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

APPELLATE SIDE JURISDICTION

CRIMINAL APPLICATION NO. 5055 OF 2015

Ali Ahmed Khan s/o Tahsin Ahmed Khan ...**APPLICANT**

VERSUS

The State of Maharashtra & anr. ...**RESPONDENTS**

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Mr. A.P.Mundargi, Senior Counsel i/b
Mr. R.S.Deshmukh, advocate for the applicant
Mr. A.R.Kale, A.P.P. for Respondents
Mr.S.S.Bora, advocate for complainant

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CORAM : INDIRA K. JAIN, J.
DATED : 11th DECEMBER, 2015

PER COURT :

1] Here is an application for pre-arrest bail in Crime No. 223 of 2015, registered at Nanded (Rural) police station, District Nanded for the offences punishable under Sections 420, 406 r/w 34 of the Indian Penal Code.

2] Heard Shri A.P.Mundargi, learned Senior Counsel i/b Shri R.S.Deshmukh, learned counsel for the applicant and Shri A.R.Kale, learned A.P.P. assisted by Shri S.S.Bora, learned counsel for the complainant. Perused the papers of investigation.

3] The facts giving rise to the instant application may be stated in brief as under.

(i) Nikhil Enterprises at Nanded is a Proprietary Firm. Complainant Nisar Nuruddin Lalani is its Proprietor.

(ii) Applicant is Director of Tridhara Sugar Company Limited. Tahsin Ahmed Khan is Chairman of Tridhara Sugar Company and Bahadur Ali Ibrahim Mujawar is its Chief Executive Officer.

(iii) In the year 2010 Tridhara Sugars had taken over the Company from erstwhile Narsinh Sahkari Sakhar Karkhana Limited, situated at Lohgaon, Taluka and District Parbhani.

(iv) The Company had resolved and authorized its Chairman, Director and Chief Executive Officer to sell sugar of season 2014-15 in advance to wholesale traders and commission agents of sugar. As Company was to commence crushing season for the period 2014-15, it was in need of money.

(v) Accused approached the complainant and requested to advance Rs.One Crore for sale of sugar. On 13.6.2014 and 17.6.2014 complainant paid Rs.Fifty Lacs each through Banks to Tridhara Sugars. Again accused requested the complainant to give advance of Rs.Fifty Lacs. Complainant then paid Rs.Fifty Lacs to the accused. Two memorandum of understanding were executed by accused on 7.6.2014 and 22.7.2014.

(vi) On 20.11.2014 complainant approached the accused to determine the price of sugar as per memorandum of understanding. The same was avoided by the accused.

(vii) On 12.12.2014 Tridhara Sugar Company expressed its inability to sell and supply the sugar to complainant.

(viii) Complainant then sent messages to accused and demanded money back. Accused did not pay back the money.

(ix) Having found that complainant was cheated and huge amount was misappropriated report was lodged to police station.

4] The learned Senior Counsel for applicant submitted that Company was intending to commence with the crushing season of 2014-15 and so H and T advances were distributed and challan for crushing licence was filed. The learned Senior Counsel submits that due to financial crunch Company had to face distress and could not repay the amount, but there was no intention to cheat the complainant as alleged in first information report.

5] The learned Senior Counsel would then submit that in 2014-15 unfortunately there was a collapse of sugar industries and most of the Sugar Factories could not go for crushing due to severe drought, water scarcity and decreased prises in sugar globally. The learned Senior Counsel submitted that since last three years the same situation is prevailing and in 2014-15 Tridhara Sugars could not commence crushing season due to the circumstances which were beyond their control.

6] The learned Senior Counsel submitted that Company is still intending to pay the amount but it can be only after the Factory and its machineries, etc. are sold.

7] The learned Senior Counsel strenuously submitted that element of dishonest intention or inducement is totally absent in this case. Complainant has suppressed the material facts that a case under Section 138 of the Negotiable Instruments Act has been filed against the accused and there were past business relations between the parties.

8] It is then submitted that applicant is a young person having sound family background. The first information report is politically motivated. The past antecedents of complainant are not clean and clear. He is one of the accused in ACB Case No. 1 of 2006. Complainant was found with excessive amount at the time of election and the said amount was seized from him. Complainant had defrauded the Bank in Crores of rupees. Looking to the past antecedents and background of complainant, learned Senior counsel submits that prima facie involvement of applicant in the alleged crime is doubtful and urges to protect the liberty of applicant by granting anticipatory bail.

9] Per contra, learned Additional Public Prosecutor assisted by the learned counsel for complainant vehemently contended that applicant and Chairman of the Company were aware that they were going to sell the Company, still in collusion with the other Directors they cheated the complainant by demanding and accepting huge amount of Rs. One Crore Fifty Lacs and misappropriated the same. It is alleged that applicant and Directors played fraud, took huge amount from complainant under the pretext of supplying sugar which was never supplied and thereby they have committed offences of cheating and criminal breach of trust.

10] The learned Additional Public Prosecutor then submits that huge amount of Rs.One Crore Fifty Lacs has to be recovered from the accused and without their custodial interrogation it would not be possible for the investigating agency to go on with the investigation. It is further submitted that applicant would hamper and tamper the prosecution witnesses. He would pressurise them to change their statements which would cause obstruction in the smooth investigation. Learned A.P.P. submitted that there is sufficient evidence showing prima facie involvement of applicant in the serious crime and in this background prays to reject the application in the interest of fair investigation.

11] As indicated above offences alleged in the present case are under Sections 420 and 406 of the Indian Penal Code. To attract offence under Section 420 of the Indian Penal Code it is necessary to see the definition of cheating.

Cheating is defined under Section 415 of the Indian Penal Code. The ingredients of cheating are : -

> “1. Deception of any person.
> 2. (a) Fraudulently or dishonestly inducing that person;
> (i) to deliver any property to any person, or
> (ii) to consent that any person shall retain any property,
> or

> (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

12] So far as offence under Section 406 of Indian Penal Code is concerned criminal breach of trust is defined in Section 405 of the Indian Penal Code. Following are the ingredients :-

> "1. Entrusting any person with property or with any dominion over property.
> 2. That person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation--
> (i) of any direction of law prescribing the mode in which such trust is to be discharged, or
> (ii) of any legal contract made touching the discharge of such trust. "

13] In the case on hand, most of the material facts which are undisputed are : -

(i) Complainant is Proprietor of Nikhil Enterprises at Nanded.

(ii) Applicant is Director of Tridhara Sugar Company Limited, Parbhani.

(iii) Tahsin Ahmed Khan is Chairman and Bahadur Ali Ibrahim Mujawar is Chief Executive Officer of Tridhara Sugar Company.

(iv) Tridhara Sugars is functioning since 2010.

(v) The company had resolved and authorised its Chairman, Director and Chief Executive Officer to enter into memorandum of understanding to sell sugar of season 2014-15 in advance to wholesale traders and commission agents of sugar.

(vi) On behalf of Company complainant was requested to give Rs.One Crore in advance for sale of sugar and accordingly complainant on 13.6.2014 and 17.6.2014 paid Rs.Fifty Lacs each through Banks.

(vii) Again at the request of accused Complainant paid Rs.Fifty Lacs through Bank.

(viii) Two memorandum of understanding dated 7.6.2014 and 22.7.2014 were executed by the accused.

(ix) Accused received the amount of Rs.One Crore Fifty Lacs from the complainant and did no supply sugar as agreed in the memorandum of understanding.

14] With these admitted facts, the crucial question which remains now for consideration is whether applicant is prima facie involved in the commission of alleged crime or not.

15] As appears from first information report main allegations against the accused are that they were knowing that they are going to close the Company and knowing well dishonestly collected the huge amount from the complainant. In this connection, reference is made to the notice issued by State Bank of India, Industrial Financial Branch, Aurangabad to the Company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. On the basis of this notice it is submitted that applicant and other accused were aware that they were irregular and their account was brought to NPA category, still they made a promise to supply the sugar to the complainant and obtained huge amount of Rs.One Crore Fifty Lacs from him.

16] It can be seen from the record that notice under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 was issued by the Bank on 18.10.2014. The memorandum of understanding executed by the accused was on 7.6.2014 and 22.7.2014. Notice was thus subsequent to the agreement to supply the sugar to complainant.

17] It means on the date of transaction there was no such notice and therefore allegations against the accused that they had knowledge that they would never commence the crushing season and accepted the amount appear to be against the record.

18] In the above premise and looking to the allegations in first information report, nature of offences alleged, severity of punishment, role attributed to applicant and the nature of dispute as it appears between the parties, this court is inclined to allow the application. Hence the following order.

<u>O R D E R</u>

(i) Criminal Application No. 5055 of 2015 is allowed.

(ii) In the event of arrest of applicant in Crime No. 223 of 2015, registered at Nanded (Rural) police station, Nanded, for the offences punishable under Sections 420, 406 r/w 34 of the Indian Penal Code, applicant shall be released on bail on P.R. and S.B. of Rs.50,000/- each.

(iii) Applicant shall not tamper with the prosecution evidence and shall make himself available as and when required.

[INDIRA K. JAIN, J.]

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