling the good grains in Government warehouse. When, in fact, the society itself was registered on 04-09-2018, by 17-12-2018 how they could get the experience of one year is a question, yet, the tender of the present applicant was accepted. It was then transpired that along with the tender, certain forged documents have been attached. The said certificate issued by Agriculture Produce Market Committee (hereinafter referred to as 'APMC'), Pachora on 03-11-2018 was forged. Further, one more document was attached which was on bond paper of Rs.100/- stating

that the Chairman of Savitribai Phule Sahakari Sanstha, Pachora, Chairman Sant Janardhan Hamal Mapadi Sahakari Sanstha, Chalisgaon, Tq. Jalgaon (the society of the informant) and Chairman Shri. Ganesh Hamal Mapadi Sahakari Sanstha, Bhadgaon, Tq. Bhadgaon had given consent for giving tender to the society of the applicant, was also a forged document. When such forged documents have been created and tender has been obtained from Government agency, then definitely there is a cheating and forgery requiring physical custody of the present applicant for the purpose of investigation.

5. It is to be noted from the contents of the FIR that tender was called by giving publication on 17-12-2018 by the Collector office. One of the condition that was incorporated was that society should have experience of one year in the said work. It appears that the certificate of registration as well as the certificate issued by APMC was attached to the tender. The bid that was given by the applicant is stated to be the lowest bid. In fact, it was not mandatory for the Collector to accept the bid, though it was the lowest, if it was not fulfilled all the requirements. It appears that the office of the Collector did not take into consideration the said aspect and granted tender to the society of the applicant. It cannot be stated here that there is any kind of cheating of the informant for the simple reason that those documents were presented to the Collector. The Government agency has not come forward in saying that it has been cheated.

6. Another circumstance that is required to be considered is that the informant had challenged the process before this Court in Writ Petition No.8407 of 2019. However, it appears that the said writ petition came to be disposed of in view of the reply filed by District Supply Officer that the petitioner i.e. informant had given written consent to award the work in favour of the applicant's society. There was every opportunity to the informant to point out this Court regarding the said forgery. The forgery is also alleged in respect of documents styled as 'Pratidnya Patra' executed on a bond paper of Rs.100/-. It is stated to have been executed on 29-05-2019. This Court disposed of the said Writ Petition on 11-09-2019 i.e. subsequent to the execution of that document and when that document was referred to and produced by the District Supply Officer, the present FIR has been lodged on 09-07-2020. Therefore, there is considerable delay in lodging the FIR. The case is also based on documents which are already in possession of police and therefore, the physical custody of the applicant is not required. Therefore, he deserves to be released on anticipatory bail. This Court, by order dated 04-09-2020, had granted ad-interim protection to the present applicant, that deserves to be confirmed and made absolute. Hence, the following order :-

ORDER

- I) The application stands allowed.

II) The order passed by learned Additional Sessions Judge, Jalgaon in Criminal Bail Application No.495 of 2020 dated 13-08-2020 is hereby set aside. The said application stands allowed.

III) The ad-interim protection, granted by this Court earlier to applicant vide order dated 04-09-2020, is hereby confirmed and made absolute. In other words, in the event of arrest of the applicant – Jagdish s/o Kashinath Teli in connection with Crime No.259 of 2020, registered with Pachora Police Station, District Jalgaon for the offences punishable under Sections 420, 464, 465, 467, 468, 471 read with Section 34 of Indian Penal Code, he be released on P. R. Bond of Rs.10,000/- with one surety in the like amount.

IV) The applicant shall not tamper with the evidence of the prosecution in any manner and shall cooperate with the investigation.

V) The applicant shall remain present before the Investigating Officer on every Sunday between 10.00 a.m. to 2.00 p.m. till filing of charge-sheet.

[SMT. VIBHA KANKANWADI, J.]

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