

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2253 OF 2023

Mohan Gajanan Khismatrao

...Applicant

vs.

The State of Maharashtra

...Respondent

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SUBHASH
PAREKAR

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Mr. Sandeep Karnik a/w. Mr. M.R. Jhakde, for the Applicant.

Mrs. G.P. Mulekar, APP, for the Respondent/State.

Mr. N.N. Waghware, PC. Crime Branch, Thane present.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 04, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. The applicant, who is arraigned in C.R. No. 180 of 2022 registered with Thane police station for the offences punishable under sections 120-B, 420, 465, 467, 468, 471, 419, 409, 201, 166, 167, 109 and 477-A read with 34 of Indian Penal Code, 1860 seeks to be enlarged on bail.

3. The gravamen of indictment against the applicant is as under :-

A] Lands were acquired by the government for Kushivali Irrigation Project. Some of the persons whose lands were acquired had not collected the compensation awarded and the

said amounts were laying unclaimed. The applicant retired as a Nayab Tahsildar. Post retirement, the applicant came to be appointed on contract basis. The applicant was posted in the office of Sub Divisional Officer, Ulhasnagar and was incharge of the branch dealing with land acquisition matters including the land acquisition proceedings in respect of Kushivali Irrigation project. He was aware about the entire acquisition process and the persons who had not yet claimed the compensation awarded for the acquisition of their lands.

4. It is alleged that the applicant, in pursuance of a criminal conspiracy with the co-accused, had set up impersonators in the place of original claimants, and by preparing false and forged documents made them submit bogus claims and those claims were sanctioned and the compensation amounts were disbursed to those impersonators. The applicant and the co-accused had thereby defrauded the State Government and the genuine claimants to the tune of Rs. 5,44,62,817/-.

5. Mr. Sandip Karnik, the learned counsel for the applicant, submitted that the applicant had processed the applications in discharge of official duties. The applicant was unaware that the

persons who claimed the compensation were the impersonators. Since those persons had produced the documents which appeared to be genuine, the applicant had no reason to suspect the genuineness of their claims. The co-accused who allegedly impersonated the original genuine claimants and also received the amounts of compensation dishonestly, have been released on bail. There is no material to indicate that any amount came to be credited to the account of the applicant. Thus, the applicant who has retired from Government service also deserves to be enlarged on bail.

6. It was submitted that the applicant was arrested on 21st May, 2022. He has been in custody for more than one and half year. It is unlikely that the trial can be concluded within a reasonable period. Thus, further detention of the applicant is unwarranted.

7. The learned APP resisted the prayer for bail. It was submitted that the applicant was the kingpin. A well planned conspiracy to defraud the Government and the genuine claimants was hatched as the applicant had known the fact that compensation was lying unclaimed. The applicant provided all the details to the co-accused and even got the applications for release of the compensation

amount sanctioned, and released the payment as well. The applicant can not claim parity with the co-accused who have been released on bail, as they stand on a different footing.

8. Mrs. Mulekar, learned APP would further submit that apart from the instant crime, four other crimes involving identical allegations have been registered against the applicant. Thus, the applicant does not deserve the relief of bail.

9. I have carefully perused the report under section 173 of the Code and the documents annexed with it. Incontrovertibly, the applicant was posted in the land acquisition branch as an Incharge Officer. The applicant had processed the applications for release of the unclaimed compensation. There is a statement of an employee attached to the said branch which throws light on the role allegedly played by the applicant. She has categorically stated that the proposals for release of the unclaimed compensation were got sanctioned by the applicant from the then Sub Divisional Officer. While she was verifying the documents submitted by the claimants, the applicant restrained her from making necessary inquiries and verifying the documents and told her to merely catch their biometrics. In her supplementary statement, she has categorically

stated that at the instance of the applicant and the then SDO, who is also an accused, she had processed the applications. One of the co-accused has disclosed that out of the amount which was fraudulently withdrawn, a sum of Rs. 1,75,00,000/- was paid to the then SDO and the applicant. There is a strong prima facie case against the applicant.

10. At this juncture, the submission on behalf of the applicant that the applicant is not involved in forgery of the documents does not merit countenance. Having regard to the nature and magnitude of the fraud, it is inconceivable that such huge amount could have been siphoned off without the complicity of the officer who dealt with the applications. There is overwhelming material to show that the applicant was the principal confederate in the conspiracy to defraud the State Government and genuine claimants. The fact that the co-accused have been released on bail, therefore, does not enure to the benefit of the applicant.

11. The fact that four more crimes involving identical allegations have been registered against the applicant also assumes significance. Release of the applicant on bail, at this stage, is fraught with the risk of tampering with evidence and threatening the

witnesses. Thus, as huge public money is involved, the applicant does not deserve to be enlarged on bail.

Hence, the following order.

ORDER

1] The application stands rejected.

2] By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the trial Court shall not be influenced by any of the observations made hereinabove.

(N. J. JAMADAR, J.)