

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

CRIMINAL APPLICATION NO.6656 OF 2015

Vijay s/o Arjun Patil,
Age 40 years, Occu. Business,
R/o at Post Parivardha,
Taluka Shahada,
District Nandurbar,
at present residing at Flat No.8,
Vishwadhara, Near ABB Circle,
Trimbak road, Mahatma Nagar,
Nasik, District Nasik

..Applicants

Versus

1. The State of Maharashtra,
through P.I. Shahada Police
Station, Shahada,
Taluka Shahada,
District Nandurbar

2. The Superintendent of Police,
Nandurbar, Dist. Nandurbar

..Respondents

Mr K.C. Sant, Advocate for applicants
Mr S.M. Ganachari, A.P.P. for respondents
Mr Amit S.Savale, Advocate for complainant, assisting A.P.P.

- WITH -

CRIMINAL APPLICATION NO.2 OF 2016

1. Birendra s/o Yogiraj Bharadwaj,
Age 41 years, Occu. Business,
R/o Arpan Apartment, Saubhagya
Nagar, Nashik road, Nashik

2. Abhijit s/o Balasaheb Chavhan,
Age 38 years, Occu. Business,
R/o Kritika Apartment, Saubhagya
Nagar, Nashik road, Nashik

.. Applicants

Versus

. The State of Maharashtra,
through Shahada Police Station,
Shahada, District Nandurbar

.. Respondent

Mr S.G.Kawade, Advocate for applicants
Mr S.M. Ganachari, A.P.P. for respondent

Mr Amit S. Savle, Advocate for complainant, assisting the A.P.P.

CORAM : N.W. SAMBRE, J.

DATE : 20th January 2016

PER COURT

Heard.

2. The applicants are seeking pre-arrest bail in Crime No.194/2015 registered on 2nd November 2015 at Shahada Police Station, District Nandurbar, for the offence punishable under Section 420 read with Sec.34 of Indian Penal Code.

3. The prosecution case as against the present applicants is that one Vijay Patil introduced the remaining applicants through a company who are expert in developing floriculture, which is used for execution of Poly House. Upon mortgaging of the land of the complainant, the Nationalised Bank financed amount of Rs.51 lakhs of which 50% amount was paid to the said company of the applicant, however, against the payment of Rs.25,65,000/-, it is claimed that the applicant through their company has not executed any work and rather has duped the present complainant.

4. The complainant thereafter filed complaint with the Police Station resulting into present applicants approaching the police station with an offer for settlement and have executed an agreement to that effect, however, same was also not honoured.

5. Mr Sant, learned Counsel, appearing for the applicant Vijay Patil in Criminal Application No.6656 of 2015 with Criminal Application

No.127 of 2016 would urge that the applicant is instrumental in supplying the raw material to the main company and as such, was paid an amount of Rs.7,77,000/-. He would then urge that the applicant has supplied the material for the amount received and as such, his liability ends to that extent. Mr Sant then would urge that the liability of the company of which the applicant is neither a partner nor beneficiary, but worked for the company for execution of civil work. According to him, in view thereof, the custodial interrogation of the applicant is not necessary and applicant is entitled for pre-arrest bail.

6. Learned Counsel for the applicants in Criminal Application No.2 of 2016 would urge that the applicants are entitled for pre-arrest bail, in view of the fact that there was agreement of execution of work in between complainant and the applicants. He would then urge that the work to certain extent was executed, however, on failure of complainant to pay the balance amount, the work could not be executed in favour of complainant. He would further submit that failure to comply with the contractual obligation would give right in favour of complainant to take recourse of filing of suit for recovery, however, in absence of mens rea, applicants cannot be held responsible. He submits that the applicants hold immovable property and have reputation in the society and as such, their custodial interrogation of the applicants is not necessary as hardly there is anything required to be seized from the applicants.

7. Learned A.P.P., who was assisted by learned Counsel for the complainant has strenuously opposed the applications on the ground that the applicants connived with each other and by playing fraud on complainant, have dealt with the amount of Rs.25,65,000/- three years back. It is further urged that the spot panchnama and other investigation papers speak a volume about the mens rea of the applicants in the matter of commission of crime in question and has prayed for rejection of the applications.

8. With the assistance, I have perused the investigation papers of the present case.

9. It appears from the investigation that the account No.2110135000000854 in the Vysya Bank is in the name of Floriculture Technology private limited, in which the applicants are partners/beneficiaries, on 1st August 2013 the balance amount was Rs.3,099,934/- after the said company received an amount of around Rs.26 lakhs from the complainant. The applicants thereafter distributed the said amount amongst themselves, as is perused from the entries in the account of the said company, instead of executing the work for which the amount was received by them.

10. When the matter was taken up with the Police, the applicants have executed an agreement to repay the loan amount and have issued cheque in favour of complainant, which was also dishonoured for which the complaint under the Negotiable Instruments Act is already pending.

11. So far as applicant Vijay Patil is concerned, he is direct beneficiary from the account of Floriculture Technology Private Limited, as he was the person instrumental in introducing the said applicants to the complainant and assured the execution. The applicant Vijay Patil has received Rs.7,77,000/- by cheque from the said company and claimed to have spent the same on the execution of certain work, however, fact remains that the spot panchnama and the inspection by the Bank, which financed the loan in question speak a volume about the non-execution of the work in question.

12. From the above, the criminal intention on the part of the present applicants in commission of crime in question is writ large.

13. As such, both the applications fail, stand rejected.

14. At this stage, learned Counsel for the applicants in Criminal Application No.2 of 2016 prays for continuation of interim protection for a period of four weeks.

15. As such, the interim protection granted by this Court vide order dated 1st January 2016 in Criminal Application No.2 of 2016 to continue for a period of four weeks from today.

(N.W. SAMBRE, J.)

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