



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1156 OF 2024**

Sudarshan Nageshrao Bhojankar
Rajendra Pandurang Zunzarrao ... Applicants
versus
The State of Maharashtra ... Respondent
WITH
ANTICIPATORY BAIL APPLICATION NO.1157 OF 2024

Vijay Padmakar Shingade
Vilas Pandurang Pawar
Ravindra Anandrao Patil
Sitaram Lakshaman Kavarkhe
Gulab Mumjaji Wakale ... Applicants
versus
The State of Maharashtra ... Respondent
WITH
ANTICIPATORY BAIL APPLICATION NO.3328 OF 2023

Shashikant Jaywantrao Shinde ... Applicant
versus
The State of Maharashtra ... Respondent
WITH
INTERIM APPLICATION NO.524 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3328 OF 2023

Rajendra Mahadev Patil ... Applicant/Intervener
and
Shashikant Jaywantrao Shinde ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Shyam Kalyankar for Applicants in ABA No.1156 of 2024.
Mr. Saurabh Butala, for Applicants in ABA No.1157 of 2024.
Mr. Raja Thakre, Senior Advocate with Mr. Uday Nighot, Mr. Saurabh

Butala, Ms. Sulajja Patil, for Applicant in ABA 3328 of 2023.

Mr. Ajay Patil, APP for State in all matters.

Mr. Girish Kulkarni with Mr. Atharva R.B. i/by Mr. Vaibhav Gaikwad, for Intervener in IA 524 of 2024.

Mr. Ajay Kumar Landge, ACP Crime Branch, Navi Mumbai, present.

CORAM: N.J.JAMADAR, J.

DATE : 2 SEPTEMBER 2024

P.C.

1. Heard the learned Counsel for the parties.
2. These applications are for pre-arrest bail in connection with C.R.No.424 of 2023 registered with APMC Police Station, Navi Mumbai, for the offences punishable under Sections 406, 409, 420 read with Section 34 of the Indian Penal Code, 1860 and Section 13(2) of the Prevention of Corruption Act, 1988.
3. The applicant in ABA No.3328 of 2023 is one of the directors of Agriculture Produce Market Committee, Mumbai (APMC, Mumbai). The applicant was also elected as a director of APMC for 10 years as the representative of Mathadi workers. The applicant is a member of Maharashtra Legislative Council.
4. The applicant No.1 in ABA No.1157 of 2024 is posted as a Deputy Secretary with the APMC. The applicant No.2 is the Office Superintendent. Applicant Nos.3 to 5 have since retired from the post of

Deputy Secretary from APMC, Mumbai.

5. The applicant No.1 in ABA No.1156 of 2024 is working as a Deputy Engineer and Applicant No.2 as the Junior Engineer with APMC.

6. The prosecution case, in brief, runs as under :

7. Suresh Maru had filed a Petition, being Writ Petition No.3099 of 2021, seeking directions to initiate an inquiry against the officials of APMC, representatives of people and certain individuals by making allegations that he was made to pay huge amounts by way of undue advantage for granting favour of allotment of Public Sanitary Convenience (PSC) Block contracts in the APMC premises. Suresh Maru had, however, subsequently sought to withdraw the said petition. By an order dated 5th January, 2022 the Division Bench of this Court, finding the allegations in the Petition serious, directed the respondent-State to cause an inquiry treating the Memo of the petition as basic material through an officer not below the rank of ACP and on the basis of the said report take further action and file action taken report.

8. Pursuant to the said direction, the then ACP, Vashi Division, Navi Mumbai conducted an inquiry and, inter alia, concluded that there was no substance in the allegations of the petitioner Suresh Maru that the

applicant, being the Director of APMC, and other co-accused had demanded and were paid illegal gratification. It was further noted that there were irregularities in awarding of the contract of PSC Blocks, re-possessing the PSC Blocks, not collecting the deposits and not executing the rent agreements etc. and the said irregularities were within the remit of the jurisdiction of the Director Marketing, Maharashtra State and, therefore, independent action be initiated in respect of those irregularities.

9. The said report was submitted on 4th April, 2022. Subsequently, pursuant to a question raised in the State Legislative Assembly, a fresh inquiry was instituted. In the fresh inquiry report submitted by ACP, EOW, Navi Mumbai, dated 9th August, 2023, it was inter alia noted that Himali Social Foundation, run by Suresh Maru, was allowed extension of contract to run PSE Blocks despite the term of the contract having been expired without following the tender process, at the intervention of the applicant in ABA 3328 of 2023, in the year 2011. The applicant in ABA No.3328 of 2023 had, thus, assisted Suresh Maru to continue to operate the PSC Block. The ACP further noted that the officers and office bearers of APMC had, in connivance with Suresh Maru, allowed him to

operate 10 units of PSC Blocks out of 12 units during the period 2005 to 2017. The contract was awarded without following the tender process, and in the year 2017 and 2018 defective tender process was followed. Thus, there was wrongful gain to Suresh Maru and wrongful loss to APMC.

10. In substance, the applicants dishonestly and fraudulently awarded the contract to operate PSC Blocks to Suresh Maru by deliberately deviating from the procedure prescribed for awarding the contract, and, thereby caused wrongful loss to the government to the tune of Rs.7,61,49,689/-. In the process, the applicants obtained undue advantage.

11. When ABA No.3328 of 2023 was first listed before the Court on 30 November 2023, this Court was persuaded to grant interim protection to the applicant observing, inter alia, as under :

“6. Mr. Raja Thackary, learned senior counsel for the applicant, submitted that the applicant has been falsely roped in due to political vendetta. In the inquiry instituted pursuant to the directions of this Court, no irregularity was found. The allegations of illegal gratification were found to be unsustainable. Subsequently, a fresh inquiry was instituted and on the basis of the said report, the instant first information report came to be lodged. Even in the said report, the role attributed to the accused is that of recommending the continuation of contract to run PSC

Block after expiry of the term. Mr. Raja Thackary would urge that pursuant to the order of this Court, it was incumbent upon the State to consider the inquiry report submitted by the then ACP, Vashi, Navi Mumbai and submit an action taken report before this Court. Instead, the matter was re-inquired and the applicant has been roped in on the strength of such inquiry report.

7. Mr. Venegaonkar, learned PP, resisted the prayer for pre-arrest bail. It was submitted that there are grave allegations against the applicant and the co-accused. The first inquiry was found to be defective and incomplete. Therefore, the matter was directed to be re-inquired into by another police officer. There is material to show that the applicant had intervened in the tender process and directed the then Chairman of APMC to allow Suresh Maru to operate PSC Block beyond the contract period. Attention of the Court was also invited to the statement of a person to whom Suresh Maru had given interview.

8. Evidently, there are two inquiry reports. In the first report, the allegations made by Suresh Maru were found to be not substantiated by credible material. In the second inquiry report prima facie, the role attributed to the applicant is that of recommending the then Chairman of APMC to allow Suresh Maru to continue to operate the PSC Blocks after the expiry of the term of the contract without following the tender process.

9. Investigation is warranted to ascertain whether there was a quid pro quo and wrongful gain to the applicant or it was a case of mere recommendation to continue the contract beyond the term. Prima facie, at this stage, there does not seem to be material to indicate that element of criminality can be attributed to the said recommendation, in the year 2011.

10. In the circumstances, it may be expedient to protect the liberty of the applicant while directing the applicant to join in the investigation. If further investigation reveals the complicity of the applicant, the same can be considered at the stage of final

adjudication of the prayer for pre-arrest bail. Hence, I am inclined to grant interim protection to the applicant.”

12. Based on the aforesaid order, the liberty of the applicants in ABA Nos.1156 of 2024 and 1157 of 2024 was also protected by an order dated 30 April 2024.

13. I have heard Mr. Raja Thakre, learned Senior Advocate for the Applicant in ABA No.3328 of 2023, Mr. Shyam Kalyankar, learned Advocate for the Applicant in ABA No.1156 of 2024 and Mr. Butala, learned Counsel for the Applicant in ABA No.1157 of 2024 and Mr. Patil, learned APP for the Respondent-State at some length. Learned Counsel for the parties took the Court through the material on record

14. Mr. Thakre, learned Senior Advocate for the Applicant in ABA No.3328 of 2023, submitted that the instant prosecution is actuated by a design to spite the applicant, in particular, and accused, in general, to wreak vengeance. Mr. Thakre laid emphasis on the fact that, in the first inquiry report, the then Assistant Commissioner of Police, Vashi Division, has recorded a categorical finding that there was not an iota of material in support of the allegations that the office bearers or officers of APMC had either demanded or accepted any money from Suresh Maru. As the said report was not to the liking of the rival political dispensation,

the applicant has been roped in on the basis of another inquiry report.

15. Mr. Thakre submitted that from the perusal of the material on record, the only allegation against the applicant is that the applicant had suggested that the contract of M/s.Himali Social Foundation be extended by a term of five years. Eventually, the decision to extend the contract was taken by the then Chairman and Secretary of APMC, Mumbai. Thus, no element of criminality can be attributed to the applicant.

16. Mr. Kalyankar, learned Counsel for the Applicant in ABA No.1156 of 2024, submitted that the applicants were not initially named in the FIR. The applicants had no executive or decision making authority. In the reply filed on behalf of the prosecution in opposition to the prayer for pre-arrest bail before the learned Additional Sessions Judge, it was alleged that the contract of construction of PSC blocks was awarded to M/s. P.C.Jadhav. The contractor did not complete the work. The applicants had allegedly made the contractor to handover construction work to Suresh Maru and the bills were cleared in the name of M/s. P.C.Jadhav. The applicant and co-accused allegedly had obtained undue advantage in the nature of 5% commission. Mr. Kalyankar

submitted that, being the junior level officers, the applicants had no authority to make such a decision. It was further submitted that, in fact, M/s. P.C.Jadhav had duly completed the work and demanded release of EMD.

17. Mr. Butala, learned counsel for the Applicants in ABA No.1157 of 2024, strongly urged that the prosecution has been biased and completely unfair. Inviting attention of the Court to the orders passed by this Court, Mr. Butala submitted that it was incumbent upon the State to place report of the inquiry conducted by the Assistant Commissioner of Police, Vashi, wherein a categorical finding was recorded that there was no proof of any demand or acceptance of bribe from Suresh Maru. Certain irregularities were indeed pointed out by ACP, Vashi Division, which were within the province of the jurisdiction of the Director of Marketing.

18. Mr. Butala further submitted that even the subsequent inquiry records that as Suresh Maru had suffered financial loss, he had made complaints against APMC with various authorities. Moreover, the then Administrators, Directors and concerned higher level officers were held responsible for the decisions which allegedly caused wrongful gain to

Suresh Maru by deviating from the prescribed procedure. Yet the then Administrators and senior Officers having not been implicated. That shows the unfairness on the part of the prosecution. Mr. Butala, lastly submitted that, none of the applicants had authority to award a contract or extend the same. Therefore, the order of interim bail deserves to be made absolute.

19. Mr. Patil, learned APP, stoutly resisted the prayer of pre-arrest bail. It was submitted that there was a large scale fraud in awarding a contract to operate PSC blocks to Suresh Maru. Huge wrongful loss was caused to the government. Mr. Patil laid emphasis on the fact that the inquiries were conducted pursuant to the orders passed by this Court. Therefore, the allegations of political vendetta are completely misplaced.

20. Mr. Patil further submitted that the subsequent inquiry conducted by ACP, EOW, Navi Mumbai, was necessitated as the first inquiry was found to be incomplete. Therefore, the applicants cannot draw any mileage from the fact that further inquiry was conducted.

21. I have carefully perused the material on record and given anxious consideration to the submission canvassed across the bar. The

prosecution has alleged that the offences were committed in pursuance of a criminal conspiracy. Evidently, there are two inquiry reports. In the first inquiry report conducted by ACP, Vashi Division, it seems, a clear finding was recorded that the allegations made by Suresh Maru were not substantiated by any credible material. The second inquiry report concludes that the then Administrators, Directors of APMC and Officers of APMC took decisions in deviation of the prescribed procedure and thereby caused wrongful gain to Suresh Maru and wrongful loss to APMC.

22. Qua the applicant in ABA No.3328 of 2023, it was alleged that in the year 2011, at the instance of the applicant, the contract to operate PSC blocks was renewed without following the tender process, and, thereby, there was wrongful gain to Suresh Maru.

23. Mr. Raja Thakre made an endeavour to demonstrate that there were multiple instances where the contracts have been renewed without following the tender process. The applicant being a People's representative had, at best, recommended the extension of the contract. The ultimate decision was taken by the then Chairman and Secretary of the Society. Thus, no criminality can be attributed to the applicant.

24. Prima facie, the aforesaid allegation of recommendation to extend the contract, in itself, without anything more, may not fall within the dragnet of the offences for which the applicant in ABA No.3328 of 2023 has been arraigned. Further allegation that the applicant, or for that matter the other co-accused, had obtained undue advantage is, prima facie, not supported by material on record. On the contrary, the first inquiry report of ACP Vashi Division, concludes in clear and explicit terms that there was no substance in the allegation that either bribe was demanded or accepted by the accused.

25. As noted in the order granting interim protection, extracted above, it does not appear that during the course of investigation any material has been collected to show that there was a quid pro quo and wrongful gain to the applicant in ABA No.3328 of 2023. At this length of time, and having regard to the nature of the accusation, further custodial interrogation of the applicant does not seem warranted.

26. For the foregoing reasons, I am impelled to make the order of interim bail absolute qua the applicant in ABA No.3328 of 2023.

27. Qua the applicants in ABA Nos.1156 of 2023, I find substance in the submission of Mr. Kalyankar that the accusation against the

applicants rests on a thin thread. Prima facie, there is no material to indicate that the applicants, being the Deputy Engineer and Junior Engineer, had either authority to award the contract or to allow the work to be completed by a person, who was not party to the contract. Even in the reply filed to the Application for pre-arrest bail before the Court of Session, a guarded statement was made by the investigating agency that the information was received that the applicants and the co-accused had obtained 5% commission by allowing the works contract to be completed by Suresh Maru for M/s. P.C.Jadhav. Such being the nature of the accusation, I am inclined to make the order of interim bail absolute qua the applicants in ABA No.1156 of 2023.

28. As regards the prayer for pre-arrest bail of the applicants in ABA No.1157 of 2023, the reasons which weighed with the Court in granting pre-arrest bail to the applicant in ABA No.3328 of 2023 govern the claim of these applicants as well. The Court cannot loose sight of the fact that the gravamen of indictment rests on the allegations made by Suresh Maru, who came to be subsequently implicated as an accused. The second inquiry report, in terms, records that Suresh Maru was financially embarrassed. Mr. Suresh Maru made a number of complaints against

the APMC, its officers and officials with various authorities.

29. The second inquiry report also indicts the then Administrators, other directors and the concerned officers of the administrative department to have conspired to cause wrongful gain to Suresh Maru. Thus, whether the applicants had authority to award the contract by deviating from the prescribed procedure or extend the contract ? whether the applicants derived any wrongful gain ? whether the applicants deliberately took decisions which caused either wrongful loss to APMC or wrongful gain to Suresh Maru, are the questions which warrant adjudication at the trial.

30. Applicant Nos.3 to 5 have already retired from APMC. All the applicants appear to have roots in society. Possibility of tampering with evidence and threatening the witnesses appears to be remote.

31. In these circumstances, I am impelled to make the order of interim bail qua the applicants in ABA No.1157 of 2024 also absolute.

32. Hence, the following order :

ORDER

- (i) The Applications stand allowed.
- (ii) The order of interim bail dated 30 November 2023 in ABA

No.3328 of 2023 is made absolute on the terms and conditions incorporated therein.

(iii) The order of interim bail dated 30 April 2024 passed in ABA No.1156 of 2024 and 1157 of 2024 is made absolute qua the applicants therein on the terms and conditions incorporated therein.

(iv) The applicants shall henceforth appear before the Investigating Officer as and when directed.

(v) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(vi) Interim Application No.524 of 2024 also stands disposed.

(viii) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

Applications disposed.

(N.J.JAMADAR, J.)