

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.4785 OF 2015

Subhash s/o Gangadhar Khokale ..APPLICANT

VERSUS

The State of Maharashtra ..RESPONDENT

Mr R.F. Totala, Advocate holding for Mr M.S. Karad, Advocate for
applicant;
Mrs M.A. Deshpande, A.P.P. for respondent

CORAM : N.W. SAMBRE, J.

DATE : 15th October, 2015

ORAL ORDER :

By the present application under section 438 of the Code of Criminal Procedure, the applicant seeks his release on bail, in the event of arrest, in connection with C.R. No.I-229 of 2015, registered with MIDC Waluj Police Station, Taluka Gangapur, District Aurangabad, for offences punishable under sections 406 and 408 of the Indian Penal Code, on 15th August, 2015, for the incident alleged to have taken place between 29th May, 2015 and 29th July, 2015.

2. It is the case of the prosecution that the applicant herein was working as a Supervisor in Sai Enterprises, owned by the complainant, which is engaged in manufacturing of wooden packing box. The applicant was entrusted with the work of purchase of material for and on behalf of Sai Enterprises and store the same.

(2)

3. According to the complainant, while the applicant was working as Supervisor in Sai Enterprises, he has purchased the material worth Rs.1,38,400/- for and on behalf of Sai Enterprises, but did not bring the same in the company and thereby has committed criminal breach of trust.

4. Learned Counsel appearing on behalf of the applicant, while making out a case for grant of pre-arrest bail, would urge that the applicant being an employee in a private firm was entitled to carry out separate business and according to him, his real brother, namely, Shankar Gangadhar Khokale is running a unit in M.I.D.C., Nashik, for manufacturing the material used for wooden boxes and the same material is supplied to the applicant herein. With a view to substantiate the said contention, there are appropriate documents placed on record depicting that the brother of the applicant is manufacturing such material and has supplied the material to the present applicant. Mr Totala would further urge that there are specific statements made on affidavits by the wife of the applicant and the adjoining neighbours, that the complainant, with the aid of police, has withdrawn the material received from the brother of the applicant, which was stored in the house of the present applicant. The particulars of the material are furnished at paragraph 16 of the affidavit of the wife of the applicant, namely, Mangala, which is sworn on 11th September, 2015. The said affidavit/statement is also supported by the affidavits given by the neighbours.

(3)

5. While opposing the application, learned Addl. Public Prosecutor has invited my attention to the contents of the affidavit in reply filed by Pannusing Bahure, the Investigating Officer in the present case, so as to canvass that the amount of fraud, in the present case, is to the tune of Rs.37,77,188/-.

6. It is admitted position that the said affidavit was filed subsequent to the filing of the above referred affidavits by the wife and brother of the complainant, as also the neighbours. The said affidavits are neither countered nor disputed by the Investigating Officer, though an opportunity to that effect was given to him, as the matter was adjourned at his behest.

7. It is required to be noted that upon perusal of the case papers and the contentions raised herein, there appears to be a dispute between the complainant and the applicant since both are doing the same business and prima facie, it appears that false implication of the applicant in the crime in question, cannot be ruled out, he being the business competitor of the complainant.

8. It is also required to be noted that in the affidavit sworn by Mangala, wife of the applicant, that the complainant with the aid of the policemen had removed the material stored in the house of the applicant and she had tried to lodge complaint to that effect to the police station and had repeatedly visited the police station, the police have not accepted the said complaint, prompting her to send the said complaint to the police by

(4)

Registered Post A.D. Mr Totala has placed on record the photo copy of the receipt issued by the postal authorities to that effect.

9. In view of the above referred background, it will be appropriate to grant protection to the applicant, as the complainant *prima facie* appears to have removed the material from the house of the applicant. Hence, I pass the following order :-

In the event of arrest of the applicant, in connection with C.R. No.I-229 of 2015, registered with MIDC Waluj Police Station, Taluka Gangapur, District Aurangabad, for offences punishable under sections 406 and 408 of the Indian Penal Code, he be released on bail, on furnishing P.R. Bond of Rs.15,000/- with one surety in the like amount.

The applicant shall attend the concerned police station daily, initially for four days, between 10.00 a.m. and 11.00 a.m. and thereafter as and when called by the Investigating Officer.

Criminal Application stands allowed in above terms.

(N.W. SAMBRE, J.)

amj

(5)

criap4785.15