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

CRIMINAL APPLICATION NO.4073 OF 2015

1. Vijay Gokuldas Majithia,
Age 57 years, Occu. Business,
Having office address at Resex
Traders, 139-C, Noman Mansion,
Kemps Corner, Near Shalimar
Hotel, Mumbai 400 036,
Maharashtra

2. Ina Vijay Majithia,
Age 54 years, Occu. Housewife,
Having office at
Traders, 139-C, Noman Mansion,
Kemps Corner, Near Shalimar
Hotel, Mumbai 400 036,
Maharashtra ..Applicants

Versus

. The State of Maharashtra
At the instance of
Latur (Rural/Gramin) Police Station,
Latur, District Latur, Maharashtra ..Respondent

Mr R.N. Dhorde, Senior Counsel i/b Mr A.D.Ostwal, Advocate for applicant
Mrs M.A. Deshpande, A.P.P. for respondent
Mr S.S. Rathi, Advocate for complainant, assisting A.P.P.

- WITH -

CRIMINAL APPLICATION NO.4075 OF 2015

1. Mithesh Doshi,
Age 32 years, Occu. Service,

2. Pravin Kushe,
Age 42 years, Occu. Service

3. Kanakam Pillai,
Age 46 years, Occu. Service

4. Nikhil Desai,
Age 35 years, Occu. Service

5. Bhupendra Khadpe,
Age 41 years, Occu. Service,
All having office at

Resex Traders, 139-C,
Noman Mansion,
Kemps Corner, Near Shalimar
Hotel, Mumbai 400 036,
Maharashtra ..Applicants

Versus

. The State of Maharashtra
At the instance of
Latur (Rural/Gramin) Police Station,
Latur, District Latur, Maharashtra ..Respondent

Mr A.D. Ostwal, Advocate for applicants
Mrs M.A. Deshpande, A.P.P. for respondent

- WITH -

CRIMINAL APPLICATION NO.5048 OF 2015

D.C. Srinivasulu Reddy s/o D.Subba
Reddy, Age 43 years, Occu.Business,
R/o No.480-1-1B=Kodurupadu
S.P.S.R. Nellore District .. Applicant

Versus

1. The State of Maharashtra,
Through Police Inspector,
Latur Rural Police Station,
Latur.

2. The Superintendent of Police,
Latur, District Latur .. Respondents

- WITH -

CRIMINAL APPLICATION NO.4126 OF 2015

Mr Sanjay s/o Maimalji Modi,
Age 47 years, Occu. Business,
R/o 214, Indraprastha Tower,
6, M.G. Road, Indore
(Madhya Pradesh) .. Applicants

Versus

The State of Maharashtra,
through Police Inspector, Latur
Rural Police Station, Latur .. Respondent

Mr V.D. Salunke, Advocate for applicant
Mrs M.A. Deshpande, A.P.P. for respondents
Mr Swapnil S. Patil, Advocate for complainant, assisting A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 27th October 2015

PER COURT

Heard.

As applicants in all these applications are seeking anticipatory bail in same crime, the same are heard and disposed of together.

2. These applications are by the Directors of company namely Resex Traders, having its office at Mumbai, seeking pre-arrest bail in Crime No.164 of 2015 registered on 17th July 2015 at (Rural/Gramin) Police Station, District Latur, for offences punishable under Sections 420, 406, 468, 471 read with sec.34 of the Indian Penal Code, pursuant to the transaction of supply of 'D' oil cake, a by-product of Soybean processing unit.

3. The case of the prosecution is that upon a complaint, lodged by one Shantilal Kishanlal Sabu, the above referred offence came to be registered, as said Shantilal Sabu, a Proprietor/Director of solvent extracting unit at Latur had supplied 'D' oil cakes to various companies, upon the orders to that effect given by Resex Traders, a Broker Firm of which the applicants are Directors.

4. According to complaint, it appears that he had supplied the material upon instructions of above referred Directors and its

employees to various parties in India and said transactions were duly honoured by paying appropriate consideration to the complainant. According to complainant, the applicants having gained the confidence of the complainant have placed certain orders in the capacity of broker firm for supply of ‘D’ oil cakes from August-September 2013 to the various firms in India and accordingly, the complainant has supplied the said material. According to the complainant, though the material was supplied in the name of various firms, during transit the said material was diverted to some other firms, upon the instructions of the applicants herein and without paying consideration to the complainant though consideration thereof was received by applicants. The complainant initially trusted the applicants in view of their past conduct, however, later on realised that the goods were diverted to the various firms during transit and the consideration thereof though was received by the applicants’ firm, however, was not parted to the complainant.

5. It appears that the complainant Rasex has paid the amount to M/s Gauri Agrotech, Jalna Rs.1,00,00,000/- and Rs.18,00,000/- to Vaibhav Traders, Mumbai with whom the complainant had no business transaction, which amount was meant for complainant. Apart from above, learned Counsel for the complainant has placed on record the details about the registration of companies viz. Rasex Traders Private Limited, Rasex Futures and Derivatives Pvt. Ltd., Rasex Financial Services Private Limited, Pearl Bioful Pvt. Ltd., Axis Trading Company Pvt.Ltd., Avkash Agencies Pvt. Ltd. On the same address, on which the

Rasex is registered which prima facie speaks about the obvious intention of the applicants herein to carry out transactions in between them with an intention to commit defaults which are alleged in the present case.

6. According to prosecution, an amount of around Rs.3,51,63,809/- remained to be paid to the complainant by the applicants' firm. Amongst these, an amount of Rs.32,42,744/-, Rs.87,93,694/-, Rs.1,64,13,625/-, Rs.97,13,996/- was outstanding against the applicants' firm against the supplies made.

7. According to the complainant, the applicants herein styling themselves to be a broker firm and by gaining confidence by honouring earlier transactions, have placed the above referred orders and have diverted the goods by causing financial loss to the complainant and as such, have committed the offence under Section 420 and other relevant Sections of the Indian Penal Code.

8. In view of above referred background, Senior Counsel Mr Dhorde, while trying to make out case for grant of pre-arrest bail, has invited attention of this Court to the contents of the first information report, so as to canvass that the transaction in question is arising out of a contractual obligation. According to him, there is a suit filed by the complainant against the applicants and one Maharashtra Feeds and General Commodities, Hasan, for recovery of an amount of Rs.40,84,974/- in which in paragraphs 2, 3, 7 and 8, the complainant has, in clear terms, spelt out the contractual obligation in between the

parties. He would then submit that the complainant has also initiated the proceedings under the Negotiable Instruments Act for dishonour of the cheque and as such, the applicants herein are entitled for pre-arrest bail, as there is no *mens rea* on the part of the applicants to commit the crime in question. He would then suggest that in view of pendency of recovery proceedings and the criminal proceedings under the Negotiable Instruments Act, the applicants herein need to be protected, as it is always open for the complainant to recover the amount outstanding by initiating the recovery proceedings.

9. Mr Ostwal, learned Counsel for the applicant in Criminal Application No.4075 of 2015, while adopting the above referred arguments would like to add that the applicants are the employees of the firm Rasex Traders and as such, they cannot be vicariously held responsible for criminal act of their master and as such, sought to rely upon the judgment in the matter of **Thermax Ltd., Vs. K.M. Johny** reported in **2011 (13) SCC 412.** Learned Counsel then relied upon the complaint initiated under Section 156 (3) of the Cr.P.C. so as to canvass that their master Rasex Traders has initiated the complaint case for offences punishable under Sections 408, 420, 465, 467, 468 of the Indian Penal Code against one Satish Mehata, who according to him is the main culprit in the present case, who has created the present mess resulting into registration of offence. He would then add that though the said complaint is dismissed under Section 203 of the Cr.P.C., he has instructions to state that appropriate proceedings are initiated for restoration of the same. According to him, whatever act

is attributed to them is pursuant to the compliance of the instructions issued by their master. According to him, there is no *mens rea* on the part of the applicants.

10. So as to demonstrate the non-involvement of the applicants in the commission of crime in question, Mr Salunke, learned Counsel for the applicants in Criminal Application No.5048 and Criminal Appln.No.4126 of 2015 has taken me through the plaint filed by one of the applicants against Gauri Agrotech, Jalna for recovery of amount of Rs.1 Crore. In addition to above, he would then urge that the amount of Rs.87,92,484/- which is outstanding against Jayant Enterprises, the said amount was duly paid to the Rasex Traders or its nominee and as such, according to applicants, they are falsely implicated in the crime in question.

11. While opposing the application, learned Additional Public Prosecutor, who is assisted by the Counsel for the complainant has taken me through the investigation papers, so as to establish a prima facie case against the present applicants. Learned A.P.P. then would submit that from the statement of the various witnesses viz., the Proprietor of Maharashtra Feeds, Hasan, Mr Krushnamurti Naidu from Balaji Enterprises and Shri Venk Impex, it could be easily inferred that there is prima facie involvement of the applicants in the commission of crime in question. So as to substantiate the said contention, this Court was taken through the various orders against which the goods were supplied as ordered to the applicants which in transit, were diverted to the various firms. The said statements, according to her

reflect that though the applicants before this Court have received consideration, a part of the same was paid to the complainant with an instruction that the amount be shown to have been paid by the firm to whom the goods were received, however, it appears from the record, according to her, the balance amount was retained by the applicants or is used by them in satisfying their debt. According to learned A.P.P. the diversion of the goods in transit as to such firms, which prima facie could be inferred has managed by the applicants.

12. Learned Counsel for the complainant, while opposing the bail application, has invited attention of this Court to the E-mails and the tax invoices demonstrating how the goods in transit were being diverted by the applicants for which no consideration was paid to complainant.

13. In the light of above submissions, I have proceeded to analyse whether the applicants have made out the case of false involvement in the crime in question.

14. From the record, it depicts that there appears to be supply of goods i.e. 'D' oil cakes to various parties in India at the behest of applicants for which promise and assurance on the part of applicants herein was made about payment to the complainant. For the reasons best known to the applicants, the goods in transit appear to have been diverted to the firms other than to which the same were directed from the factory outlet of the complainant.

15. The statements of witnesses who are either Proprietors or the Directors of the companies, who have received part of the goods have in clear terms stated that the consideration of the goods which they have received was already parted with either to the complainant or to the applicants. The applicants then instead of making payment against the goods received, have utilised the goods for their trade and business and have retained the consideration received by it or diverted the same to others so as to satisfy its debt. This speaks volumes about the conduct of the applicants in prima facie involvement in commission of crime under Section 420 of Indian Penal Code and other relevant sections, as instead acting as broker, have put the stock in trade, received the consideration and not paid the same to complainant.

16. Though a case is sought to be made out before this Court that there exists civil dispute between the applicants and the complainant, however, it is required to be taken note of the fact that the said civil dispute is restricted to the extent of claim made against Maharashtra Feeds, Hasan and not the other criminal events as are narrated against the present applicants. This Court is also alive to the fact about initiation of proceedings under Section 138 of the Negotiable Instruments Act, however, the same is also in an isolated case, nothing to do with the criminal attributions against the applicants herein.

17. Apart from above, this Court is also required to take note of the fact that the goods which were directed to the parties mentioned in

the complaint were diverted at the behest of applicants to Rajane Enterprises, Gupta Enterprises, Shri Aquatics, Nellor, Jayant Enterprises, Vaibhav Enterprises, etc. Though the amount was paid by these companies to the applicants Rasex Traders, the same appears to have not been paid to the complainant. Apart from above, as is rightly pointed out by Mr Ostwal that the complaint under Section 156 (3) of Cr.P.C. was initiated against one Satish Mehata which speaks voluminous about the internal dealing of the applicants qua the management of the company Rasex. This Court also must take judicial note of the fact that though the criminal complaint under Section 156 (3) of Cr.P.C. appears to have been initiated against said Satish Mehata, however, same came to be dismissed under Section 203 of Cr.P.C. for the reasons best known to the applicants, as is apparent that the applicants have not seriously prosecuted the said case.

18. It is apparent from the investigation papers that there is prima facie involvement of the applicants in the commission of crime. The nature of allegations against the present applicants has resulted into commission of economic offence, which is required to be dealt with by an iron hand as is reiterated by the Honourable Apex Court

19. Learned Counsel for the complainant has fairly conceded that the applicant No.2 - Ina Vijay Majithia in Criminal Application No.4073 of 2015, wife of the applicant No.1 has not in any way participated in the dealings or in the decision making payment. Even perusal of the documents does not reflect her prima facie involvement. In view

thereof, in my opinion, it will be appropriate to consider the application of applicant No.2 Ina Vijay Majithia, a housewife, one of the Directors of Rasex Traders, to be released in the event of her arrest.

20. It is required to be noted that so far as the employees of Rasex company who are named as accused in the present case are concerned, the diversion of the goods in transit, receipt of the payment was well within their knowledge. Prima facie, it appears that they have equally participated and responsible for commission of the crime in question.

21. Upon perusal of the copy of plaint as is submitted, it is required to be noted that the issue raised in the said claim hardly anything to with the payment that was due to the complainant from the present applicants. The suit for recovery by the applicants against Gauri Agrotech is an independent issue which cannot be connected with the issue raised in the present application in absence of any convincing reasons or cogent evidence to that effect.

22. What appears from the record is that the applicants herein have received the goods pursuant to various tax invoices as is placed on record by the complainant and the part of the investigation papers which were diverted by the applicants then and there for carrying out trade and rather the applicants though have received the consideration thereof, have not paid the said amount to the complainant.

23. As such, all these applications stand rejected, but for the applicant No.2 – Ina Vijay Majithia in Criminal Application No.4073 of 2015.

24. In the event of her arrest, the applicant No.2 in Criminal Application No.4073 of 2015 - Ina Vijay Majithia be released on bail, in connection with Crime No.164 of 2015 registered on 17th July 2015 at (Rural/Gramin) Police Station, District Latur, for offences punishable under Sections 420, 406, 468, 471 read with sec.34 of the Indian Penal Code, upon furnishing P.R. Bond of Rs.2,00,000/- (Rs. Two lakhs) with one surety in the like amount.

25. The applicant No.2 – Ina Vijay Majithia to attend concerned police station for two days i.e. on 17th and 18th November 2015 between 10.00 a.m. and 12.00 a.m. and thereafter, as and when called by the Investigating Officer.

26. The request made by Mr Dhorde, learned Senior Counsel for the applicants to continue the ad interim protection granted by this Court to the applicants on 31st July 2015 is strongly objected by learned A.P.P. and Counsel for the complainant.

27. Looking to the nature of accusations in the present case and the ensuing Deewali festival, it will be appropriate to extend protection to the applicants for a period of four weeks from today. Hence, interim protection granted by this Court on 31st July 2015 to continue for a period of four weeks from today.

28. All the Criminal Applications stand disposed of in above terms.

(N.W. SAMBRE, J.)

vvr