IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.857 OF 2020

Fahim s/o Jameel Shaikh,
Age : 35 years, Occu. Business,
Prop. E-ZONE ENTERPRISES,
Shop No.2, H.R. Complex,
Chhatrapati Chowk, Samta Nagar,
Osmanabad,
R/o Nagnath Road, Mali Galli,
Osmanabad, District Osmanabad **APPLICANT**

VERSUS

The State of Maharashtra,
through Police Inspector,
Police Station Anand Nagar,
Osmanabad, District Osmanabad **RESPONDENT**

Mr. Girish K. Thigale (Naik), Advocate for the applicant
Mr. V.M. Kagne, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 11.02.2021

PER COURT :

This is an application under Section 438 of the Code of Criminal Procedure by one of the accused from Crime No.181 of 2020, registered with Anandnagar Police Station, Osmanabad for the offences punishable under Sections 409, 420, 467, 468, 471 read with Section 34 of the Indian Penal Code.

2. In substance, the allegations are to the effect that accused No.1 at the material time was District Administrative Officer, Municipal Council Administrative Division, Collector Office, Osmanabad. He was the person, who was authorized to upload the demand on the Government e-Marketplace portal. By misusing aadhar card of co-accused one Mr. More, who was his subordinate, he managed to open an account with the e-portal, called bids on 08.01.2019 for installation of solar street lights in the premises of administrative buildings of all the Municipal Councils from Osmanabad district and for setting up solar generators under another scheme of the Government, totally worth Rs.1,03,74,000/-. It is alleged that without there being any demand by the concerned Municipal Councils, accused No.1 – Administrative Officer, on his own, in collusion with the present applicant, placed the order to the latter by pretending that his bid being the lowest was accepted. It is also alleged that according to the Government Resolution dated 01.12.2016, any purchase worth Rs.3,00,000/- and above could have been made only through e-tendering process. It also requires that the goods worth Rs. 25,00,000/- onwards can be purchased only by publishing e-tender and a tender in a newspaper published at State level. Giving a complete go-bye to such a mandate, accused No.1 – Administrative Officer placed the order with the present applicant for the work. It is then alleged that both of them hand-in-gloves without there being actual delivery of the goods, caused the huge amount of the entire consideration to be paid to the applicant on 13.03.2019, by generating consignee receipt on 01.03.2019 and issuing

acceptance certificates online on 15.03.2019.

3. Thus, the applicant alongwith the main accused - Administrative Officer, by sharing common intention, has indulged in forgery, cheated the Government office and siphoned off the public fund.

4. Mr. G.K. Thigale (Naik), learned Advocate for the applicant would submit that he is innocent. The applicant has bona fide having seen the order uploaded on the e-portal, had placed his bid. It was accepted in due course. He delivered the goods regarding which requisite consignee receipt was generated and acceptance certificate was issued and he was paid the amount under the contract. There is no *mens rea*. If the main accused – Administrative Officer has indulged in some misdeeds, the applicant cannot be held responsible.

5. The learned Advocate would further submit that after the grievance was raised by a Peoples Representative with the office of the Collector, an enquiry was ordered. A three member Committee comprising of the Government Auditors and Principal of an ITI conducted the enquiry and even in the report of the said Committee, the goods were found to be forthcoming. The learned Advocate would, therefore, submit that since the applicant is a businessman and has bona fide supplied the goods pursuant to the order appearing on the web-portal and when even the Committee has found and could trace the goods, the role of the applicant would end.

Whether the order was placed strictly in accordance with the Government Resolutions, whether the Municipal Councils had passed any resolution for such installation of solar lights and inverters, could have a bearing as far as the role played by the main accused – Administrative Officer is concerned. The applicant being a businessman, he is not supposed to verify and crosscheck the procedure being followed at the other end i.e. the Government office.

6. The learned Advocate would, therefore, submit that merely on the basis of a statement of co-accused, who is the main culprit, the applicant is now being sought to be implicated. There are no criminal antecedents. The applicant is ready to cooperate the Investigating Officer. His custodial interrogation is not necessary and he may be granted bail.

7. The learned A.P.P. would strongly oppose the application. He submits that the offence is serious. The main accused having shared common intention with the applicant, has systematically siphoned off the Government money. He would further point out that the applicant is feigning ignorance. If at all he was acting bona fide, he would have delivered the goods at the place i.e. the Collector office, as was required by the demand uploaded on the e-portal. Even if three member Committee has now found that these goods are forthcoming, all these goods were not found at the place where they were supposed to be delivered, but were found dumped elsewhere. There was no reason for the applicant to have delivered the goods at

difference places. The learned A.P.P. would submit that having sensed that a Peoples Representative has taken up the issue regarding misappropriation, the applicant alongwith the main accused has managed to plant these goods and that is why those were found at difference places.

8. The learned A.P.P. would further submit that the applicant was paid entire amount of consideration even before the goods were actually delivered. This fact itself corroborates the inference about he having acted hand-in-gloves with the main accused. Thus, he has played an active role in siphoning the Government money.

9. The learned A.P.P. would then submit that the District Collector, Osmanabad also extended an opportunity to the applicant, the main accused and the other suppliers, who are similarly placed as that of the applicant. After taking into account the explanation tendered by the applicant and other persons, she has also drawn a similar inference. He would, therefore submit that there is a strong prima facie case which requires the Investigating Officer to resort to custodial interrogation of the applicant. Taking into account the complexity of the modus operandi, the Investigating Officer would be able to complete the investigation only if he undertakes custodial interrogation of the applicant. The offence being serious, no discretion be exercised in favour of the applicant.

10. I have carefully gone through the papers. It is pertinent to note

that the offence has been registered after undertaking a detailed scrutiny of all the facts and circumstances. The Committees were appointed and even the Collector independently enquired into it and several aspects can be noted to demonstrate as to how the main accused, who was the then Administrative Officer posted in the office of the District Collector (Municipal Administration), has indulged in several misdeeds.

11. As can be easily demonstrated, giving a complete go-bye to the Govt. Resolution dated 01.12.2016, the main accused managed to place an order for purchasing the goods on the Government e-portal though the Resolution mandates that purchases worth more than Rs.3,00,000/- could be made only by floating e-tender and when it also requires that the material worth Rs.25,00,000/- onwards could be purchased after publishing the tender in the newspaper circulated in the region as well as State level, the main accused caused demand to be placed on the e-portal. Pretending that the bid of the applicant was lowest, placed order for purchase of the goods. Pertinently even the account through which such purchase was to be made was opened by him with the name of his subordinate Mr. More. He himself manged to issue the consignee receipt and generated the acceptance certificate and even managed to pay entire consideration to the applicant. Therefore, so far as the complicity of the main accused in commission of the crime is concerned, it is writ large on the face of the papers of investigation.

12. As far as the role attributable to the applicant is concerned, if he

is a businessman, who could supply the goods worth Rs. One crore and more at one go, one could easily draw an inference that even he must be aware about the procedure being followed by the Government office for purchasing goods. He cannot be as naive as he is now pretending to be by taking a convenient stand of being a bona fide vendor.

13. As is apparent from the record, even going by the demand for purchase placed on the e-portal by the main accused, the order was placed with the applicant on 20.01.2019 and 23.02.2019 and immediately, the payment was disbursed on 13.03.2019 by showing that the goods were delivered on 01.03.2019 and 15.03.2019. Conspicuously, on the invoices, the dates of expected deliveries were mentioned as 06.03.2019 and 07.04.2019. It is also apparent that the mode of despatch was supposed to be manual. The invoices are dated 20.01.2019 and 21.02.2019 whereas the consignee receipt and acceptance certificates are 01.03.2019 and 15.03.2019, but there is every room to believe that the applicant has recovered money even before he actually supplied the goods.

14. True it is that a three member Committee, which was appointed to undertake the enquiry, could find the goods and based on that, the applicant is now taking a convenient plea that he has already supplied the goods against which he has received legitimate dues.

15. However, a careful consideration of the papers of the

investigation would demonstrate that though he was supposed to supply the goods at the Collector office as is mentioned in the demand placed on the e-portal, the Committee has found the goods placed at different locations. Even it is the stand of the main accused in his statement submitted before the Collector that since there was no place to keep these goods in the Government office, he asked the applicant to place these goods elsewhere. All these circumstances create a serious doubt and rather confirm the inference that the applicant could manage to recover money even before supply of goods and having sensed that the matter was getting a serious turn, could manage to dump the goods elsewhere than the office of the Collector.

16. Considering the modus operandi being attributed, custodial interrogation of the applicant is highly imperative.

17. It is a matter of misappropriation of Government money. Following the principles in the case of ***Nimmagadda Prasad Vs. Central Bureau of Investigation; (2013) 7 SCC 466***, the applicant is not entitled to anticipatory bail.

18. The application is rejected.

[MANGESH S. PATIL]
JUDGE

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