

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

CRIMINAL APPLICATION (ABA) 682 OF 2020

Laxman s/o Kerba Kamble Vs. State of Maharashtra, through PSO, PS Daryapur, Dist.
Amravati

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions

Court's or Judge's orders.

and Registrar's Orders.

Mr.N.B. Kalwaghe, Advocate for applicant.
Mr. I.G. Damle, APP for non-applicant.

CORAM : ROHIT B. DEO, J.

DATE : DECEMBER 18, 2020.

Heard.

(2) The applicant is apprehending arrest in Crime 308/2020 registered with Police Station, Daryapur, District Amravati for the offence punishable under Sections 468, 471, 473 of the IPC.

(3) The crime is registered on the basis of complaint dated 23.09.2020 lodged by Mrs. Nikita Pradip Deshmukh on behalf of the Daryapur Municipal Council. The gist of the complaint is that the applicant submitted bid in response to the tender published for allotment of work of garbage collection. The bill was *inter alia* accompanied by certificate purportedly issued by the Sangamner Municipal Council on 12.10.2017 certifying that the applicant executed work of garbage collection from 01.09.2016 to 31.08.2017 and certificate purportedly issued by Aurangabad Municipal

Corporation on 11.08.2019 certifying that the applicant executed garbage collection contract from June, 2017 to December, 2018. The Sangamner Municipal Council and Aurangabad Municipal Corporation have confirmed that certificates are forged and that the applicant did not executed any work referred in the forged certificates.

(4) *Prima facie*, there is more than ample material in the case diary to hold that the certificates are forged. The offence is serious one and if the trial culminates in conviction the maximum sentence which can be imposed is life imprisonment.

(5) Mr. Kalwaghe, learned counsel for the applicant submit that the applicant was granted pre arrest protection by the Sessions Court, and while protected he has cooperated with the Investigating Officer.

(6) The submission is refuted by the learned APP Mr. Damle who states that relevant documents are not supplied and are yet to be recovered.

(7) The next submission canvased by Mr. Kalwaghe is that the applicant was not really required to submit the alleged forged certificates. The tender condition was that the bidder must have executed 3 similar works with Nagar Parishad or Municipal Council or Municipal Corporation and that the applicant did submit three other certificates, which

are genuine and which satisfied the experience condition in the tender.

(8) The learned APP is not in a position to throw clear light on the said submission.

(9) Mr. Kalwaghe then submits that since the tender was cancelled there is no financial gain and therefore no offence is made out. The statement is noted only for rejection.

(10) I am satisfied that there is indeed a prima facie case against the applicant. However, there are certain circumstances which impell me, to depart from the ordinary course, and to protect the applicant subject to certain conditions.

(11) The first circumstance is that the submission that two forged certificates were not really required to be submitted, cannot be brushed under the carpet. The statement is to be viewed in the context of categorical stand taken by the applicant during the course of investigation that it was an employee who he named, who without his consent procured the forged certificates and that the signature is only the digital signature of the applicant. It does not appear, at least from the case diary, that Investigating Officer has made any investigation on these lines. It does not appear that the named employee is interrogated.

(12) Assuming that the certificates are forged and which is every likelihood they are custodial interrogation may not be necessary. In the trial, ultimately it would be for the applicant to discharge the burden of proving his innocence or bring on the record a strong probability that he was not aware of the forgery.

(13) It is not the case of the prosecution that applicant has any antecedent. I have not come across any material to suggest that applicant shall not be available to face the trial.

(14) In this view of the matter notwithstanding that two certificates, which are submitted along with the bid are the allegedly forged, I do not see any implement in protecting the applicant.

(15) In the event of arrest in Crime 308/2020 registered with Police Station, Daryapur, District Amravati for the offence punishable under Sections 468, 471, 473 of the Indian Penal Code, the applicant shall be released on furnishing personal bond of Rs.25,000/- with a solvent surety of like amount, which surety may be furnished within four weeks from the arrest, if any.

(16) The applicant shall attend the concerned Police Station everyday from 11:00 a.m. to 05:00 p.m. from 23.12.2020 to 29.12.2020 and shall cooperate with the Investigating Officer. This period shall be treated as deemed

custody for the purpose of Section 27 in the Indian Evidence Act.

(17) The applicant shall not directly or indirectly make any attempt to influence the witnesses.

(18) The application is allowed.

JUDGE

Wagh