

(2012) 03 BOM CK 0263

In the Bombay High Court

Case No : Criminal Application No. 998 of 2012

Pradeep Rasoni

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:

Maharashtra Municipalities Act, 1965 — Section 308
Penal Code, 1860 (IPC) — Section 109, 120B, 177, 34, 406
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2012) BomCR(Cri) 418 : (2012) 114 BOMLR 1594

Hon'ble Judges : A.H. Joshi, J

Bench : Single Bench

Advocate : Shashank Manohar, instructed by Mr. Ram S. Shinde, for the Appellant; P.P. Chavan, Special P.P. for respondent/State and Shri S.B. Talekar, Advocate assisting to P.P., for the Respondent

Judgement

A.H. Joshi, J.—Rule. Rule is made returnable forthwith and is heard by consent. Heard both sides. Perused the case diary and documents tendered by learned Special Public Prosecutor.

2. Accusations against most of the accused are combined inseparably. Therefore, three applications are decided by this common judgment.

3. Applicant in Criminal Application No. 998 of 2012 is Shri Pradeep Gyanchand Rasoni. At the relevant time, he was Councilor of Municipal Council, Jalgaon. He was appointed/nominated by the Council as member of high power committee of the Municipal Council, Jalgaon. He was involved in the process of granting the tender and execution of work of housing for slum dwellers, which has led to registration of crime subject matter.

4. The applicants in Criminal Application Nos. 973 and 974 both of 2012 are the Directors of M/s Khandesh Builders Private Limited, the contractor firm.

5. The Council floated a tender for constructions of houses for slum dwellers. M/s

Khandesh Builders Private Limited was only firm who had furnished its conditional offer. Its bid was 39% higher than estimated cost. The terms were negotiated and brought down to 17 per cent above estimated cost. Mobilization advance was given. Work had remained incomplete.

6. The group of Councillors which was opposing the allotment of tender ultimately persuaded the Municipal Commissioner to file a complaint and ultimately crime has been registered. Written complaint was lodged by Dr. Pravin Nilkanthrao Gedam, who was acting as the Commissioner of Municipal Corporation, Jalgaon. He was required to write repeated letters and take efforts in that direction.

7. Ultimately Crime No. 13 of 2006 was registered against the applicants at Jalgaon police station, Taluka and District Jalgaon for the offences punishable under Sections 120B, 409, 411, 406, 408, 465, 466, 468, 471, 177, 109 r/w 34 of the Indian Penal Code and Sections 13(1)(d) r/w 13(2) of the Prevention of Corruption Act.

8. Various inquiries at administrative level were ordered by different authorities in relation to the very contract which was the subject matter of Crime No. 13 of 2006. The investigation in the said crime has remained pending for long duration, either dormant or neglected.

9. The investigation got some impetus when present investigating officer took over. The applicants herein were arrested on different dates. Initially the police custody for short duration was sought and was granted, and since then they are in Magisterial custody.

10. In support of applications for bail, two different class of applicants have advanced certain submissions which are different and some amongst those are common :-

11. SUBMISSIONS OF APPLICANT SHRI PRADEEP GYANCHAND RAISONI :-

(a) He was member of High Power Committee, which did not have any power and all that he has done was in the capacity of member of the said Committee and his role was advisory in nature.

(b) All actions were taken initially by the President of Municipal Council. The decisions given by the Council were implemented by the Chief Officer, and later on by the Mayor and the Commissioner.

(c) The work of housing scheme was funded by HUDCO. Repayment of this loan was guaranteed by State Government. Thus all actions have a seal of approval by State Government.

(d) Whenever in the opinion of Chief Officer certain resolutions of the Council were contrary to law, those were challenged by him making reference to Section 308 of the Maharashtra Municipalities Act.

(e) The Chief Officer never referred the matter to the Collector or the State Government for annulment of the resolutions and those were never annulled by any competent authority, such as Collector of the State Government.

(f) The scheme of housing for slum dweller was a welfare activity of the Municipal Council. Similar contracts have been successfully implemented in past.

(g) Though one may argue that the fact of registration of the first information report itself constitutes prima facie case against the applicant, yet the first information report being politically motivated does not have any substance and factual foundation whatsoever. Therefore in present case the first information report is registered though prima facie case is not disclosed.

(h) The allegations contained in first information report are tentative in nature and do not contain the description of ingredients of offences mentioned therein.

(i) By barely mentioning Sections, such as 409, 465, 466, 471, 109 and Section 120B of the Indian Penal Code and offences under the Prevention of Corruption Act, no offence can be spelt out.

(j) Lack of application of mind by police while registering the offence is apparent by virtue of inclusion of Section 411 of the Indian Penal Code.

(k) The abetment and criminal conspiracy, though mentioned is described adequately.

(l) Though the applicant is public servant, any monetary gain or any other gain or acceptance of bribe is not at all described, much less otherwise expressed. Offences under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act are barely mentioned. No offence under the Prevention of Corruption Act is even barely described.

12. SUBMISSIONS BY APPLICANTS WHO ARE DIRECTORS OF THE FIRM M/S KHANDESH BUILDERS PRIVATE LIMITED :-

(a) Khandesh Builders Private Limited had undertaken a routine business enterprise, and no criminal intention whatsoever much less intention to cheat by criminal conspiracy, abetment, etc. can be attributed against its Directors.

(b) What the Company had undertaken was the work of housing construction, which it has undertaken in the routine course of business and merely due to the past and present business relations of the Company and/or its Directors with other accused, the criminal conspiracy and abetment cannot be attributed.

(c) Demand of mobilization advance was a matter of conditional offer made by the Company. The conditions were negotiated and were accepted by the Municipal Council. No fault could be attributed to giving of mobilization advance and its receipt by the Khandesh Builders Private Limited.

(d) Mobilization advance was liable to be recovered by the Council by deduction from the Running account bills of the work done under contract. Mobilization

advance has accordingly been recovered to large extent. A small amount has remained to be recovered which could have been recovered had the work not been hindered and progressed as scheduled.

(e) The mobilization advance was taken and certain payments were made to the firm, with whom applicants firms have old business relations. The fact that M.L.A. Shri Suresh Jain and applicants are business associates in those three firms, cannot be connected with the transaction of allotment of contract and cannot be treated as undue or illegal payment and a fruit of conspiracy.

(f) The company of accused already had credit balance in its account with bank and payments are made to three firms from Companies own funds. The money which had come from the Municipal Council by way of advance cannot be regarded as sole source of alleged transfer, which is regarded by first information report as illegal siphoning of funds.

(g) The allegations contained in the first information report, in so far as those relate to siphoning of funds are concerned are tentative in nature and no offence whatsoever is described.

(h) The Directors of contractor company are not liable to be described or included in the definition of public servant.

(i) The contractor Company has to recover money from the Council. It has already succeeded before the Arbitrator. The intervenor had appeared before the Arbitrator and presented their points which have been taken into account by the Arbitrator while passing the award. Municipal council now Corporation has not challenged the award, and has duty to honour it.

13. POINTS COMMON TO BOTH PETITIONS :-

i) The applicants have already undergone the police custody and presently they are in Magisterial custody. Nothing new is to be discovered from them by the investigating officer from them.

(ii) Shri Pradeep Raisonni, Shri Jagannath Wani and Shri Rajendra Mayur are over 70years of age and no purpose would be served by keeping them in custody any further.

(iii)The evidence relied upon by the prosecution is documentary and most of the documents have been taken into possession by the investigating machinery. It is unlikely that the liberty of applicants shall adversely affect the investigation or the prosecution case in any manner whatsoever.

(iv) The first information report is politically motivated and is actuated with mala fides.

(v) The first information report is lodged by the informant against whom the Corporation has passed the motion of no confidence.

14. Learned Advocate Shri Shashank Manohar appearing for Shri Pradeep Raisonni

applicant in Criminal Application No. 998 of 2012 has placed reliance on following reported judgments :-

- (i) 1994 Mh.L.J. 1803 Menino Lopes vs State of Goa
- (ii) Smt. Kaulashwari Devi and another Vs. Nawal Kishore and another,
- (iii) C. Chenga Reddy and Others Vs. State of Andhra Pradesh,
- (iv) V.C. Shukla and Others Vs. State (Delhi Administration),
- (v) AIR 1980 SC 499 Abdulla M. Pagarkar vs State
- (vi) S.W. Palanitkar and others Vs. State of Bihar and another,
- (vii) Kailash Kumar Sanwatia Vs. The State of Bihar and Another,
- (viii) Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra and Another,
- (ix) S.K. Alagh Vs. State of U.P. and Others,
- (x) Keki Hormusji Gharda and Others Vs. Mehervan Rustom Irani and Another, .
- (xi) Sanjay Chandra Vs. CBI, .

15. The emphasis of submissions based on these judgments is on the point that :-

- (i) The power to arrest and continue the accused in custody is not governed merely by what prima facie appears.
- (ii) Bare satisfactory description of commission of offence shall not be adequate to continue the custody.
- (iii) The description may easily be found in the first information report due to articulation.
- (iv) The emphasis is on the point that the description must be sustainable on the basis of reasonability of the accusations and whatever material the prosecution has collected.

16. Based on these propositions, it is urged that :-

- (i) Seen from any angle, the accusations contained in the first information report is politically motivated and actuated with malice.
- (ii) It may describe commission of offence, however reasonable belief that such offence is committed has to emerge from it. It does not so emerge and hence the applicants have strong case for bail.

17. Learned Senior Advocate Shri Mundergi appearing for Directions of Khandesh Builders the applicants in Criminal Application Nos. 973 and 974 of 2012 has placed reliance on following judgments :-

- (i) Joginder Kumar Vs. State of U.P. and others,

(ii) Sanjay Chandra Vs. CBI,

(iii) Sharad Kumar etc. Vs. Central Bureau of Investigation,

18. The emphasis is given on two judgments, namely Joginder Kumar and Shanjay Chandra.

19. While referring to Sanjay Chandra's case, reference is given to the doctrine that personal liberties would always weigh in preference to the need of custodial interrogation, and the liberties of accused could come under an embargo only when reasonable ground of belief that he will tamper with the witnesses would exist.

20. In the present case, the bail has been opposed by the State by mentioning various aspects as those emerge from investigation and additional point such as threats given by the accused to the investigating machinery, the conduct of accused persons, their status and nexus with power and consequent act of influencing the investigation.

21. Learned Special Public Prosecutor has tendered a set of documents to demonstrate that :-

(a) The sitting M.L.A. Shri Suresh Jain before his arrest who is arrayed as an accused wrote letters to exert pressure on the jail authorities when Pradeep Raisonni, one amongst the accused applicant was in Magisterial custody.

(b) Unrowdy conduct of some of the supporters of the accused had led to filing first information report relating to the said conduct.

(c) The investigating officer was threatened of dire consequences towards his firmness and stern action taken by him, by Shri Jain while Shri Jain was in police custody.

(d) Station diary entries have been made relating to staging by supporters of accused persons. Shri Suresh Jain, M.L.A. had instigated people for taking a rally to police for protesting the arrest.

(e) All accused have directly and indirectly exerted to influence the investigation machinery.

(f) The Commissioner of Municipal Corporation who had lodged the first information report was also subjected to a false complaint by the then Mayor on the ground that he had not returned the laptop for his use.

22. On merits of the case, the bail is opposed on the ground that :-

(a) It is not a simple case of misappropriation.

(b) Present is a case of breach of trust by those who were enjoying the position of trust, and have conspired in that direction.

(c) It is not a case where the accused have been acting in good faith and in a

routine business transaction.

(d) The statements of witnesses have been recorded by police, and it has transpired that the applicant Shri Pradeep Raisonni used to practically rule the entire affair under the indication of Shri Suresh Jain.

(e) The tender was floated with conditions which were impracticable and aimed at the elimination of fair contest and for ensuring allotment of work to chosen one i.e. Khandesh Builders Limited.

(f) The elimination of fair competition was done by fixing the duration for completion of tender to 9 months, by disregarding written opinion to the contrary given by the Chief Officer.

(g) This pre-decided period of completion to be 9 months was a part of conspiracy and this would be apparent from the adverse/protesting note by Chief Officer.

(h) The firm M/s Khandesh Builders has sublet the contract and while doing so allotted it with condition that work be completed in 18 months, as it was sure of extension, the allotment of tender to it, being a conspired deal.

(i) Mobilization advance, as understood in its common connotation is to be given for the purpose of raising certain infrastructure or purchasing machinery or raw material.

(j) Initial condition stated in tender document was of not giving any mobilization advance. This condition was altered, and money was allowed to be used for purposes other than conventional object of such advance.

(k) The firm to whose account the money has been transferred by Khandesh Builders Private Limited is to the firms or companies composed of Shri Suresh Jain, M.L.A. (one of the accused), Shri Jagannath Wani (Applicant) and Shri Rajesh Mayur (Applicant), their family members, kins or friends.

(l) The manner in which the entire business as regards slum dwellers housing scheme has been conducted, is done disregarding adverse written remarks and recommendations given by the Chief Officer. All these derelictions by the accused cannot be read simply as acts of bona fide mistakes or inadvertent illegality.

24. This court has considered the points agitated on behalf of the applicants and by the prosecution. This court has taken over all view of the matter. What emerges is that :-

(a) Applicant Shri Pradeep Raisonni was entrusted with the job of the Committee, though claims he has no power, the case diary demonstrates that he has exercised the domain over entire affairs.

(b) The role by other councilors though was active, was almost getting in tune with what was being dictated by the applicant Shri Pradeep Raisonni.

(c) No reasons have come forward in the form of any explanation as to what are the circumstances in which the tender conditions were reformulated to benefit the contractor in total disregard to recommendations of the Chief Officer.

(d) The construction work was given by Khandesh Builders Private Limited to another contractor, though such allotment may be permissible with duration of 18 months which was apparently in excess and in violation of time limit fixed by tender conditions between the Council and M/s Khandesh Builders Private Limited.

(e) The involvement of the contractors in the business of firm which received the money after or collateral to disbursement of mobilization advance, cannot at this stage, be regarded as sheer coincidence and a pure case of business relationship.

(f) The past transactions of this nature are now produced before this court record in the form of a tabulated statement, however those need deeper scrutiny by the investigating officer or before the trial court or before this court.

(g) The entire business from the beginning i.e. after the project was designed and work was sought to be executed, was pre-designed, and conspired, abated, etc. and hence, it would apparently fall in criminal conspiracy along with other offences.

(h) It is well settled that the direct evidence relating to conspiracy is always difficult, even at times impossible to collect.

(i) At least at this stage in the present case, the conspiracy may have to be inferred from the manner in which the business has-been conducted by the accused persons.

(j) It is reasonably demonstrated that the accused including present applicants are influential persons.

(k) The fact that crime could not be investigated for 6 years is proof of fact that applicants are influential and have succeeded in stalling the investigation and remaining investigation cannot be done freely unless applicants suffer and loose liberty for a while.

(l) It is obvious and apparent that the freedom and liberties of the accused persons cannot be seen from the routine simplistic attitude.

24. Therefore, it prima facie appears that :-

(a) The accused had rendered the Municipal Council a bonded labor for their personal gain, and Councils treasury as personal purse.

(b) Breach of trust is too brief a description for deeds they are engaged in.

(c) Prima facie very strong case exists against the accused for opposing bail till completion of investigation.

25. This court had enquired with the learned Special Public Prosecutor as regards

the stage of investigation. Learned Prosecutor has taken instructions, from the investigating officer, who is present in the court. The Special Public Prosecutor has replied that the investigation is expected to be completed within 25 days time.

26. In this background, this court is satisfied that the applicants do not deserve grant of bail. The applications are rejected. Observations are based on what has prima facie emerged at this stage, and do not govern future applications for like prayers.