IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.256 OF 2021

Divakar Bapuso Karande and another	…	Applicants
Vs.		
State of Maharashtra	…	Respondent

WITH
INTERIM APPLICATION NO.1067 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.256 OF 2021

Jayant Govindrao Patil	…	Intervenor
In the matter between:		
Divakar Bapuso Karande and another	…	Applicants
Vs.		
State of Maharashtra	…	Respondent

Mr. Ashok Mundargi, Senior Advocate a/w. Mr. Rohan Hogle and
Mr. Jayant Bardeskar for Applicants.
Ms. Pallavi N. Dabholkar, APP for Respondent-State.
Mr. Shekhar A. Ingawale for Intervenor.
Mr. Ikbal Mahat, PSI, Laxmipuri Police Station, District - Kolhapur.

CORAM : NITIN W. SAMBRE, J.
DATE : SEPTEMBER 15, 2022

P.C. :

The applicants are seeking pre-arrest bail in Crime No.256 of 2020 registered with Laxmipuri Police Station, District Kolhapur for the offences punishable under Sections 409, 420, 464, 465, 468 r/w. Section 34 IPC.

2. The offence is alleged to have been committed between the period from 01.04.2014 to 12.02.2020.

3. Complainant – Tax Collector of Kolhapur Municipal Corporation

alleged that applicant No.1 Divakar Bapuso Karande was working as the Tax Assessor and Collector for the aforesaid period for a particular area. It is alleged that for the aforesaid period, applicant No.1 in the said capacity has intentionally assessed certain properties unlawfully thereby maintaining incorrect / forged entries in the record, causing loss to the Municipal Corporation as against the lawful tax liability of around Rs.3 crores.

4. While trying to make out a case for grant of pre-arrest bail, Mr.Mundargi, learned senior counsel would urge that the motive to commit the offence cannot be inferred from the allegations on the record. According to him, an internal inquiry conducted by the Municipal Corporation has absolved applicant No.1 of any default or liability as alleged.

4.1. Apart from the above, according to him, even if there is any *bonafide* mistake in the assessment of tax to be levied and collected under the provisions of the Maharashtra Municipal Corporations Act, 1949, the statute provides for an appropriate remedy for taking corrective measure *viz*. re-assessment, levy and collection of tax with retrospective effect. According to him, to the best of his knowledge, already such proceedings are taken recourse to by the Corporation.

4.2. His further contentions are,-

(a) prior to applicant No.1 putting in charge of the tax assessment and collection, it was the complainant who was looking after the said affairs. After that, the said applicant inherited record from the complainant. The applicant continued to assess and collect the tax with the very same entries. As such, he would urge that if applicant No.1 is to be held responsible then by the same yardstick, the complainant is also required to be impleaded as the accused.

(b) applicant No.1 / public servant is very much available for the investigation and that being so, his custodial interrogation is not required as the offence is based on the document / recorded entries. As such, he would urge that the said applicant deserves to be released.

4.3. According to Mr. Mundargi, learned senior counsel, applicant No.2 namely, Anirudh Pramod Shete has expired and as such, his name is already deleted from the application.

5. Learned APP would invite my attention to the affidavit filed by the investigating officer so as to substantiate her claim of forgery, criminal breach of trust and cheating. According to her, specific instances are mentioned in the FIR whereby intentionally applicant has tampered with the tax entries of certain properties which are assessed for tax so as to benefit the owner / occupier of the said property. She would urge that the applicant had criminal motive to commit an offence and get financial benefits out of the same.

5.1. She would further urge that pursuant to the interim protection ordered by this Court even if the applicant had appeared before the investigating officer, the applicant did not co-operate in explaining the entries in the record and also did not produce a computer data for the purpose of further verification. As such, she would urge that the application deserves to be rejected.

5.2. In response to the submissions made by learned senior counsel Mr. Mundargi, learned APP, on instructions, assures that the role played by the complainant in the matter of the commission of offence in question also will be looked into by the investigating officer.

6. I have appreciated the said submissions.

7. The fact that the applicant was posted as a Tax Assessor and Collector for the period from 2015 to 2020 in relation to the properties which are referred to and mentioned in the FIR is not a fact in dispute.

Mr. Mundargi, learned senior counsel, in my opinion, is justified in claiming that if there is any mistake on the part of the assessor in assessing the property taxes, the Corporation has a leverage by virtue of statutory provisions to recover the same by re-assessing and issuing demand. Be that as it may, this Court at present is required to confine to the issue as to whether the applicant has forged the record of the Corporation so as to cause benefit to the occupiers / owners and to further cause financial loss to the Corporation intentionally by getting benefit for himself.

8. From the investigation carried out till this date, it could be inferred from the affidavit in reply that the applicant was duty bound to maintain the record of the Corporation in the matter of the tax assessment and collection. The applicant might be negligent in discharge of his duties but what can be noticed is, the applicant has intentionally made independent computer entries in relation to such properties, which are mentioned in the FIR thereby intentionally assessing the tax at much lower rate than it was required to be assessed lawfully. Such inference can be based on the investigation carried out till this date.

9. Apart from the above, the Court is required to be sensitive to the fact that the applicant has not co-operated in the investigation during the interim protection ordered by this Court.

10. If the claim put forth by the senior counsel Mr. Mundargi on the issue of forgery particularly having regard to the provisions of Sections 463 and 464 of the IPC is appreciated, it is apparent from the investigation that the applicant, who was the lawful custodian of the record of the Corporation and was duty bound to discharge duty as the Tax Assessor and Collector, has not only forged the entries but also suppressed the record from the investigating agency. As such, in my opinion, the case of the prosecution for custodial interrogation appears to be quite justified.

11. In the light of the aforesaid observation, no case for grant of pre-arrest bail is made out. Application, as such, stands rejected.

12. In view of the disposal of the anticipatory bail application, nothing survives in Interim Application No.1067 of 2021. As such, it stands disposed of.

(NITIN W. SAMBRE, J.)

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