

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.251 OF 2022

Panjabrao Jangluji Patil

Versus

State of Maharashtra, through P.S.O., P.S. Sadar, Nagpur

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Abhay Sambre, Advocate for the applicant.

Shri V.A. Thakare, A.P.P. for the non-applicant/State.

Shri P.K. Sathianathan, Advocate Assist to Prosecution.

CORAM : ANIL S. KILOR, J.

DATED : 16/06/2022

1. The applicant is seeking pre-arrest bail in Crime No.382 of 2021, dated 24.08.2021, registered with Police Station Sadar, District: Nagpur (City), for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. This is a second bail application filed before this Court for grant of anticipatory bail. Earlier, as many as seven applications filed by all the accused persons in Crime No.379 of 2021 including the application of the present applicant i.e. Criminal Application (ABA) No.737 of 2021 were decided by this Court vide order dated 29.03.2022, rejecting the same after observing that the custodial interrogation of the applicant is necessary.

3. It is submitted that except the allegation that tender No.9/2017-18 and tender No.27/2017-18, were allotted to M/s Nanak Infratech and the said company had withdrawn the security deposit amount before completion of 24 months period, there is no allegations against the applicant.

4. Shri Sambre, learned counsel for the applicant submits that as far as the allegations in respect of tender No.27/2017-18 are concerned the amount of security deposit is still lying with the bank and it was not withdrawn. Accordingly, he submits that there is no offence committed as far as the E- Tender No.27/2017-18 is concerned.

5. The learned counsel for the applicant further points out that as far as E-Tender No.9/2017-18 is concerned, there are Government Resolutions which permit the Contractor to withdraw the security deposit after three months from the date of completion of the work. Attention of this Court has been drawn for this purpose to the Government Resolution dated 12.04.2017 issued by Public Works Department, State of Maharashtra and reliance has been placed on a clause 4.6.7 which reads thus:

“४.६.७. काम समाधानकारकपणे पुर्ण झाल्यावर निविदेतील तरतुदीप्रमाणे ठेकेदारांकडून प्राप्त अतिरिक्त कामगिरी सुरक्षा ठेव रक्कम व बँक प्रतिभूती हमी ३ महिन्यांच्या आत कंत्राटदारांना कार्यकारी अभियंता यांनी परत करावी.”

6. He, therefore, submits that there is no illegality committed by the applicant as alleged.

7. Shri Sambre, learned counsel for the applicant further submits that as far as the investigation in respect of E-Tender No.9/2017-18 is concerned, it is over and it can be seen from the affidavit filed by the prosecution dated 14.06.2022, more particularly in para-3. Accordingly, he submits that custody of the applicant is not necessary.

8. He lastly, argues that earlier when the first application was rejected all the seven applications were heard together and at that time, due to mistake of the learned counsel for the applicant these points were not brought to the notice of this Court. He further submits that as there is no restriction or bar to move fresh application, the present application has been moved. Accordingly, he prays that the applicant be released on bail.

9. On the other hand, Shri Thakare, learned APP submits that as per clause-20 of the tender document in respect of E-Tender No.9/2017-18, the period of 36 months from the date of completion is the period of defect liability. It is submitted that it has come in the investigation that the amount of security deposit i.e. Rs.42,800/- was withdrawn by the applicant before completion of three years. It is pointed out that the work was completed on 06.02.2019

and the period of defect liability i.e. 36 months was over on 06.03.2022. However, the amount was withdrawn on 23.03.2021 i.e. before defect liability period. He therefore submits that there is a clear violation of clause 20 of the agreement.

10. Shri Sathianathan, learned counsel for the Zilla Parishad reiterates the submission of the learned APP and further submits that as earlier this Court has rejected the application of the applicant, the present application is not maintainable.

11. I have perused the First Information Report (FIR), affidavit filed by the State, reply filed by the Zilla Parishad and relevant Government Resolutions along with tender document in respect of E-Tender No.9/2017-18.

12. At this stage, it is pertinent to note that after hearing the learned counsel for the applicant, as this Court is satisfied that the factual aspects stated were not pointed out at the time of deciding earlier application. Accordingly, I proceed to consider the submissions of rival parties.

13. The clause-20 of the tender does not speak about retention of security deposit for 36 months, whereas, it speaks about the defect liability period and this can be seen from the language used in clause 20, which

contemplates that in case of any defect in the work, the damages caused are liable to be recovered from the contractor, as arrears of land revenue or it can be deducted from the amount payable to the contractor or from the security deposit retained by the Government.

14. The Government Resolution dated 12.04.2017 more particularly clause 4.6.7 permits the contractor to withdraw the amount of security deposit after three months on completion of work and on certification about satisfaction of work by the Executive Engineer.

15. In this case, such certificate is on record which is signed by Executive Engineer and Sectional Engineer which not only certifies the completion of work but also it certifies that the work was completed as per standard specification. It also certifies that there is no recovery outstanding against the contractor.

16. Further the affidavit dated 14.06.2022 shows that investigation in respect of allegations made against the applicant is completed and as such according to me, the custodial interrogation of applicant is not necessary. Moreover, looking at the age of the applicant, I am of the opinion that he is entitled for grant of bail.

17. As far as objection to the maintainability of the present application is concerned, there is no bar to restrict the number of applications. In that view of the matter, I am of the opinion that the present application is maintainable.

18. As far as the main accused are concerned, who are responsible for the alleged offence and of whom custodial interrogation of whom is necessary, they have been denied bail by this Court.

19. As far as the applicant is concerned in the above referred backdrop and factual aspect, I am of the opinion that the custodial interrogation of the applicant is not necessary. Accordingly, I pass the following order:

- a) The criminal application is **allowed**.
- b) It is directed that in the event of arrest of the applicant in Crime No.382 of 2021, dated 24.08.2021, registered with Police Station Sadar, District: Nagpur (City), for the offences punishable under Section 420 read with Section 34 of the Indian Penal Code , the applicant shall be released on bail on furnishing P.R. Bond of Rs.15,000/- with one solvent surety in the like amount.

- c) The applicant shall attend the concerned Police Station as and when his presence is required and he shall co-operate in investigation.
- d) The applicant shall not tamper with the prosecution witnesses.
- e) The applicant shall not leave the jurisdiction of the concerned Police station without permission of the Court.

The criminal application is **disposed of** accordingly.

[ANIL S. KILOR, J.]