**ORDER IN EXH. 06 OF BAIL OF ACCUSED IN REGULAR CRIMINAL CASE NO. 284/2017.**

01. By this application accused claim bail under section 437 of Cr.P.C. on the count that there are change in circumstances as charge-sheet has been filed in the instant case.

02. It is the case of prosecution that, the accused and his colleagues, who are the Managing Directors and Directors of Kumuda Factory had taken Rayat Factory for running business of cutting sugarcane and transportation on contract for the period of 18 years in the year 2013-2014 and 2014-2015. For that purpose agreement was executed between accused and Rayat Sugar Factory before the Sugar Commissioner of Maharashtra State. The accused had taken the agreement for registration, but inspite of registering in Maharashtra State, he has registered in it with Sub Registrar, Belgaum, State Karnataka by replacing some pages of the agreement and thereby created a false document and used it as genuine document by cheating Rayat Sugar Factory. Thus, it is the case of prosecution that accused had committed offence punishable under section 420, 406, 463, 464, 465, 467, 468 and 471 of Indian Penal Code.

03. At the threshold, it may be apposite to note the un-controverted facts. First and foremost, that accused had taken Rayat Factory for running business of cutting sugarcane and transportation on contract for the period of 18 years in the year 2013-2014 and 2014-2015. For that purpose agreement dated 19.09.2013 was executed between accused and Rayat Sugar Factory before the Sugar Commissioner of Maharashtra State. At present accused is in jail. The controversy revolves upon the fact as to whether there is prima-facie evidence against him wherein the application for bail be rejected as alleged by the prosecution.

04. According to the applicant / accused he has not committed any offences. After execution of agreement Kumuda Sugar Factory has carried out it's business for two years in sugar crop season i.e. in the year 2013-2014 and 2014-2015. There is no single complaint against accused by Rayat Sugar Factory. This conduct itself shows no any forged document created by Kumuda Sugar Factory. The allegation that accused has changed some pages of that agreement are totally false and baseless one. The Managing Director of the Rayat Sugar Factory had given consent letter for registration of agreement to Sub Registrar, Belgaum on 04.10.2013. The Directors of Rayat Sugar Factory had taken illegal possession of Sugar Factory without consent of Kumuda Factory. Therefore, Kumuda Factory had filed Civil Suit in Hon'ble District Court, Belagavi bearing Case No. A.C. No. 00007/2015. Being aggrieved with the civil suit, law officer of Rayat Factory had filed false FIR. At present the investigation is completed, charge-sheet is filed. Hence, there is no need to keep the accused behind the bar. The accused is permanent of resident of Belgum and having movable and immovable properties there and having roots in the society. He is ready to abide by any conditions imposed by the court. The offences are triable by Judicial Magistrate First Class. Considering all these aspects applicant / accused be released on bail.

05. The prosecution has opposed the application by filing the say. According to the prosecution, there is no change in circumstances in the present case. The accused has made forgery by replacing pages 1, 2 and 17 of agreement dated 19.09.2013 and there by created false document and used it as genuine document by cheating Rayat Sugar Factory. From the contents of FIR, statements of witnesses and copy of agreement there is prima-facie case is made out against accused. There is loss of Rs. 2,68,63,131/- revenue of Maharashtra Government. He is also involved in

other criminal offences i.e. C.R. No. 06/16 in Pangari Police Station, C.R. No. 23/16 in Vairag Police Station, C.R. No. 142/2017 of Karad Taluka Police Station in respect of cheating. If the accused will be released on bail he will try to destroy evidence against him and pressurized the prosecution witnesses. The prosecution is ready and willing to conduct the matter on day to day basis. With these contentions prosecution prayed for rejection of bail.

06. On perusal of charge-sheet it emerges that accused entered into an agreement dated 19.09.2013 for running Rayat Sugar Factory on rent basis for 18 years. The said agreement was executed before the Sugar Commissioner Maharashtra State. But the accused i.e. the Managing Director of Kumuda Factory Registered agreement before Sub Registrar, Belgaum. However, after receiving copy of agreement the Rayat Sugar Factory realised that accused has change some pages of document dated 19.09.2013. The said document was registered on 05.10.2013. On perusal of agreement adduced on record by APP shows page nos. 1, 2 of Non Judicial Stamp paper of Rs. 50/- each have been replaced by stamp paper of Karnataka State. So also, every page of agreement was bearing signature of accused, office bearers of Rayat Sugar Factory and the Sugar Commissioner of Maharashtra State. But the copy registered agreement shows it does not bears signature of office bearers Rayat Sugar Factory as well as Sugar Commissioner of Maharashtra State. Similarly, page no. 17 of agreement does not bears signature of witnesses, while registered agreement bears signature of witnesses. This itself shows that accused has forged original agreement by changing pages of original agreement. The contents of FIR is in corroboration with the statement of other witnesses. In short, there is prima-facie case against accused.

07. In this context, it was argued on behalf of accused that Directors of Rayat Sugar Factory had taken illegal possession of Sugar Factory without consent of Kumuda Factory. Therefore, Kumuda Factory had filed Civil Suit in Hon'ble District Court, Belagavi bearing Case No. A.C. No. 00007/2015. Being aggrieved with the civil suit, law officer of Rayat Factory had filed false FIR. Reliance was placed on affidavit of Balasaheb Sakhare in respect of consent letter given to registered the document in Belgaum. The said submissions would not helpful the accused, as it was the duty of the accused before registering the agreement in Belgaum to take prior consent of Rayat Sugar Factory in respect of replacement of stamp papers / pages and also take the signatures of office bearers Rayat Sugar Factory as well as Sugar Commissioner of Maharashtra State. The consent letter given by Rayat Sugar Factory gives only consent to register the agreement signed by office bearers Rayat Sugar Factory as well as Sugar Commissioner of Maharashtra State. But the accused has replace the pages and registered the document. Hence, I am not inclined to accede with the submission of learned Advocate for the accused that he has falsely implicated by Rayat Sugar Factory.

08. The learned APP also submits that the accused persons may not be granted bail as applicants would tamper with prosecution evidence. So also the learned APP states that he is ready and willing to conduct the matter on day to day basis. On the point of rejection of bail application the leaned APP place reliance on the cases of :-

1) Virupakshappa Gouda and another Vs. The state of Karnataka and another in Criminal Appeal No. 601/2017 of SC.

2) Deepak Gupta Vs. State of Orissa reported in 2016 ALL MR (Cri) Journal 482.

3) CBI Hyderabad Vs. subramani Gopalakrishnan & Anr. reported in 2011 SAR (Criminal) 476.

4) Champakbhai Amirbhai Vasava Vs. State of Gujarat reported in 2001 CRI. L.J. 4475.

5) Y. S. Jagan Mohan Reddy Vs. Central Bureau of Investigation reported in 2013 SAR (Criminal) 619.

09. In retort, on the count of accused entitled of bail in cases of triable for Magistrate even though the punishment prescribed may extent to imprisonment for life and in the cases of cheating, forgery and breach of contract reliance was placed on the cases of :-

1) Mr. Ishan Vasant Deshmukh @ Prasad Vasant Kulkarni Vs. State of Maharashtra reported in 2011 ALL MR (Cri.) 198.

2) Navnath s/o. Shesherao Solanke & Anr. Vs. The State of Maharashtra reported in 2014 ALL MR (Cri) 1804.

3) Ambarish Rangshahi Patnigere Vs. State of Maharashtra reported in 2010 ALL MR (Cri) 2775.

4) Rajendra Prakash Agrawal Vs. Union of India & Anr. Reported in 2015 ALL SCR 3833.

5) M/s. Astec Life Sciences Ltd. & Ors. Vs. State of Maharashtra & Ors. 2008 ALL MR (Cri) 1054.

There can be no dispute in respect of the settled principles in the cases adduced by Advocate of accused. However, the facts and circumstances in the said cases are not identical with those in present case at hand. In the instant case, even though the charge-sheet has been filed, there exists prima-facie case against applicant / accused for committing alleged offence. Needless to say that offence is of grievous nature. Considering the manner in which applicant / accused committed the offence, cannot be lost sight of. In these circumstances it would not be proper to enlarge accused on bail when there exist prima-facie case against accused.

10. At this juncture, the learned Advocate for the accused has claimed bail on the principle of “bail and not jail”, based on liberty guaranteed under the Constitution. But it would be imperative to note that often in bail matter, the principle is sought to be applied so as to to get the bail anyhow. It is hence, necessary to dissipate mistaken impression. No doubt, “Bail and not jail” is well cherished principle based on a right to personal liberty not only safeguarded but put at the highest pedestal also vide Arti. 21 of the Constitution of India; and so ordinarily personal liberty is the governing factor in case of bail, but the same cannot be stretched too far or beyond its normal frontiers. It does not and cannot have dominion over larger interest, social order as well or possibility of liberty being abused. The claim of the accused seeking bail therefore cannot be countenanced of it is likely to run counter to the large interest. To put it in different words, bail cannot be granted under guise of liberty if there is likelihood of accused's subjugating large interest or there is possibility of accused's misusing or abusing his liberty after bail. In case of such likelihood, any subtle attempt to get bail under the guise of liberty must be forwned upon and frustrated. In the case in hand Sub Registrar, Satara

had given a letter on 29.07.2017 stating that there is loss of revenue of Rs. 2,68,63,131/- which fact cannot be over looked at the time of deciding the present bail application.

11. From this stand point, it would be imperative to note that merely in view of long detention or that there are no chance of his long absconding or about tempering with evidence are not only the criteria to be borne in mind while considering the bail application. So also, merely because accused is the owner of the large property movable or immovable would not be ground to presume that the presence of the accused would be secured at the trial by granting him bail. In the case in hand, the accused is the resident of Karnataka and having three criminal cases pending against him. Hence, his chances of absconding are much more. The charge has already been framed against accused and at present the matter is posted for evidence of prosecution witnesses. Thus, considering the manner in which accused committed the offence, I agree with the submission of learned APP that if the accused released on bail, there are chances of pressurizing prosecution witnesses. On the count of gravity of offence, I think, this is not a fit case to grant bail to accused. Hence, I pass following order :

**ORDER**

1) Application of bail is rejected.
2) Learned APP to expedite the matter by securing presence of all the prosecution witnesses by next date.

Karad
Date :- 31/07/2017.

( R. T. Ghogle )
3rd Judicial Magistrate F.C.
Karad