IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 682 OF 2022

Sudhakar @ Sudhir S/o Ganeshrao Patil
Age : 62 years, Occ : Business/sContractor,
M/s. Pallavi Constructions, Parbhani,
R/o 84/85, Kalyan Nagar,Basmat Road,
Parbhani, Dist. Parbhani .... Applicant

Versus

The State of Maharashtra .... Respondent

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Mr. R.N. Dhorde, Senior Advocate i/b. Mr. V.R. Dhorde, Advocate for the Applicant
Mr. V.S. Badakh, APP for Respondent/State
Mr. Sachin S. Deshmukh, Advocate for Assist to P.P

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[**CORAM : S.G. MEHARE, J.]**

RESERVED ON : 28.06.2022

PRONOUNCED ON : 19.07.2022

ORDER :

1. The applicant is seeking bail under Section 438 of the Code of Criminal Procedure in Crime No.153 of 2022 registered at Nanalpeth Police Station, District Parbhani for the offences punishable under Sections 420, 418, 466, 467, 468, 471 r/w. Section 34 of the Indian Penal Code.

2. The applicant is the proprietor of Pallavi Constructions, Parbhani. He is a construction Contractor. The prosecution has a case that his tender for carrying out the work of

improvement of Deolgaon Dudhate MDR-43 km 2/00 to 4/00 and 5/500 to 12/00 Tq. & District Parbhani total 9 km., was accepted. The construction cost was Rs.1,19,00,119/-. As per the terms of the tender, the Contractor was to purchase bitumen through an authorized Government refinery only. However, the applicant purchased the bitumen from the Hindustan Petroleum Corporation Limited (HPCL) under forged and fake bills/challans. He produced those bills/challans before the Executive Engineer, Parbhani, pretending it genuine. By producing those bills/challans, the applicant has illegaly gained Rs.26,44,000/- and thereby cheated the Government. In its Audit, the Accountant General, State of Maharashtra, noted that the bills produced by the applicant were fake. The bills produced by the applicant were necessarily verified by the Deputy Engineer and Executive Engineer. The measurement book No. 4517 was the relevant evidence to prove the cheating. However, the applicant, in conspiracy, has stolen the measurement book. The concerned Department did not pay heed to the complaints of the complainant. Hence, he lodged the F.I.R.

3. Learned senior counsel Shri. Dhorde, for the applicant, has vehemently argued that the applicant has not committed the offence as alleged. The applicant has submitted Income

Tax Returns for the year 2010-2011. The applicant had purchased the bitumen from Government companies, namely Hindustan Petroleum Corporation Limited (HPCL) and Bharat Petroleum Corporation Limited (BPCL). As the A.G. Office raised some objections, the Executive Engineer, P.W.D., Parbhani issued a letter to the applicant dated 06.09.2018. The applicant submitted his detailed reply on 24.12.2018. The learned counsel for the applicant has submitted that the copies of the bills were submitted with the concerned P.W.D. department. The National Construction Company purchased the said bitumen at Parbhani and was sent along with its Tax Invoice P-151. In the said Tax Invoice, the date of supply, lorry number, and the docket numbers were mentioned. Those bills were sent to the respective companies for verification, and the company has sent a report that matched their official records. After receipt of the report, the Executive Engineer, Nanded, submitted his report to the Superintending Engineer, Nanded, on 04.02.2019, contending that the company submitted the report that the bills were matched with their record. There is no evidence that the bills were fake. Accordingly, the Superintending Engineer, informed by letter dated 04.01.2022 to the Desk Officer, P.W.D., Mantralaya, Mumbai, and suggested closing the file.

4. It has also been argued by the learned senior counsel, that the complainant is the M.L.A. from Gangapur Taluka, but interfere in the business in Parbhani District. The Member of Parliament from his own party also raised a grievance that the complainant is indulging in the activities of their district. The said letter clearly indicates what type of the complainant is. The complainant is picking and choosing the contractors who are not belonging to his party or belonging to rival political parties. The allegation of stealing the measurement book is falsified by the report of the P.W.D., submitted to the Investigating Officer, informing that the measurement book was with the Department till 2015. There are various complainants against the present complainant. The applicant is running 62 years with pancreatic ailments and also suffered a Brain Stroke on 14.04.2022. On similar facts, the Additional Sessions Judge, Darwha, has granted the bail to another contractor. The complaint is nothing but the outcome of political rivalry. The investigation was thoroughly conducted by the respective Engineers. They had verified the varsity of the bills produced by the applicant. However, nothing was discovered adverse against the applicant. Since he does not belong to the political party of the complainant deliberately, a false report has been lodged against him. Besides this, the entire record is available with the office of the P.W.D. Thorough

investigation as regards the genuineness of the documents was done. Therefore, the custodial interrogation of the applicant is not essential.

5. Per contra, the learned APP has vehemently argued that, in the investigation, it is revealed that the applicant has submitted forged and fake bills. The so-called bitumen bills did not match the record of the HPCL and BPCL. The objection was raised by the office of the Accountant General. The measurement book is missing. The applicant has played an active role in disappearing the said book. A serious offence has been committed by the applicant. He has cheated the Government by securing the amount of RS.26,44,000/- from the Government illegally.

6. Mr. Sachin Deshmukh, learned counsel for the complainant, has also vehemently opposed the application and argued that without seeking permission from this Court, the affidavit of one Ruchir Patil is filed. This act of presenting an affidavit is unknown to the recognized procedure followed by this Court. Nonetheless, the documents appended to the said affidavit, more particularly the letter of the Member of Parliament dated 22.11.2019, is duly replied to by the original complainant on 26.01.2020 and has presented a suit for defamation and consequential damages in the Court of Civil

Judge, Senior Division, Aurangabad. He has referred to Clause 10 of tender conditions and submitted that the Contractor should submit the bills, and the Engineer In-charge shall take the requisite measurement for the purpose of verification and the claim of the Contractor. The bills on pages nos.108-113 submitted by the applicant were received by the Engineer In-charge in the measurement book, and accordingly, the bills were paid. Eventually, such invoices presented by the Contractor at the time of measurement of work were found forged and fraudulent in the Audit of Accountant General, Nagpur, in its inspection in August 2013. Thereafter, the necessary instructions were issued by the State on the basis of the report of the Public Account Committee (P.A.C.), by which it was directed to lodge F.I.R., and in the process, the Government verified the genuineness of the bills presented by the Contractor, while raising the bills from HPCL. Further, it was communicated by the HPCL on 15.05.2018 that invoices do not match with the HPCL record (page No. 108). Thus, fraud has been played by the accused. The consequent directions were issued on 09.02.2018 by the Superintending Engineer, Nanded, in that regard.

7. He has also vehemently argued that the P.W.D. department officials have protected the Contractor from

criminal action. The participation of the officials of the P.W.D. is rather evident. The measurement book No. 4517 has been destroyed, contending that the same was missing and the complaint has lodged on 03.10.2021 for the lost property bearing No.277/2022. The nominal complaint was lodged on 03.10.2021 of missing the record on 01.09.2012 to avoid criminal action. Further, the same Executive Engineer, while offering an explanation before the investigating officer on 12.05.2022, stated that the measurement book No. 4517 in relation to the work in question was available with the Senior Clerk, namely M.L. Satpute, who retired on 31.05.2015 and same was handed over to one C.M. Ukkadgaonkar, Jr. Clerk, and thereafter, the same is missing. There are three different versions of the officers of the P.W.D. as regards measurement book No.1517. A serious judicial note of the same deserves to be taken so as to maintain the rule of law.

8. The prosecution and complainant’s case in a nutshell is that the bitumen was procured from the Hindustan Petroleum Corporation Limited, and the said invoices did not match the record of the HPCL. At the same time, the bills were verified and disbursed by the Executive Engineer on the basis of the invoices, which were found to be bogus in the wake of objection by the Accountant General, Nagpur and subsequent

report of P.A.C. and further confirmed by the HPCL. The P.W.D. is bent upon avoiding any action, much less the criminal action against the Contractor so as to save the fraudulent wing of the officials of the P.W.D., those who have participated actively in causing loss to the public exchequer. The P.A.C. has recorded such instances of 101 bogus invoices and confirmed by the HPCL. Therefore, the custodial interrogation of the applicant is warranted. The applicant has been misrepresenting the Court by submitted that the invoices tendered by him were genuine. Considering the facts and circumstances of the case, the applicant is not entitled to get anticipatory bail. Hence, the application may be rejected.

9. It is not in dispute that after presenting the bills by the applicant, the concerned officials from the P.W.D. had verified the bills. When the dispute as regards the genuineness of the purchase of bitumen from the HPCL arose, again the report was called from the HPCL and that HPCL has issued a report that all those bills match with their record. The applicant has referred to a bunch of documents in support of his contention that the applicant has purchased the bitumen from the Government agency and he has also submitted the Income Tax Returns for the year 2010-2011 mentioning the purchase of asphalt. In short, he has a case that he did not hide the

income. The statement of the Bank accounts have been produced. After the objection raised by the Accountant General, Nagpur, the P.W.D. called the applicant in the year 2018 to submit the explanation with proof. The applicant responded to the said letter and submitted the original gate pass of HPCL, Mumbai along with the tax invoices. A detail report was called from the HPCL and BPCL. It was informed to the office of P.W.D. that the so called bills of bitumen were not forged and false and match with the record of the HPCL.

10. Perusal of the record reveals that a record match the bills with HPCL and BPCL. The measurement book was in the custody and possession of the P.W.D., but it has been alleged that the applicant in conspiracy to avoid criminal action has stolen the same. The measurement book is to be maintained by the P.W.D. and it lies with and in the custody of the concerned Clerk or the officer. After the detailed inquiry was made by the P.W.D., again evidence has been procured that those bitumen bills do not match with the record of HPCL and BPCL. There are two contrary evidence on the same fact.

11. Having regard to the nature of the allegations, it reveals that the investigation pertains to the record and accounts. The investigation may be based on record only and the entire record is available with the Government and P.W.D. The

prosecution has nothing except the allegations against the complainant that the measurement book has stolen by the applicant to avoid the criminal action. It is purely the matter of accounts and the Accountant General has pointed out the deficiency in the bills. Thereafter, the inquiry was made and the P.W.D. was satisfied. Considering the scenario and the process of submitting the bills, maintaining the measurement book and releasing the bill amount. This Court is of the view that the custodial interrogation of the applicant would serve no purpose. Hence, the application deserves to be allowed. Hence, the following order.

O R D E R

(i) The application is allowed.

(ii) In the event of arrest, the applicant **Sudhakar @ Sudhir Ganeshrao Patil** be released on bail on furnishing P.B. and S.B. of Rs.1,00,000/- (Rupees One Lac only) with one or two solvent sureties of the like amount in Crime No. 153 of 2022, registered at Nanalpeth Police Station, District Parbhani for the offences punishable under Sections 420, 418, 466, 467, 468, 471 r/w Section 34 of the Indian Penal Code, on the condition that he shall attend the Police Station as and when called by the Investigating Officer on written notice.

[S.G. MEHARE, J.]

S.P. Rane