IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.569 OF 2020

SAHEL BIN AMER CHAUS
VERSUS
THE STATE OF MAHARASHTRA
...
WITH
CRIMINAL APPLICATION NO.1909 OF 2020
IN
BAIL APPLICATION NO.569 2020
...
Advocate for Applicant : Mr. R S Deshmukh Senior Counsel I/b Mr. Sayyed Tauseef Yaseen
APP for Respondent-State : Mr. S B Narwade
...
WITH
BAIL APPLICATION NO.954 OF 2020

ASHOK S/O BHIMRAO KULKARNI
VERSUS
THE STATE OF MAHARASHTRA
...
Advocate for Applicant : Mr. S J Salunke
APP for Respondent : Mr. S B Narwade
...
CORAM : V.K. JADHAV, J.
...
Date of Reserving the order : December 14, 2020.
Date of Pronouncing the order : December 21, 2020.
...

ORDER :-

1. The applicant SAHEL BIN AMER CHAUS in bail application no.569 of 2020 and the applicant ASHOK BHIMRAO KULKARNI in bail application no.954 of 2020

are seeking regular bail in connection with crime No.329 of 2019 registered with Majalgaon City Police Station, District Beed for the offences punishable under Sections 420, 409, 467, 468, 471, 120-B and 34 of the Indian Penal Code. Their applications bearing Misc. Criminal Bail application No.194 of 2020 and Cri. Bail application No.252 of 2020 with similar prayers came to be rejected by the learned Additional Sessions Judge, Majalgaon vide order dated 29.6.2020 and 6.8.2020 respectively.

2. Brief facts, giving rise to the present bail applications, are as follows :-

a] On the basis of the complaint lodged by one Krishna Shriram Jogdand, working as a Civil Engineer with the Majalgaon Municipal Council, Taluka Majalgaon, District Beed under the authorization issued by the Chief Officer in terms of the provisions of Section 77 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as 'the Act of 1965'), the aforesaid crime came to be registered against the then Chief Offficer Mr. B.C.Gavit, and the account Shri Ashok Bhimrao Kulkarni (applicant in BA No 954 of 2020), consulting Civil Engineer. It has been alleged in the complaint that the Municipal Council, Majalgaon has undertaken to complete 22 (twenty two) civil works by utilizing special grants received for that purpose. However, the then Chief Officer, the then accountant (applicant Ashok in BA No 954 of 2020) and the Consulting Civil Engineer have committed misappropriation, breach of trust and siphoned the public money. It has been alleged that all the accused persons have misappropriated an amount of Rs.1,44,28,959/- (Rs. One crore forty four lakhs twenty eight thousand nine hundred and fifty nine). It has been alleged in the complaint that the Directorate of Municipal Administration, Mumbai had constituted an Enquiry Committee for making an enquiry into the allegations of irregularities, misappropriation and siphoning of the funds in respect of said 22 civil works carried out by the Municipal Council, Majalgaon. The said five members committee has submitted an enquiry report to the Director on 25.6.2019. Further, a Third Party Technical Audit was carried out through the Government Polytechnic College, Beed. Said Enquiry Committee so also the Third Party Technical Audit have noticed serious irregularities in the entire process of the completion of work. Thus, considering the said reports, the Director of Municipal Administration has directed the then Chief Officer to lodge the report/FIR against the errant officials.

3. The applicant Sahel Bin Amer Chaus in BA No.569 of 2020 is a directly elected president of the Majalgaon Municipal Council, Majalgaon, District Beed and said elections were held in the month of November, 2016. Though, name of the applicant was not mentioned in the FIR nor any allegations were imputed against him, it has been revealed during the course of the investigation that payment of bills for the 'Special Road Grant Scheme' was issued on the basis of the signature of the present applicant on form no.64 whereby the payments

from the Municipal Funds are released. Further, E-tendering process was not followed in carrying out the said 22 civil works and, tender notice about the said work was published only in local newspaper namely “Majalgaon Parisar” under the signature of the then Chief Officer and the President of the Majalgaon Municipal Council. The Director of the Municipal Administration at Worli, Mumbai has submitted the report on 24.6.2019 and stated therein that the applicant is responsible for various illegalities as detailed in the said report. The applicant Sahel Bin Amer Chaus, being the President of the Majalgaon Municipal Council is also the President of General Body meeting as well as the standing committee. It has been revealed in the investigation that there is misappropriation of total amount of Rs.1,44,28,959/-. Furthermore, it has also been revealed in the investigation that the Assistant Director of Local Fund Audit has submitted the Audit report of the Municipal Council, Majalgaon for the financial year 2016-2017 and 2017-2018, wherein various irregularities/illegalities were noted. It has also been noted in the said audit that despite the demand made by the Auditor, part of the record was not made available. It has also revealed in the investigation that technical sanction is different from the actual work done. Thus, the work shown to have been carried out on record to facilitate the misappropriation of the huge amount.

4. Mr. R.S.Deshmukh, the learned Senior counsel appearing for the applicant Sahel Bin Amer Chaus in Bail application No.569 of 2020 submits that there are no allegations against the applicant in the body of the First Information Report and, as per the directions given to the then Chief Officer, Municipal Council, Majalgaon for filing the FIR against the errant officials of the Municipal Council, it has not been directed to lodge the complaint against the applicant-President of the Municipal Council. Learned counsel submits that the applicant was directly elected as a President and he took the charge of the Majalgaon Municipal Council as a President and presided over the first meeting of the

council on 5.1.2017. Though, it is alleged that during the tendering process financial irregularities made and procedural aspects were not followed at all, however, no specific role causing financial irregularity or procedural lapses has been attributed to this applicant. Even, the five members enquiry committee constituted under the orders of the Director of Municipal Administration, Mumbai has also not implicated the present applicant except observing that the applicant-President since presided over the meeting in which working under 'Special Road Grant Scheme' was sanctioned, he should be responsible for the same. The learned Senior counsel submits that the applicant was not even elected as a President of the Majalgaon Municipal Council. It was the duty of the then Chief Officer and the Collector to supervise, monitor and check the work of the errant officials, consultant engineer and accountant. It was not the duty of the applicant as a President of the Municipal Council to supervise the administrative work of the Municipal Council officers.

5. The learned Senior Counsel Mr. Deshmukh appearing for the applicant Sahel Bin Amer Chaus in BA No.569 of 2020 further submits that so far as the allegations about payment of bills order issued on the basis of the signature of the present applicant on form no.64 are concerned, the applicant at the relevant time never signed on form no.64. The applicant, being a President, had no business for appending the signature on said form No.64. The learned Senior Counsel submits that even form no.64 is not traced out and it is not a part of the record submitted alongwith the charge-sheet. It has been allegedly revealed during the investigation that 'E-tendering' process was not followed in carrying out the said twenty two civil works and tender notice of the said work was published only in Local Newspaper 'Majalgaon Parisar' under the signature of the Chief Officer and the President. The learned Senior Counsel submits that copy of the said tender publication does not form part of the charge-sheet and the applicant specifically deny any of such publication ever issued under his name and signature.

6. The learned Senior Counsel Mr. Deshmukh appearing for the applicant in BA No.569 of 2020 submits that, the applicant is directly elected President of the Majalgaon Municipal Council. In terms of the provisions of section 2(7) of the Act of 1965, "Councilor" means a person duly elected as a member of the council, the directly elected President and includes the nominated Councilor. Learned Senior counsel further submits that in terms of the provisions of Section 302 of the Act of 1965, the applicant is a public servant. Learned Senior Counsel further submits that the applicant is thus entitled to the protection under the provisions of section 197 of the Cr.P.C. However, in the present case, no such sanction was obtained under section 197 of Cr.P.C. for prosecuting the applicant.

7. The learned Senior Counsel Mr.Deshmukh appearing for the applicant in BA No.569 of 2020 further submits that the applicant was admitted in Asian Hospital with complaint of breathlessness, uneasiness and bedsores on 13.10.2020. He was taken

into Intensive Care Unit and various tests were performed on him. The applicant is suffering from systemic hypertension with Ischemic heart disease, which is also called coronary heart disease (CHD) or coronary artery disease is the term given to heart problems caused by narrowed heart (coronary) arteries that supply blood to the heart muscle. The applicant is also complaining about chest pain, heart palpitation and breathlessness on exertion and therefore he was admitted in the Civil Hospital, Beed on 10.7.2020. The applicant was also referred to Higher Center at SRTM Government Hospital, Ambajogai and the applicant, thereafter, shifted to Asian Hospital, Aurangabad, which is a Super Specialty Hospital for further treatment. By order dated 11.8.2020 this Court has released the present applicant (Sahel Bin Amer Chaus) on temporary bail considering the critical health condition of the applicant. The learned Senior Counsel submits that the offences alleged against the applicant are triable by the Magistrate and maximum punishment for the offence is up to seven years. The learned Senior Counsel submits that attempt has been made to implicate the present applicant about placing the charges under section 34 and 120-B of the IPC. The learned Senior Counsel submits that further detention of the applicant in jail is unwarranted and uncalled for. The applicant is ready to abide the conditions, if imposed by this Court while releasing him on bail. The applicant may be released on bail.

8. The learned Senior Counsel Mr. Deshmukh appearing for the applicant in BA No.569 of 2020 in order to substantiate his submissions placed reliance on following two cases :-

i. Punjab State Warehousing Corporation Vs. Bhushan Chander and another reported in 2016 DGLS (SC) 635.

ii. D.Devraja Vs. Owais Sabeer Hussain in Criminal appeal No.458 of 2020 (arising out of SLP (Crl) No.1882 of 2018).

9. Learned counsel Mr. Salunke appearing for the applicant Ashok Bhimrao Kulkarni in bail application No.954 of 2020 submits that the letter dated 11.11.2019 issued by the Department of the Municipal Council

Administration, Aurangabad specifically states that the criminal action is directed only against those who have wrongly recorded the entries in the measurement books of the works carried out and, as such, the FIR against the present applicant Ashok Kulkarni is not maintainable. Even if the allegations as against the applicant are taken at their face value, the same would not constitute any offence qua-him. At the most, those allegations can be termed as a dereliction of the duty and nothing further. Learned counsel submits that in the entire FIR and even it has also not been revealed during the investigation the amount was allegedly siphoned by the present applicant. Furthermore, FIR does not disclose any particular overt act of the applicant. The applicant was working as an Accountant at the relevant time with the Municipal Council, Majalgaon. The applicant was not empowered to call the Tenders, issue work orders or sanction the bills. All the bills of the works are sanctioned by the Chief Officer. The works undertaken by the Municipal Council are always undertaken after resolution passed by the

General Body Meeting. In view of the same, the applicant cannot be connected with the alleged offence.

10. Learned counsel further submits that in terms of the provisions of section 58 of the Act of 1965, functions of the President and in terms of the provisions of section 77 of the Act of 1965 powers and duties of the Chief Officer, are prescribed. So far as the powers and duties of all the officers and servants other than Chief Officer shall be such as standing committee may specify from time to time. In view of the same and considering the nature of the allegations as it is, no offence is made out against the applicant Ashok Kulkarni. Moreover, the applicant is a public servant and, as such, prior sanction from the appropriate Government is necessary before launching the FIR against him. Present FIR is lodged without obtaining the sanction. The applicant is in jail in connection with the present crime since long. There is no question of tampering with the prosecution evidence, if the applicant is released on bail. The applicant is also ready to abide the conditions, if

imposed by this Honourable Court while releasing him on bail. The applicant Ashok Kulkarni may be released on bail.

11. Learned APP Mr. Narwade appearing for the state in Bail application No.569 of 2020 submits that the applicant being the President of the Municipal Council, Majalgaon was duty bound to look after the task of financial sanction to the various permissible work. It has been revealed during the course of the investigation so also in the Audit report for the year 2016-2017 and 2017-2018 that the applicant Sahel Bin Amer Chaus-President is responsible for various illegalities. There are illegalities right from publishing the Advertisement in a local newspaper, which is not widely circulated and further allotment of the work to the interested persons, difference in the entries recorded in the measurement book and actual measurement. Learned APP submits that, *prima facie*, there is strong case against the applicant-President. The applicant may not be released on bail.

12. Learned A.P.P. in B.A. No.954 of 2020 has strongly resisted the application and submits that the Directorate of Municipal Council Administration, Worli, Mumbai has constituted a committee for making a enquiry into the allegations of misappropriation in respect of the twenty two Civil works. As per the Technical Audit carried out by the Government Polytechnic, Beed dated 15.6.2019 and, as per the report submitted by the said college authority, it was revealed that there is variance in the measurement recorded in the ledger book and as per the actual measurement on the spot of the said work in respect of the road/ drainage work. There is also variance in respect of the length of the road. In view of the same, the Deputy Director of the Municipal Council Administration directed the then Chief Officer, Municipal Council, Majalgaon to lodge the FIR. Learned APP submits that as per the administrative sanction given by the Collector, Beed to Majalgaon Municipal Council under 'Special Road Grant Scheme' for construction of 22 civil works as per the guidelines of the Government to the

tune of Rs.1,61,10,130/-, it was necessary to get the technical sanction for the said work. As per the record, this procedure was not followed by the then Chief Officer of the Municipal Council, Majalgaon. There are stark irregularities/illegalities in the work allotment of serial numbers 3 to 22 shown in the complaint. The learned APP submits that the applicant Ashok Bhimrao Kulkarni being the accountant has disbursed the amount of Rs.1,44,28,959/- through cheques during the period of 20.3.2017 to 17.5.2017. As per the enquiry committee report dated 18.6.2019, particularly page no.334, fourth column from the account maintained for 'Special Road Grant Scheme' by the Municipal Council, Mumbai, cheques for 22 works to the tune of Rs.1,44,28,958/- in total issued against the bills during the period of 20.3.2017 to 17.5.2017 by the then Chief Officer Shri B.C.Gavit, the applicant account Shri Ashok Kulkarni. The learned APP submits that, as per the communication dated 18.3.2020 Assistant Director of Local Funds Audit, Beed has submitted the Audit Report of the Municipal Council, Majalgaon for financial years 2016-2017 and 2017-2018. As per the said report, substantial amount has been transferred illegally. As per the Bombay Finance Rules, 1959, funds allotted by the Government for particular scheme are required to be used for that scheme only. Inspite of the same, President of the Municipal Council, Majalgon, the Chief Officer and the accountant have transferred said funds and used for the different scheme. The Auditor has raised serious objections in respect of non-submission of record of account and the bills at the time of Audit. As per the list which is at page no.664 to 670 of the charge-sheet, it has been specifically recorded that certain amount has been shown against the construction work, office work, electricity, cleanliness, salary, advertisement, water supply, loan, toilet, Gharkul and so on, however, certified bills order, administrative sanction order, technical sanction order, measurement book, budget and other record has not been submitted at the time of audit inspite of the demand made by the Auditor. It appears that the applicant Ashok Kulkarni, who is an accountant has not maintained the accounts and disbursed the huge amount. Prima facie, there is strong case against the applicant. The applicant Ashok Kulkarni may not be released on bail.

13. I have carefully considered the submissions advanced by the learned counsel for applicants in both the bail applications and the learned APP. With their able assistance, I have perused the charge-sheet, grounds taken in the bail applications, annexures thereto and the replies filed by the respondent State.

14. I have carefully gone through the allegations made in the FIR and also perused the charge-sheet, particularly, the following documents/reports :-

[i] Administrative approvals to the funds received for construction of the roads and the technical approval to the said work (from page no. 57 to 62).

[ii] Report of the five members enquiry committee dated 24.6.2019, which runs into 79 pages from page no.193 to 271 of the charge-sheet.

[iii] Audit Report of the year 2016-2017, 2017-2018 which runs into 139 pages from page no.483 to 621 dated 18.3.2020.

[iv] Technical Audit Report of the Government Polytechnic, Beed which runs into 225 pages from 622 to 846 of the charge-sheet ; and

[v] various documents pertaining to the account details, the amount disbursed to the various contractors through cheques etc., submitted alongwith the charge-sheet.

Administrative approvals to the funds received for construction of the roads and the technical approval to the said work (from page no.57 to 62) :-

On careful perusal of the funds received for construction of the road and the documents, it appears that the proposal has been submitted for administrative approval for construction of the road Ward-wise and, accordingly, Administrative approval has been granted to the various road construction works as per the dates mentioned against the said construction work of the road. It further appears that the Executive Engineer had submitted his report in respect of the said Administrative approval of the construction of the roads to the tune of Rs.1,61,10,130/- pointing out therein that though the administrative approval has been grated for construction of a particular road, there is a change in the name of the construction of the road so also the amount required to be spent on it. It is really shocking to note here that out of the construction work of 22 civil work of the roads undertaken by the Municipal Council, Majalgaon, almost in respect of all the works there is a substantial change in the construction of work, so also the amount required to be spent on it as per the administrative approval. Thus, the plain meaning of the same is that administrative approval is on paper and the work shown to have been completed at some different site with different amount.

Report of the five members enquiry committee dated 24.6.2019, which runs into 79 pages from page no.193 to 271 of the charge-sheet :-

It is observed by the enquiry committee that though E-tendering process is compulsory for the work if exceeds rupees three lakhs, the tender notice was issued in a Local Newspaper and it is also observed by the five members Committee that there is a substantial change in the name of the work, budgetary amount and in the technical approval as against the administrative approval. Furthermore, five members enquiry committee has taken into consideration various factors and specifically pointed out the illegality. It is not possible to reproduce each and every item considered by the five members committee, however, the five members committee has relegated the matter for carrying out technical audit report.

Technical Audit Report of the Government Polytechnic, Beed which runs into 225 pages from 622 to 846 of the charge-sheet :-

On careful perusal of the Third Party Audit report (Technical scrutiny) of all 22 construction of the road, I find that in respect of all construction of the roads, it is observed in the third party audit report difference between the measurement length of the road site shown by the municipal staff members and in the measurement book. It has also been specifically observed that date of the work started, work completed date and defect liability period is not mentioned in the provided documents and thus overall quality of completion of the work could not be ascertained to conclude.

Audit Report of the year 2016-2017, 2017-2018 which runs into 139 pages from page no.483 to 621 dated 18.3.2020 :-

So far as the Audit reports of the year 2016-2017 and 2017-2018, various serious irregularities have been noted pertaining to maintaining of the accounts, irregularities in cash book, irregularities in maintaining bank accounts, payment of the advances illegally to near about 86 persons, however, in some of the cases cheques of the final payment has been issued to some different persons for different work, deficiency in the supply of bleaching powder and Turti (Alum) etc. In the Audit report of the year 2017-2018 more serious irregularities and illegalities have been noted, including illegal payment of advances to the various persons 65 in numbers, transfer of the amount of 29 works to another works without approval of the Collector, irregularities and illegalities in respect of the bank accounts, cash book, balance sheet and various items.

15. I am of the considered opinion that these are not the irregularities but the accused persons have systematically from the beginning planned to misappropriate the huge amount which is in Crores while implementing 22 civil works undertaken by the Municipal Council, Majalgaon, District Beed. It is shocking that though huge amount shown to have been spent for various works, however, neither the General Body nor the standing committee has accorded the financial sanction to those expenditure. It appears that without taking any Financial sanction, Administrative

sanction from the Collector, huge amount shown to have been spent. It is difficult to believe that the applicant-President Sahel Bin Amer Chaus is not responsible for the same.

16. It also appears that in terms of the Government Resolution dated 26.11.2014 the amount of the work if exceeds Rupees Three lakhs, E-Tendering process is compulsory. In view of the same, as per the Administrative sanction and allotment of the Special Grants under the 'Special Road Grant Scheme' to the tune of Rs.1,61,10,113/- for (22) twenty two civil works, instead of implementing E-Tendering process, without following the procedure as prescribed in the aforesaid Government Resolution, Tender notice was issued in a Local newspaper, having no circulation at all. It further appears from the Audit report that huge amount has been spent without any Administrative sanction.

17. It is not possible to refer each and every aspect of the reports, as referred above. However, on the basis of all these documents annexed to the charge-sheet, a

prima facie, irresistible inference could be drawn that, the applicant/s in both these bail applications are responsible for illegalities and misappropriation of huge amount. It appears that the funds received under the Special Grants, Road grants, Fourteenth Financial Commission, Golden Jubilee Funds and other Schemes, administrative sanction was given by the Collector, Beed. It was necessary to obtain sanction from the Collector, Beed before transferring the said funds to other schemes. However, the funds received have been used for various other purposes without obtaining sanction from the Collector, Beed. For example funds received from the Fourteenth Financial Commission came to be used for election expenses. Furthermore, there is blatant illegality in disbursement of advances for purchase of electrical items, water supply items and various items. It further appears that huge amount has been spent against the construction work, office work, electricity work, cleanliness, etc., but certified bill orders, administrative sanction order, technical sanction order, measurement book and other record has not been submitted for Audit inspite of the demand made by the Auditor.

18. In a case Punjab State Warehousing Corporation Vs. Bhushan Chander and another reported in 2016 DGLS (SC) 635 reported in 2016 DGLS, relied upon by the learned Senior counsel Mr. Deshmukh, in paragraph nos.22 and 28, the Supreme Court has made following observations :-

> "22. A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the acts omission or commission is totally alien to the discharge of the official duty, question of invoking Section 197 Cr.P.C. does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha's (supra). The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 CrPC is not necessary but when the said offences are interlinked with an offence under Section 409 IPC

> sanction under Section 197 for launching the prosecution for the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in B. Saha (supra) has distinguished in Shreekantiah Ramayya Munipalli (supra) keeping in view the facts of the case. It had also treated the ratio in Amrik Singh (supra) to be confined to its own peculiar facts. The test to be applied, as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in Matajog Dube (supra) which we have reproduced hereinbefore. The three-Judge Bench in B. Saha (supra) applied the test laid down in Gill's case wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office.
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> 28. In view of the aforesaid analysis, the irresistible conclusion is that the respondents are not entitled to have the protective umbrella of Section 197 CrPC and, therefore, the High Court has erred in setting aside the conviction and sentence on the ground that the trial is vitiated in the absence of sanction. Consequently, we allow the appeal and set aside the judgment and order passed by the High Court and remit the matter to the High Court to decide the revision petition in accordance with law.

In the case cited above, it is held that protection under section 197 of Cr.P.C. is not applicable to the officers of Government Companies or employees of public sector undertaking even though they are state within the meaning of Article 12 of the Constitution of India. Hence, to proceed with the prosecution under sections 409, 467 etc., against the godown assistant of the Corporation sanction under section 197 of Cr.P.C. is not required. However, in paragraph no.22 the Supreme Court has made general observations by referring various cases that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official, if the acts, omission or commission is totally alien to the the discharge of the official duty, question of invoking section 197 of the Cr.P.C. does not arise.

19. In the instant case, I do not think that a systematic plan of misappropriation of huge amount by preparing the false record and thereby committing a criminal breach of trust has hardly any connection with discharging the public duties.

20. In a case D. Devraja Vs. Owais Sabeer Hussain (supra) relied upon by the learned Senior Counsel appearing for the applicant in BA No.569 of 2020, the Supreme court had an occasion to consider the

requirement of the sanction to entertain and/or take cognizance allegedly committed by the police officer under section 197 of Cr.P.C., r/w section 170 of the Karnataka Police Act. In paragraph no.68 the Supreme Court has made following observations :-

> "68.Sanction of the Government, to prosecute a police officer, for any act related to the discharge of an official duty, is imperative to protect the police officer from facing harassive, retaliatory, revengeful and frivolous proceedings. The requirement of sanction from the government, to prosecute would give an upright police officer the confidence to discharge his official duties efficiently, without fear of vindictive retaliation by initiation of criminal action, from which he would be protected under Section 197 of the Code of Criminal Procedure, read with Section 170 of the Karnataka Police Act. At the same time, if the policeman has committed a wrong, which constitutes a criminal offence and renders him liable for prosecution, he can be prosecuted with sanction from the appropriate government."

21. Thus, the facts and issue dealt with by the Supreme Court in the case cited above are totally different and hardly any relevance while deciding the issue involved in this case.

22. In view of the discussion above and considering the entire aspect of the case, *prima facie*, there is strong

case against the applicants in both the bail applications. Thus, I am not inclined to release them on bail.

23. At this stage, the learned Senior counsel Mr. R.S. Deshmukh appearing for the applicant Sahel Bin Amer Chaus in Bail Application No.569 of 2020 submits that the applicant President Sahel Bin Amer Chaus is on temporary bail on health grounds. Even as per the recent certificate dated 12.12.2020 the applicant is suffering from asthenia, shortness of breath, chronic cough. According to Dr. Shreyas G. Deshpande, the applicant Sahel Bin Amer Chaus will require physical support for daily activities, high nutritional diet for lack of energy and muscle strength intermittent supplemental oxygen therapy to prevent hypoxia. Learned Senior Counsel submits that temporary bail granted to the applicant Sahel Bin Amer Chaus by order dated 11.8.2020 may be continued for a reasonable period, so as to enable the applicant to approach the Supreme Court. Hence the following order :-

O R D E R

I. Bail application No.569 of 2020 (Sahel Bin Amer Chaus Vs. The State of Maharashtra) and Bail application No.954 of 2020 (Ashok Bhimrao Kulkarni Vs. The State of Maharashtra) are hereby rejected.

II. However, the temporary bail granted to the applicant Sahel Bin Amer Chaus in Criminal Application No.1248 of 2020 in Bail application No.569 of 2020 by order dated 11.8.2020 on his health grounds to remain continued till **6th of January, 2021.**

III. Both the bail applications are accordingly disposed off.

IV. In view of disposal of bail application No.569 of 2020, nothing further survives for consideration in Criminal Application No.1909 of 2020 in B.A. 569 of 2020 and the same is accordingly disposed off.

(V. K. JADHAV)
JUDGE.

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