IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1093 OF 2014

Mohit Aggarwal. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Rahul Rao i/b. Mr. P.R. Yadav, advocate for Applicant.

Mr. Aniket Nikam a/w. Ms. Anuja Jhunjhunwala i/b. Naik Naik & Co., advocate for intervenor in APPP 640/14.

Mr.Sandeep Karnik, advocate for intervenor in APPP 585/14.

Mr. Avhad, Spl. P.P.

Ms. R.M. Gadhvi, APP for State.

Mr. Wadhankar, Sr. P.I.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : JUNE 15, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned Counsel for the intervenors, and learned Special PP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein apprehends his arrest in Crime No. 216 of 2013 registered at M.R.A. Marg Police Station for offence under Section 120(B), 409, 465, 467, 468, 471, 474, 477A of the Indian Penal Code and Section 3 and 4 of the M.P.I.D. Act. The offence was transferred to Economic Offences Wing for the purpose of investigation and has been renumbered as C.R. No. 89 of 2013.

3 It is the case of the prosecution that on 30/9/2013 Pankaj Saraf lodged a report at M.R.A. Marg Police Station alleging therein that he is the director of M/s. Vostok Far East Securities Pvt.Ltd. His company is in the business of investment, trading and financing. That since 2012 he has been investing in trading contract offered by National Spot Exchange Limited (hereinafter referred as "NSEL"). On July 20, 2013 he was informed by his broker that NSEL has issued Press Release on 15/7/2013 stating therein that on 12/7/2013 NSEL had received a directive calling upon them to submit an undertaking that new contracts will not be launched until further instructions and that

existing contracts should be settled on the due date. The traders/investors were given an assurance that the existing contracts traded on spot exchange will continue. There were various press release issued by NSEL. The payments to be made to the complainant were deferred from time to time and he had learnt from the website of NSEL that he had defaulted in its payment obligations and that out of the amount of Rs. 174.72 Crores, which was promised to be paid out on August 20, 2013, the NSEL had managed to collect a meagre amount of Rs. 92 Crores. It was then realised that he has been cheated by the NSEL.

4 The principal allegation is that NSEL had cheated the complainant by creating false impression of being proper spot exchange with correct risk management system and induced him and others to trade on the spot exchange by misleading the investors that their trades were supported by genuine warehouse receipts. According to the complainant, there was trading of non-existent goods by issuing false warehouse receipts. The complainant has

referred to the news published in the newspapers about the fraud played by NSEL. The complainant had given list of their Board of Directors. The complainant had heard about the settlement and payment crisis at NSEL. According to him, the principal accused is Jignesh Shah. The complainant has also given list of 25 defaulters. One of the major defaulter is shown as Aastha Minmet India Pvt. Ltd.

5 The applicant herein happens to be director of Aastha Minmet India Pvt. Ltd.. It is a broking firm which had contractual relationship with NSEL. The firm deals with purchases and sales of the commodities for a commission. In short, Aastha Minmet India Private Ltd. is a broker. The said dealing covered by Forward Contracts (Regulations) Act, 1952 and Forward Contracts (Regulations) Rules, 1954. According to the applicant, he had not entered in illegal contract with NSEL. It is also submitted that there is no privity of contract between the applicant and the complainant or any of the investors.

6 It is vehemently submitted by the learned Counsel for the applicant that the liability of broker's firm is subjected to civil proceedings for recovery, if any and for that purpose, various safeguards are entered into contracts between NSEL and Astha Minmets Indian Pvt. Ltd. It is also submitted that the firm of the applicant had made attempts to act upon the clauses of arbitration. However, the said efforts with NSEL did not materialise. It is also submitted that the applicant herein has not forged any document or valuable securities nor there is falsification of account and hence, the applicant deserves pre-arrest bail.

7 The Learned Counsel for the applicant submits that since the firm of the applicant was named in the first information report, he had apprehended arrest and therefore, had filed ABA No. 1246 of 2013 before this Court in the vacation. This Court (Coram : A.P. Bhangale, J) had observed that the applicant had approached this Court without approaching the Sessions Court. However, the applicant had shown his willingness to appear before the Sessions

Court in the eventuality that they are protected for a limited period. Hence, by an order dated 31st October, 2013, the applicant was directed to appear before the Sessions Court within a period of 4 weeks and also make himself available for interrogation by the Investigating Officer as and when called upon, and was granted liberty to apply before the Sessions Court within 4 weeks, failing which the order would stand vacated automatically.

8 The learned Counsel for the applicant submits that he had applied before the Sessions Court within time frame by filing ABA No. 1750 of 2013. It is pertinent to note that at the threshold the applicant had submitted proposal for discharge of alleged liability and to satisfy the liability attributed to the Astha Minmets India Pvt. Ltd. The applicant had submitted before the said Court that the liability of Astha Minmets India Pvt. Ltd. as calculated by the company was approximately Rs. 13 crores. However, according to the EOW/NSEL, the liability was about Rs. 23 crores. The applicant had insisted upon reconciliation of his account with NSEL. The applicant

had disclosed his assets before the Court, which were free from any encumbrances for discharging the liability. He had cooperated with the investigating agency. It was submitted that the applicant could not make any payment in cash, since the bank accounts were seized. The company of the applicant is seized by the EOW and the plant was seized by the EOW. The applicant had given no objection for selling the land offered by him in lieu of the liability.

9 The Special Judge, MPID Act and Additional Sessions Judge, Bombay City Civil and Sessions Court, Greater Bombay vide order dated 12th August, 2014 was pleased to reject the application seeking pre-arrest bail. The Court had observed that although the properties of the applicant are secured, it is not an easy task to liquidate the secured assets.

10 The applicant has then approached this Court by filing the present application seeking pre-arrest bail. By an order dated 22nd August, 2014, this Court (Coram : Smt. S.S. Jadhav, J) had granted

interim protection to the applicant, since he was granted interim protection by the Sessions Court and the applicant had cooperated with the investigation agency. The original complainant has filed intervention application. Interim relief was extended and the applicant continued to cooperate with the investigating agency.

11 In the course of the hearing of this application, the Special P.P. had specifically submitted that one Modern India Pvt. Ltd. has filed Suit No. 173 of 2014 in this Court. Notice of Motion (L) No. 2235 of 2014 was moved. NSEL had prayed for addition of third party i.e. the present applicant. That Hon'ble Single Judge (Coram : R.D. Dhanuka, J) vide order dated 23/12/2014 has passed a decree. The assets disclosed by the third party i.e. present applicant is also a subject matter of the said decree. The applicant had given an undertaking for realisation of the liabilities fixed against him i.e. Rs. 240 Crores. The Hon'ble Division Bench of this Court had constituted a committee under Chairmanship of Justice V.C. Daga (retired) by order dated 22nd September, 2014 to enquire into and for reconciliation of the amount

in the present case. The applicant herein had appeared before the said committee and had filed an undertaking on the same line, as was submitted before the Special Court. The Committee is in the process of taking effective and expeditious steps for realising the undertaking given by the applicant.

12 The learned Counsel for the applicant upon instructions from the applicant had made a specific statement before this Court on 3rd March, 2015 that in no circumstances, the applicant would withdraw the undertaking or commit breach of undertaking given before this Court. As on today also, the applicant undertakes to appear before the committee on the scheduled dates and cooperate with the committee for realisation/execution of the undertaking given by the applicant.

13 Not only this, but the applicant has given the same undertaking before this Court also and assures the Court that he would abide by

his undertaking. It is in these circumstances, the applicant has prayed for pre-arrest bail.

14 Taking into consideration the facts that the applicant was granted pre-arrest bail initially on 31st October, 2013 and has been on interim protection since then, he has cooperated with the investigating agency to the best of his capacity and also the applicant has given an undertaking before the Special Court, High Court as well as the Committee constituted by this Court, the custodial interrogation of the applicant would not be imperative. The applicant further gives an undertaking that he would cooperate with the investigating agency and report to the office of the Economic Offences Wing as and when called. In view of this, the order passed by this Court on 22/8/2014 needs to be confirmed on the following terms and conditions.

15 Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 1,00,000/- and one or more sureties in the like amount.

(iii) The applicant shall report to the office of Economic Offences Wing as and when called. He shall cooperate with the Economic Offences Wing as well as before the Committee and abide by the undertaking given by him.

16 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)