

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1798 OF 2023

Shahanawaj S/o Abdulla Sayyed

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. R. S. Deshmukh, Senior Counsel instructed by Mr. D. R. Deshmukh, Advocate for the applicant.

Mr. M. K. Goyanka, APP for the State.

Mr. N. L. Jadhav, Advocate for the intervenor.

WITH
CRIMINAL APPLICATION NO. 3961 OF 2023

CORAM : R. M. JOSHI, J.
RESERVED ON : 29th NOVEMBER, 2023.
PRONOUNCED ON : 1st DECEMBER, 2023.

ORDER

1. The question that falls for consideration of this Court is as to whether discriminatory relief of pre-arrest bail can be extended to the applicant if his involvement is prima facie seen in the offence which includes preparation of bogus drawings and technical sanction of project involving construction of bridge-cum-bandh over the river. It is needless to emphasis importance of drawings and technical sanctions of experts required before undertaking such work.

2. Applicant is successful bidder and contractor of work of construction of bridge-cum-bandh over river Manjara within jurisdiction of Municipal Council Patoda. First Information Report lodged by clerk working with Municipal Council states that on 24th January, 2013, resolution was passed by the Municipal Council for construction of bridge-cum-bandh on river Manjara. For that purpose, M.K.K. Associate was appointed as Technical Advisor. It is stated that by order dated 28th December, 2018, technical sanction was given by PWD and thereafter administrative sanction was sought from Collector, Beed. Pursuant to the said approval, tender was issued for said work. Later on, it is revealed that technical sanction for the project was fabricated and it was found that PWD Osmanbad had never issued such technical sanction and Recapitulation Sheet is found to be prepared by using bogus stamps and forged signatures. An issue was raised in this regard in the budget session of State Legislature Assembly wherein it was informed that the said technical sanction is forged and fabricated.

3. Record indicates that since no serious action was taken inspite of finding the fact that technical sanction obtained for the work is bogus and fabricated a Criminal Public Interest Litigation

bearing No. 3/2022 came to be filed before this Court. The Division Bench of this Court entertained the said petition and passed various orders from time to time and finally disposed of the said petition by order dated 1st November, 2023 by keeping option open to raise issue with regard to investigation etc. at appropriate stage.

4. On the basis of First Information Report bearing No. 212/2022 registered with Patoda Police Station, investigation commenced. During the course of investigation, it is found by the Investigating Agency that applicant is the perpetrator and also beneficiary of crime as he was personally involved in fabrication of technical sanction which is sought to be made as a basis for administrative approval obtained from the Collector.

5. Learned counsel for applicant submits that the dates and events clearly disclose that the applicant has nothing to do with the administrative work performed by the Municipal Council, PWD of Collector. According to him, administrative sanction to project was granted on 20th January, 2019 whereas the tender was published on 27th January, 2019. After opening of the tender, work order came to be issued to the successful bidder i.e. applicant on 7th March, 2019.

Thus, it is his contention that the applicant has no concern with the previous order including technical sanction issued by the concerned authority. It is submitted that merely because applicant was successful bidder and has got contract for construction work, he cannot be said to be a beneficiary of the crime. By referring to the documents placed on record by the petitioner in Criminal Public Interest Litigation No. 3/2022, it is submitted that there is no substance in the contention of prosecution that the statement of employee of H.R.S. Associate seeking implication of the applicant can be relied upon. By referring to the documents on record, it is submitted that infact M.K.K. Associate was assigned with the said work and against completion of said work payment is also received by said firm by cheque. It is submitted that the work in question has commenced in the year 2019 and it is late in time to make any grievance in that regard. According to him, there is no evidence to seek involvement of applicant in alleged crime.

6. Having regard to the steps taken by intervenor of filing and pursuing Public Interest Litigation with regard to crime in question, counsel for intervenor is permitted to oppose the application. Criminal Application No. 3961/2023 is allowed.

Learned APP and learned counsel for the intervenor opposed the application by contending that the present applicant is the son of the Corporator of the Municipal Council, Patoda and that by using said influence he has obtained this amongst other contracts. It is submitted that there is direct evidence to show involvement of applicant in preparing bogus technical sanction and preparation of Recapitulation Sheet. In this regard, reference is made to the statement of employee of H.R.S. Associate who has stated about applicant getting the said bogus document prepared and against which consideration was also paid to him in cash. Learned APP made reference to the investigation papers which according to him indicate that M.K.K. Associate was not assigned work of preparation of drawings of bridge-cum-bandh and the payment seen made to them is in respect of different work altogether. According to him, when there is evidence in order to show that technical sanction is bogus and fabricated and further statement of witness sufficiently indicates that applicant is the one who has got the same done, it is a fit case wherein custodial interrogation of the applicant would be necessary.

7. There cannot be any dispute about the fact that having regard to the nature of work of construction of bridge-cum-bandh on river, drawings and technical approval is of utmost importance. Such technical assessment and feasibility of the project not only determines cost involved therein but also human lives are dependent upon the sustainability of project. In ordinary case, a contractor who has no concern with the approval business of the authority concerned, may claim that he is not a beneficiary of the crime. However, question arises as to when there is evidence on record to indicate that the contractor who is successful in getting the work himself is instrumental for preparation of bogus technical sanction whether can be permitted to take such defence. In the instant case, prima facie perusal of the material evidence on record indicates that bogus Recapitulation Sheets and technical sanction is prepared by the employee of H.R.S. Associate. The one who has prepared the same has candidly named present applicant to be a person at whose instance the same is prepared and receipt of consideration from applicant. There are statements of the officers of PWD on record which indicate that no such technical sanction was ever accorded by the said office. As far as payment made to M.K.K. Associate is concerned, though there is one document which indicates that

payments were made towards the work of bridge-cum-bandh, however, it is rightly pointed out by learned APP that the document for contract with M.K.K. Associate does not specify so. In such situation, it is difficult to accept contentions of learned counsel for the applicant that at this stage it would not be possible to accept the oral statement of employee of H.R.S. Associate with regard to involvement of applicant in preparation of said document. Prima facie, there is corroboration to the oral statement made by employee of H.R.S. Associate indicating preparation of the drawing and its approval through it.

8. Further having regard to the facts and circumstances of the case and considering the manner in which investigation is done till date, this Court is compelled to accept the submissions of learned counsel for intervenor that several persons who are apparently involved in the crime are not booked and the entire attempt seems to protect some of them. This Court finds substance in the contention of learned counsel for the intervenor that in all probabilities even Investigating Agency has attempted to hush up the case.

9. Be that as it may, prima facie perusal of record indicates that there is evidence to show that applicant is the person who is instrumental in getting the said fabricated technical sanction and which was made basis for further process of project. Only prima facie conclusion which could be drawn from the entire facts of the case, at least prima facie, is that complicity of applicant is certainly seen in the crime of preparing vital bogus document and hence he can be said to have directly benefited by the crime. In such circumstances, this Court finds substance in the contention of learned APP that it is a fit case wherein custodial interrogation of the applicant would be necessary in order to unearth the head and tail of the crime in question. Hence, application is rejected.

(R. M. JOSHI)
Judge

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LATER ON :

1. After pronouncement, learned counsel for the applicant seeks extension of interim relief in order to move appropriate proceeding before the Supreme Court.

2. Learned APP and learned counsel for the intervenor opposed the said request.

3. Since liberty of applicant was protected the said order is extended for a period of three weeks from today.

(R. M. JOSHI)
Judge

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