IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1289 OF 2014
WITH
CRIMINAL APPLICATION NO. 766 OF 2014
(For Intervention)

Mr. A. Sudhaker Reddy ... Applicant
vs.
The State of Maharashtra ... Respondent

Mr. Subhash Jha a/w Mr. Swapnil Ambure i/b. Dinesh Tiwari & Associates,for the applicant.
Mr. M.G.Shukla for the Intervener.
Mr. Y.M.Nakhwa, APP, for the State

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 12th August, 2015.

P.C.

Heard. This is an application under Section 438 of Cr.P.C. The applicant herein is apprehending his arrest in Crime No.348 of 2013 registered at Andheri Police Station on 30.7.2013 for the offences punishable under Sections 465, 467, 468, 471, 420 read with Section 34 of IPC.

2. It is the case of the prosecution that on 30.7.2013, Purushotam Maheswari a representative of Overseas Infrastructure Alliance (India) Pvt.Ltd. (hereinafter referred to as "OIA/company") lodged a first information report at the police station contending therein that OIA

undertakes construction contracts outside India. OIA had bagged a contract for construction of 485 housing units at Maldives. They had signed a contract with the Government of Maldives. Since it was a big contract, it had become expedient to appoint a sub-contractor for completion of the project within the stipulated time. Therefore, OIA had floated a tender in May 2012. Several construction companies had participated. After scrutiny of the tenders, a sub-contract was awarded to the company named "M/s. A.S. Infratech Pvt.Ltd." (ASRIPL) for a total value of Rs.126 crores.That Mr. K.K.Menon, the Project President of ASRIPL was entrusted with the completion of the said project. That Mr. Menon had verified the credentials of A.S.Reddy Infrastructure Pvt.Ltd. On 13.8.2012, an agreement was executed between the complainant company and A.S.Reddy Infrastructure Pvt.Ltd.

3. It was agreed that the complainant company was to pay an advance payment of Rs.12.60 crore corresponding to 10% of the total contract value was to be deposited upon delivery of an Advance Bank Guarantee of equivalent amount and Performance Bank Guarantee for 10% of the contract value. The details were to be included in a format

given by the company. It was also agreed that the advance would become payable on a condition precedent with the advance bank guarantee and performance bank guarantee would b submitted to Ovrseas Infrastructure Aliance Pvt.Ltd. to the value of Rs.12.60 crore each. On 29.10.2012, Mr. K.K. Menon, Project President informed Mr. Roy the Divisional Head of accounts company that bank guarantee has been received from A.S.Reddy Infrastructure Pvt.Ltd. Hyderabad and therefore, it was necessary to make the advance payment as a condition precedent by the complainant. Mr. Menon was insisting upon making payment at the earliest. However, Mr. Roy had raised objections and had insisted upon the confirmation from the concerned Bank which had issued Bank guarantee and performance bank guarantee. An invoice was prepared for releasing of advance.

4. On 31.10.2012, A.S. Reddy Infrastructure Pvt.Ltd. had forwarded the Advance Bank Guarantee and Performance Bank Guarantee each for Rs.12.60 crore. The fact that the company was in operation at Hyderabad and the Bank guarantee being given from Maharashtra, the management had become suspicious. Upon further enquiry from a Bank, it

was confirmed that the said Bank guarantees are forged and fabricated. On 10.12.2012, Mr. Reddy had visited the company for obtaining advance payment from the company as per the agreement and the applicant-company was informed that both guarantees are forged. At that stage, for the first time, the applicant and his brother had informed the company that Rs.1,70,00,000/- were transferred to the account of Mr. K.K.Menon on 26.10.2012 for obtaining the bank guarantee and helping them to get the contract. On 18.12.2012, A.S.Reddy Infrastructure Pvt.Ltd. had tendered written submission in respect of the bank guarantee. On 11.1.2013, the complainant company was constrained to inform A.S.Reddy Infrastructure Pvt. Ltd. In respect of termination of the contract. The complainant company had submitted the bank guarantee of Indian Overseas Bank, New Delhi Branch to the Government of Maldives seeking 10 million dollars to complete the contract. The company had to pay Rs.15 klakhs quarterly to the Bank towards Bank guarantee charges and hence the company had sustained huge financial loss for operating, implementation and execution of the project. Hence, they have set the law into motion on 30.7.2013.

5. The applicant had approached the Court of Sessions seeking pre-arrest bail. The applicant was granted interim protection by the

Sessions Court in October, 2013. However, by an order dated 10.9.2014, the anticipatory bail application was rejected by the Sessions Court.

6. By an order dated 1.10.2014, this Court (Coram: Sadhana S.Jadhav, J.) had continued the interim relief since the Sessions Court had extended the interim relief till 9.10.2014. From time to time, the interim relief was extended.

7. The learned counsel for the applicant submits that the applicant herein had filed a report against the complainant company on the basis of which Crime No.54 of 2013 is registered by Nacharam Police Station for the offences punishable under Sections 406, 417, 420, 109, 120B, 464, 467, 468, 471 of Indian Penal Code. That the applicant had filed a private complaint. Pursuant to the directions under Section 156(3) of Cr.P.C. offence was registered. Purshottam Maheshwari, Vijay Vaid and Advait Chaturvedi had filed an application under Section 438 of Cr.P.C. That the said application was rejected on 29.6.2013. Being aggrieved the accused had approached the high Court at Hyderabad and filed Criminal Petition No. 6898 of 2013. The said application was withdrawn on 5.7.2013. It is pertinent to note that the said case i.e. the complainant in the present case

and others are not arrested till today. Purshottam Maheshwari had lodged the present case on 30.7.2013.

8. The learned counsel for the applicant has drawn the attention of this Court to the terms of the sub-contract agreement which was executed between the parties on 13.8.2012. The contract contemplated that the contract was for Rs.126 crorres which is full and final amount payable by OIA to ASRIPL. The price included all costs and expenses and there shall be no escalation of price. It was agreed between the parties that OIA was to pay ASRIPL as an advance payment the amount of Rs.12.60 crore upon delivery of a bank guarantee by ASRIPL of the total contract value in a format given by OIA. ASRIPL was instructed to contact Mr. K.K.Menon who is the Project in-charge and all communications in respect of the said contract were to be made through K.K.Menon. According to the learned counsel for the applicant, K.K. Menon had assured the applicant that he would arrange for the bank guarantees. ON 31.10.2012, the applicant had contacted K.K.Menon. Shri K.K. Menon had replied that the Bank guarantee will be submitted by 11.30 a.m. to OIA. The applicant had contacted Mr. Menon soon after 11.30 a.m. and Mr. Menon had replied by saying that the applicant shall not put pressure upon him. There was an

-email from Mr. Mithun Mule who informed that the Bank guarantee is received.

9. By a letter dated 17.12.2012, the present applicant had informed Mr. Vijay Vaid that the applicant had noticed a problem with the Bank guarantees issued towards advance payment. It was specifically informed that the bank guarantees had been arranged by Mr. Krishna Kumar Menon since he had informed that in the absence of bank guarantee things will not move forward. That Shri K.K. Menon had also assured the applicant and his company that OIA arranges facilities to sub-contractors through its network and by sourcing Bank guarantees from Bank branches of associate contractors who had huge unutilized limits. That Mr. K.K. Menon had solicited an additional cost for the same. That the applicant had paid the Bank guarantees commission and other incidental charges and the amount was deposited in the account of Mr. Menon.

10. By a letter dated 18.12.2012, it was informed to the Whole Time Director of OIA that K.K. Menon had agreed to arrange for bank guarantees on payment of charges of 10% towards Bank commission and on assurance by Mr. Menon the amount of Rs.1.70 crore was transferred in

his account towards Bank commission and other incidental charges. It was agreed to pay the balance of Rs.2.50 crore subsequently. That the applicant was informed by K.K.Menon that the Bank guarantee has been submitted. He had apprised the company that he was legitimately made to believe that the advance Bank guarantee and Performance Bank Guarantee were submitted by Mr. Menon and therefore, the applicant had expressed shock upon receiving the information on 17.12.2012 that the said Bank guarantees were not genuine documents.

11. On 11.1.2013, the applicant was informed that the bank guarantees and other documents are forged documents and hence the contract stood terminated forthwith

12. That the complainant was directed to appear before the Investigating agency on 31.7.2013 and 1.8.2013. It is pertinent to note that K.K.Menon has left the job since 2013.

13. The learned counsel for the applicant has also placed reliance upon the e-mails between the complainant and the applicant. Then es-mails exchanged between the applicant and K.K. Menon would specifically

establish that Mr. Menon was instrumental in obtaining those forged bank guarantees. It is alleged that a meeting was held at Mumbai to resolve the dispute. However, it did not materialize. Mr. K.K. Menon is also an accused in the present case. The applicant was residing with his mother. Mr. K.K.Menon has resigned from the company. He was arrested and enlarged on bail. It is the case of the prosecution that Mr. Menon had arranged a meeting of the proposed Bank guarantors along with the applicant at Nashik. That the applicant was present for the meeting and all arrangements for obtaining bank guarantees were made by Mr. K.K.Menon.

14. The learned counsel appearing for the complainant submits that although it is true that K.K. Menon was entrusted with the present project, he has resigned from the job. That the statement of the Bank Manager was recorded. He had stated that the Bank had not given the Bank guarantee, however, the Manager of the said Bank was present in a meeting at Nashik. That although it is true that the applicant had attended the meeting at Nashik, the Court cannot be oblivious of the fact that the persons to be appointed as guarantors were also called at Nashik.

15. The learned counsel for the applicant submits that the applicant

is not well-versed with the rules in Maharashtra. That the very fact that bank guarantees were issued from Maharashtra had caused suspicion. That the bank guarantees were to be arranged by K.K.Menon. The Bank Manager is alleged to have simply told the officer that he is not responsible for the same and therefore the Bank Manager is not shown as an accused. In fact, the first person to suspect the Bank guarantees would be the Branch Manager. However, no efforts are being made to arrest him. Only on the basis of the statements made by the Branch Manager, has been exonerated.

16. The learned counsel for the applicant submits that criminal prosecution is initiated against the present applicants only to coerce the applicant to withdraw the complaint filed by him. After being arrested, Shri K.K. Menon had categorically admitted that he has obtained the Bank guarantees of his own by contacting the respective Branch Managers. It prima facie appears that the Bank guarantees were filed ini the complainant company through K.K,.Menon and that the applicant was insisting upon him to verify the Bank guarantees. In the e-mail dated 24.10.2012, the applicant had asked Mr. Menon as to whether the approach would be correct and whether there has been proper verification. Mr. Menon had informed that the bank guarantees are genuine and that the applicant sent

his representative to verify the genuineness. The applicant had time and again reminded Mr. Menon that the transactions could be genuine. Mr. Menon had also informed the applicant that the job of the applicant is over and that the bank guarantees would be released from different banks. That on 17.12.2012, the applicant had informed Mr. Vaid that Mr. Menon is instrumental in obtaining the bank guarantees.

17. The learned counsel for the applicant submits that the applicant had paid huge amount to Mr. Menon towards commission for obtaining bank guarantees. The applicant is complainant in Crime No.54 of 2013. That the applicant has suffered loss because of the misrepresentation made by Mr. Menon to him. The applicant lost contract as well as huge amount. There is nothing on record to indicate that the applicant had personally approached any particular Bank for obtaining bank guarantees. The Court cannot be oblivious of the fact that the Branch Managers are not shown as an accused. In the above stated circumstances, custodial interrogation of the applicant would not be imperative. Hence, he would deserve pre-arrest bail. Till now, he has not joined the investigation.

18. It is made clear that the above observations are prima facie in

nature and are resterickted to an application under Section 438 of Cr.P.C. and shall not be considered for the purpose of quashing of FIR, discharge application and at the time of trial.

O R D E R

(i) In the event of his arrest, the applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs.50,000/- with one or two sureties in the like amount.

(ii) The applicant shall report to the concerned police station on first Sunday of each month till the conclusion of the trial and co-operate with the investigating agency to the best of his capacity.

Application stands disposed of.

19. Intervention Application is heard, allowed and disposed of.

(SMT.SADHANA S.JADHAV, J.)