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

CRIMINAL APPLICATION No. 1000 OF 2021.

Sheshrao s/o Shankarrao Khade,
Aged about 70 years, Occupation -
Retired, resident of Sawali,
Ashiyad Colony, Shegaon, Naka Road,
Amravati, Taluq and District
Amravati. ... **APPLICANT.**

VERSUS

State of Maharashtra,
through Police Station Officer,
Kotwali, District Amravati. ... **NON-APPLICANT.**

Mr. Abhay Sambre, Advocate for the Applicant.
Shri H.D. Dubey, A.P.P. for the Non-applicant/State.

CORAM : VINAY JOSHI, J.

CLOSED FOR JUDGMENT ON 14.07.2022.
JUDGMENT PRONOUNCED ON 11.11.2022.

JUDGMENT :

Being aggrieved and dissatisfied by the order dated

16.07.2019 passed by the Additional Sessions Judge, Amravati by which rejection of discharge application vide order dated 27.11.2017 has been confirmed, is the subject matter of challenge in this application under Section 482 of the Code of Criminal Procedure read with Articles 226 and 227 of the Constitution of India.

2. The applicant is arrayed as accused no.8 in Crime No.243/2016 registered with Police Station City Kotwali, Amravati for the offence punishable under Sections 177, 182[a], 193, 196, 199, 200, 420, 463, 465, 467, 468, 471, 34 and 120-B of the Indian Penal Code. Initially name of the applicant was not mentioned in the first information report, however, during investigation his role was ascertained, on which supplementary statements have been recorded and charge sheet has been filed.

3. Claiming absence of material to proceed further, the applicant has applied to the Court of Chief Judicial Magistrate, Amravati vide Exh.40 for discharge in terms of Section 239 of the Code of Criminal Procedure. The learned Chief Judicial Magistrate

discarded the submissions advanced by the applicant about absence of sufficiency of material and declined to discharge the applicant. The said rejection order was carried by the applicant to the Revisional Court in Criminal Revision No.1/2018. The Revisional Court has confirmed the order of rejection of discharge vide order dated 16.07.2019, which is impugned herein.

4. Heard learned Counsel appearing for the parties at length and perused entire documents, including charge sheet, which runs into hundreds of pages. By their consent Criminal Application is taken up for final disposal.

Admit.

5. It is the case of applicant that both the Courts below failed to consider the grounds claiming discharge. According to the applicant, his name was not included in the first information report, however, belatedly after two years, he has been falsely implicated in the crime. It is submitted that the applicant was working as a Project Director, and was simply duty bound to forward the project

proposal to the Government of India, through State Government. He has no knowledge about the alleged fraudulent activities. The project proposal forwarded by the applicant was never finalized, but, it was later on canceled. There was no monetary transaction, meaning thereby no financial loss was caused to the government. There is no material to construe that the applicant participated or connived with the members of the Society in fraudulent activities. The material produced by the prosecution is insufficient which makes the applicant entitled for discharge.

6. The non-applicant / State has resisted the application by filing reply-affidavit dated 17.12.2021. It is contended that the applicant had conscious knowledge regarding the fraud and forgery. He being a Project Director, had knowledge about both Societies. Knowingly he has forwarded the proposal by certifying the genuineness of the documents, and thus, has played a major role in the entire episode. The material collected during investigation not only makes out a strong suspicion, but, a triable case which may lead to his conviction.

7. At the instance of a report dated 18.03.2008, lodged by the then Project Director, District Rural Development Agency (DRDA), a crime came to be registered for the aforesaid offences. It was briefly contended that there were two societies, registered under the Societies Registration Act, 1860 as well as under the Bombay Public Trust Act, 1950, which were namely - [1] Shri Govind Prabhu Gramin Yuva Vikas Sanstha, having registration No.2149 dated 28.06.1089 (old society), and [2] Shri Govind Prabhu Gramin Vikas Sanstha having registration No. 674/05 dated 24.08.2005 (new society). The accused were the office bearers of the old as well as new society. They have conspired together and by fabricating documents of old society had secured a special project from the Central Government, Ministry of Rural Development under Swarna Jayanti Gram Swarojgar Yojna in the name of the new society, for gaining financial benefits to the tune of Rs.13.90 Crores. At the time of execution of the agreement of new new society, they have tendered registration certificate of the year 2000, which was found to be suspicious, on which an enquiry was made. It was revealed

that the document of the old society have been fraudulently used for the purpose of new society and by only deleting the word "Yuva", a scene was created about experience and other compliances of new society.

8. The applicant was the Project Director, who has forwarded the proposal of old, as well as the new society, meaning thereby he was well aware about the forged and fabricated document. Prima facie the applicant has participated in connivance with the members of the Society and played a fraud on the government. The charge sheet bears additional document named as "Ghatna Kram' along with the supplementary statements of the informant and others, showing the role played by the applicant. It is primely alleged that the applicant has forwarded the proposal of new society by concealing the change in the name of the old society, and by use of old documents. The applicant was Project Director of DRDA in between 25.07.2002 to 31.05.2006 i.e. when the second proposal was submitted.

9. The learned counsel appearing for the applicant has primely argued that applicants' name was not mentioned in the first information report, however, by deceitful means he has been involved in the case after a period of two years. It is his submission that merely because the applicant's son was the member of the new society, on mere suspicion it has been concluded that the applicant has knowledge about the mischief played while forwarding the proposal. According to the applicant, he being the Project Director, was not supposed to verify the documents, but, he has merely forwarded the proposal to the Government, which was not accepted. The learned Counsel took me through various documents and correspondence to contend that the Ministry has examined the proposal and returned to the State Government for reconsideration, meaning thereby it was not rejected.

10. It reveals from the documents that the applicant was the Project Director when both proposals were forwarded. Admittedly son of the applicant was member of the new society. It is a matter of evidence to find out whether the applicant had conscious

knowledge about creation of new society by making artificial change i.e. eyewash about new establishment. It is apparent that the government has floated a welfare scheme for the upliftment of downtrodden person under which the proposal was sent involving crores of rupees. Prima facie it reveals that various documents of old society have been used to procure the work by making artificial change. Both the Courts below have observed that in Project Provisional Committee's Meeting dated 10.02.2006, the applicant was present and had certified the credentials and competence of the new society. The minutes of the meting were said to be filed on record. Thus, prima facie it is apparent that the applicant through whom the entire project was forwarded, has played an active role in forwarding the proposal with conscious knowledge of creating a scene of an independent society.

11. While considering the application for discharge the Court is not expected to apply the standard which are generally used at the final stage of the trial. It is settled law that even a strong suspicion is sufficient to frame the charge. Though the Court is empowered to

shift the material to a limited extent, detail scanning is not necessary. The investigating agency has recorded several statements, as well as collected minutes of the meeting which prima facie discloses applicant's involvement. Moreover, at the time of forwarding both proposals, the applicant was admittedly a Project Director. Besides that, his son was a member of the new society, which also goes against his stand of absence of knowledge. Scanning of entire material un-erreingly points out that there are grounds for presuming that the applicant has committed an offence. Certainly it is not a case that the charge is groundless. Both the Courts below have appropriately considered the available material, and therefore, the impugned order calls no interference. Criminal Application is, therefore, rejected.

<u>JUDGE</u>