IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

A.B.APPLICATION NO.37 OF 2015

Nagesh Narayan Chhabria ..Applicant
-*Versus*-
State of Maharashtra ..Respondent

WITH

CRIMINAL APPLICATION NO.23 OF 2015

Ravi Nikhil Dass ..Applicant
Intervenor/complainant

In the matter of :

Nagesh Narayandas Chabriya .. Applicant
Origi.Accused
Versus

State of Maharashtra .. Respondent

Mr.A.P.Mundargi, Senior Advocate with Mr.M.Dey i/b. Diensh Tiwari & Associates for applicant
Mr.Arfaan Sait, APP for State
Mr.Anand Patil for intervenor/complainant in Appp No.23 of 2015
Mr.S.V. Patil, Head Constable Rajarampuri Police Station Kolhapur present.

CORAM : MRS.MRIDULA BHATKAR, J.
DATE : 7th April 2015.

P.C.

1] The applicant has moved this this application for pre-arrest bail. The applicant accused is facing charges under section 406, 420, 465, 468, 471 of the Indian Penal Code. Mr.Ravi Dass, original complainant has given information to the police pursuant to which an offence was registered under C.R.no.209 of 2014 at Rajarampuri Police Station. The case of the prosecution is that the applicant accused and the complainant are the partners. They had started a boutique of ready made garments vide partnership deed dated 31st October 2012. However, on 7th April 2014 without giving any intimation to the complainant, the applicant closed down the shop and he took all the stock and the furniture and transferred it to Belgaum. The complainant went to Belgaum and demanded his share in the said goods and the furniture and he claimed that the accused owed him Rs.30,65,000/- and as the applicant accused has taken away all the stocks and furniture with him to Belgaum by closing the Boutique at Kolhapur, he has cheated the complainant.

2] It is further alleged that the applicant/accused informed the complainant that the partnership firm is dissolved and the complainant and the applicant accused has prepared a deed of dissolution to that effect and he has forged the signatures of the complainant's wife thereon. He, therefore, gave a complaint to the police on 24th November 2014 and pursuant to which an offence came to be registered on 16th December 2014. Pre-arrest bail of the applicant was rejected by the sessions court. The learned Counsel for the applicant accused has submitted that the complainant and the applicant accused are the partners and there cannot be any case of misappropriation of the property. In support of his submission, he relied upon the ratio laid down in the case of <u>Velji Raghavji Patel Vs. State of Maharashtra reported in A.I.R. 1965 S.C. 1433.</u> He further submitted that the allegations made by the complainant against the applicant accused are false. The deed of dissolution of the partnership was executed by the parties on 31st March 2014 and as per the terms and conditions of the deed of dissolution, the applicant accused has paid loan of Rs.10 lakhs which was due and which was taken from Andhra Bank by the complainant. He further pointed out that the applicant accused has satisfied the loan of nearly Rs.15 lakhs of various creditors in their business. He submitted that there is no offence of forgery committed by the applicant accused. He submitted that as per the case of the complainant, if the original deed of dissolution was with him and the copy of the said deed of dissolution was handed over by the applicant accused to the complainant on 16th November 2014 that fact should have been reflected in his written complaint which was filed on 24th November 2014 or in the F.I.R. which was registered on 16th December 2014. He further submitted that the copy of the said agreement was not produced to the police on 25th November 2014. He has handed over the original documents and the deed of dissolution and, therefore, they are to be protected by pre-arrest bail order.

3] The learned Prosecutor and the learned Counsel for the complainant both, while opposing this application for pre-arrest bail, have submitted that the applicant accused has committed forgery by fabricating the deed of dissolution of partnership dated 31st March 2014. It is further submitted that custodial interrogation of the applicant accused is required because the said agreement is to be recovered from the applicant. The learned Counsel for the complainant has further submitted that the applicant/ accused has deceived him of Rs.30 lakhs and the said money is to be recovered. Unless the original document is seized, the investigation will not progress further.

4] The applicant accused and the complainant were the partners and it appears that they have monetary claims against each other. The court will not go into that. However, whether the custody of the applicant is required for interrogation in respect of the alleged forged deed of dissolution or not is a question which is to be considered. The incident of taking away the goods and transfer of the same to Belgaum has taken place on 7th April 2014. However, the complaint was given thereafter on 24th October 2014. As per the statement of the complainant, the fact of forged deed of dissolution was disclosed to him on 16th November 2014 at Belgaum by the applicant accused. A copy of the same was handed over to him on the same day.

5] However, he has not mentioned it in his written complaint on 24th November 2014 that the photocopy of the said deed was handed over to him. There are claims and counter claims in respect of who is having the original deed and there are also allegations against each one about fabrication of this document. However, it is to be taken into account that the applicant accused has paid an amount of Rs.10 lakhs to satisfy the loan which was in the name of the complainant. The receipts of the payment made in September and November 2014 are shown which is not denied by the complainant. The documents disclosing that there is repayment of loan of Rs.15 lakhs approximately to the creditors of this firm are also produced. In view of this, I am inclined to confirm the pre-arrest bail granted by this court on 14th January 2015. Hence, following order:-

(I) Application is allowed.

(II) In the event of arrest, the applicant/ accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.15,000/- with one surety in the like amount.

(III) The applicant shall not tamper with the evidence.

(IV) The applicant shall not indulge into any criminal activity.

(V) The applicant/accused shall not pressurise the complainant and other persons.

(VI) The applicant shall attend the concerned police station on every Monday between 4.00 p.m. and 6.00 p.m. till 7th May 2015 and thereafter as and when called till filing of charge sheet. The applicant shall cooperate with the investigating officer.

(Mrs.Mridula Bhatkar, J.)