IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

982 BAIL APPLICATION NO. 209 OF 2024

1. Suryakant S/o Rukhmaji Kawle.
2. Meena W/o Suryakant Kawle. **… Applicants**

Versus

The State of Maharashtra. **… Respondent**

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Mr. V. D. Sapkal, Senior Counsel, i/b Mr. Kalyan V. Patil & Mr. Umesk K. Ruparel, Advocates for Applicants.

Mrs. Pratibha J. Bharad, APP for Respondent/State.

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CORAM : **SANJAY A. DESHMUKH, J.**

DATE : 09th February, 2024.

P.C.:

1 Heard.

2 This is an application, under Section 439 of the Code of Criminal Procedure, 1973, for grant of regular bail in connection with Crime No.5 of 2024, registered with Bhagynagar Police Station, District Nanded, for the offences punishable under Sections 13(1) (d), 13(2) of the Prevention of Corruption Act, 1988 and under Section 109 of the Indian Penal Code.

3 The applicants are arrested on the allegation that they

possess disproportionate assets of 43.37% of their known / legal source of income i.e. Rs.14,24,146/- plus income.

4 It is alleged that applicant No.1 was the chief clerk in the Shivaji Secondary and Higher Secondary School at Manik Nagar, Nanded, who retired in the year 2021.

5 The details of misappropriation amount with known legal source of income are given in the report itself. It is alleged that applicant No.2 is the wife of applicant No.1, was also involved in the said crime. In her name, some properties are purchased and also gold was found in her possession. Therefore, the report was lodged.

6 The learned counsel for applicants submitted that applicant No.1 is retired in the year 2021. The applicants have roots in the society. The practical investigation is over and custodial interrogation of the applicants is not necessary. The applicants have no criminal antecedents. The earlier inquiry and prior approval was directed to be closed by the office of the DIG, Ante-Corruption, State of Maharashtra by letter dated 15^{th} / 16^{th} June, 2017. Again the application was moved by the complainant and thereafter, the applicants are arrested. The applicants are falsely implicated in the crime. The provision of repealed Prevention of Corruption Act, particularly, Section 13(1)(e) is illegally invoked against the applicants.

It is lastly prayed to allow the application.

7 The learned APP for the State strongly opposed the application and pointed out that the applicants are involved in serious crime. The complainant after closing of the file, again gave application to the DGP, and as per the request of DGP, the DIG, Anti-Corruption, State of Maharashtra, directed further inquiry and approval for open inquiry was granted by letter dated 7th April, 2018. After detail enquiry, the report was registered against the present applicants, when there was sanction from the office of DIG, Anti-Corruption, State of Maharashtra by letter dated 19th December, 2023. It is lastly prayed to reject the application.

8 Perused the papers of investigation. The practical investigation is over. Applicant No.1 is now retired. The applicants have roots in the society. The trial will take long period. Section 13(1)(e) is deleted by amendment of 2018 from the Prevention of Corruption Act, which is invoked against the applicants.

9 The learned senior counsel for applicants pointed out Section 17A (1), which reads as under:-

> "17A. (1) No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act,

where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:

Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."

10 Section 17A (1) specifies that the police officer is not empowered to conduct the enquiry/inquiry. The learned senior counsel

submitted that applicant No.1 was serving in private institution registered under the Societies Registration Act / Public Trust Act and applicant No.1 being a public servant in discharge of his official function, previous approval must be taken from his office and that exercise is not done by the investigating officer prior to investigating the said crime.

11 The learned senior counsel for applicants further pointed out that 1 Kg and 57 gram gold and 620 grams silver was found in the possession of applicant No.2, who is the wife of applicant No.1. For that, he pointed out the judgment of the Rajasthan High Court, Bench at Jaipur in case of ***C.I.T., Alwar Vs. Satya Narain Patni*** (D.B.Income Tax Appeal No.196 of 2010) dated 7th April, 2014, in which in para No.12, it is held as under:-

> "12. It is true that the circular of the CBDT, referred to supra dt. 11/05/1994 only refers to the jewellery to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family, need not be seized and it does not speak about the questioning of the said jewellery from the person who has been found with possession of the said jewellery. However, the Board, looking to the Indian customs and traditions, has fairly expressed that jewellery to the said extent will not be seized and once the Board is also of the express opinion that the said jewellery cannot be seized, it should normally mean that any jewellery, found in possession of a

married lady to the extent of 500 gms, 250 gms per unmarried lady and 100 gms per male member of the family will also not be questioned about its source and acquisition. We can take notice of the fact that at the time of wedding, the daughter/daughter-in-law receives gold ornaments jewellery and other goods not only from parental side but in-laws side as well at the time of 'Vidai' (farewell) or/and at the time when the daughter-in-law enters the house of her husband. We can also take notice of the fact that thereafter also, she continues to receive some small items by various other close friends and relatives of both the sides as well as on the auspicious occasion of birth of a child whether male or female and the CBDT, looking to such customs prevailing throughout India, in one way or the another, came out with this Circular and we accordingly are of the firm opinion that it should also mean that to the extent of the aforesaid jewellery, found in possession of the various persons, even source cannot be questioned. It is certainly 'Stridhan' of the woman and normally no question at least to the said extent can be made. However, if the authorized officers or/ and the Assessing Officers, find jewellery beyond the said weight, then certainly they can question the source of acquisition of the jewellery and also in appropriate cases, if no proper explanation has been offered, can treat the jewellery beyond the said limit as unexplained investment of the person with whom the said jewellery has been found."

12 The Gujarat High Court in the judgment in case of ***Commissioner of Income Tax-I Vs. Ratanlal Vyaparilal Jain*** (Tax Appeal

Nos.661 and 662 of 2009) dated 19th July, 2010, in paragraph Nos.9 and 10 held as under:-

> "9. As can be seen from the impugned order of the Tribunal, the Tribunal has referred to the CBDT circular No.1916 and observed that in an earlier decision of the Tribunal, the Tribunal has accepted the applicability of the circular and has held that having regard to the circular and size of the family, the ornaments to the extent specified in the circular should be accepted as reasonable. The Tribunal, accordingly, found that the jewellery held by the assessee and his family members was well within the limit laid down under the CBDT circular and accordingly, deleted the whole addition on the ground that the jewellery held by each of the family members was below the limits specified in the said circular.
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> 10. Though it is true that the CBDT circular No.1916 dated 11.5.1994 lays down guidelines for seizure of jewellery and ornaments in the course of search, the same takes into account the quantity of jewellery which would generally be held by family members of an assessee belonging to an ordinary Hindu household. The approach adopted by the Tribunal in following the said circular and giving benefit to the assessee, even for explaining the source in respect of the jewellery being held by the family is in consonance with the general practice in Hindu families whereby jewellery is gifted by the relatives and friends at the time of social functions, viz., marriages, birthdays, marriage anniversary and other festivals. These gifts are customary and customs prevailing in a society

> cannot be ignored. Thus although the circular had been issued for the purpose of non-seizure of jewellery during the course of search, the basis for the same recognizes customs prevailing in Hindu society. In the circumstances, unless the revenue shows anything to the contrary, it can safely be presumed that the source to the extent of the jewellery stated in the circular stands explained. Thus, the approach adopted by the Tribunal in considering the extent of jewellery specified under the said circular to be a reasonable quantity, cannot be faulted with. In the circumstances, it is not possible to state that the Tribunal has committed any legal error so as to give rise to a question of law."

13 Thus from the above circular, if the married woman possess the gold upto 500 grams, unmarried upto 250 grams and 100 grams male members, cannot be questioned about his source and acquisition.

14 The applicants have roots in the society and they will not flee away from the trial. Considering all these aspects, the application deserves to be allowed on the principle that bail is rule and jail is an exception. The applicants have *prima-facie* made out the case for bail on the aforesaid principle. The application, therefore, deserves to be allowed on certain conditions. Hence, the following order:-

ORDER

I. The application is allowed.

II. The applicants in connection with Crime No.5 of 2024, registered with Bhagynagar Police Station, District Nanded, for the offences punishable under Sections 13(1) (d), 13(2) of the Prevention of Corruption Act, 1988 and under Section 109 of the Indian Penal Code, be released on bail on furnishing personal bond of Rs.50,000/- each with surety of the like amount by each of them on following conditions:-

a) The applicants shall not pressurize the prosecution witnesses.

b) The applicants shall not tamper with the prosecution evidence, in any manner.

[SANJAY A. DESHMUKH, J.]

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