IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 193 OF 2016

Mr. Prakash Gowda Kalver … Applicant
vs.
State of Maharashtra … Respondent
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Mr. Ritesh Thobade for the Applicant.
Ms. S. S. Kaushik, APP for the State.
Mr. Vaghela - Intervenor.
Mr. Prakash Chougule, PSI, Parksite Police Station – Present.
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CORAM : A. S. GADKARI, J.
DATE : 30.09.2016.

P.C.:

1. This is an application under Section 438 of the Cr.P.C for pre-arrest bail in C.R. No. 2 of 2016 registered with Parksite Police Station, Vikhroli, Mumbai, under Section 406, 420, 120 (B) read with 34 of the Indian Penal Code.

2. Heard the learned counsel for the applicant, the learned counsel for the original complainant and the APP. Also perused the documents annexed to the application and the report of investigation.

3. The first information report dated 01.01.2016, is lodged by Shri Ketan Kantilal Bhayani the director of M/s. Coating and Coating (India) Pvt. Ltd. It is stated in the first information report that the company of the complainant is in the business of

manufacture of polish and other foundry chemicals which are generally used for polishing the wood and for the same purpose, they required Special Denurated Spirit (SDS). That the complainant was having acquaintance with Shri Ketan Bhatt (co-accused). The said Mr. Ketan Bhatt is a commission agent acting in the field of chemicals. The company of the complainant was in need of 15 lakh liters of SDS for its supply to M/s. Gujarat Narmada Valley Fertilizers and Chemicals Ltd., Bharuch, Gujarat. That the said Mr. Ketan Bhatt introduced the complainant with the present applicant. The present applicant is the owner of M/s. Balaji Molasses and Sugar Pvt. Ltd. The applicant represented the complainant that he is capable of providing the said 15 lakh liters of SDS to the complainant. In view of the discussion and deliberations between the complainant and the applicant, the rate of the said SDS is fixed at Rs. 26.75 per liter inclusive of all taxes. It is further stated in the report that the applicant assured the complainant that he will supply and provide the said 15 lakh liters SDS to the complainant on or before 31.5.2015 at the prescribed rate. It was also represented to the complainant that in view of the order dated 24.4.2007 passed by the High Court, Bombay in Writ Petition No. 3102/2007, the transport permit and or transport license from the State Excise Department is not necessary. On the basis of the representation and assurance given by the applicant, the complainant entered into the contract with the applicant. The applicant thereafter represented the complainant that unless and until the entire amount involved in the present transaction i.e. Rs.4,01,25,000/- (Four Crore One Lakh Twenty-five Thousand only) is either deposited with or paid to the applicant's company, the said goods will not be delivered to the complainant. In pursuance thereof the complainant deposit the aforesaid total amount of Rs. 4,01,25,000/- in the account of M/s. Balaji Molasses and Sugar Pvt. Ltd. in its bank account with the Bank of Baroda, Amar Jyoti Nagar Branch Bangalore. After the amount is deposited in the said account, the applicant thereafter represented the complainant that instead of the said goods being delivered by the applicant's company, the said goods i.e. SDS will be delivered from M/s. John Distilleries Chitali, Ahmednagar and for the said purpose, certain chemicals will have to be provided to the said company for mixing it in the SDS. That, accordingly, the complainant provided 15000/- liter of Ethyle Acitate and 60kgs of Dinatonium Saccaride to M/s. John Distilleries Private Limited on 12.5.2015. It is further stated in the report that on 28th May 2015 the said M/s. John Distilleries informed the complainant that as there is no license issued by the State Excise Department, they will not be able to provide the said goods i.e. SDS to the complainant. The complainant thereafter contacted the Superintendent State Excise Department Ahmednagar and discussed the matter with him it was informed to the complainant that the license for transport of the said goods i.e. SDS is necessary from the State Excise Department. In the meantime the period for completion of the contract was over and therefore the applicant informed the complainant that the amount deposited by the complainant is forfeited and if the complainant was desirous to have goods from the applicant, the complainant must enter into a fresh contract at prevailing market rate. The complainant, therefore, realized that the applicant, with a view to cause wrongful loss for the said huge amount and with a view to have wrongful gain to himself, has committed criminal breach of trust. He further realized that the applicant has also committed an offence as contemplated under Section 420 of the Indian Penal Code. It is therefore stated in the report that the persons mentioned in the first information report in conspiracy have made the complainant to pay the aforesaid amount to the applicant and subsequently had committed the criminal breach of trust. In the premise, the first information report is lodged.

4. The learned counsel for the Applicant submitted that there was and is no intention of the applicant to commit the criminal breach of trust and/or cheating. He submitted that there is a specific clause for arbitration in the agreement and if the complainant intends to avail any legal remedy, he has to adopt the arbitration proceedings for recovery of the said amount. He further submitted that from the perusal of the first information report itself, it is apparent that the applicant did not had any intention to commit the crime as alleged. He further submitted that it is only because of the non-issuance of the said license by the State Excise Department, the Applicant could not supply the agreed goods to the complainant. He further submitted that the investigation of the present offence is based on documentary evidence and for that purpose the custodial interrogation of the applicant is not necessary. He therefore prayed that the Applicant may be granted pre-arrest bail.

Per contra, the learned APP vehemently opposed the Application. The learned counsel appearing for the original Complainant also supported the learned APP in her opposition.

5. At the outset it is to be noted here that after perusing the papers pertaining to the present crime, it is apparent that the Applicant was well aware of the fact that the permission and or license from the State Excise Department was necessary and required for the supply of the said SDS and the applicant since inception of the contract, deliberately misrepresented the complainant about the same. He further extended false promise to the complainant for delivery of the said 15 lakh liters SDS. It further appears from the record that though the applicant was well aware of the fact that he was unable to either manufacture, procure and supply the said 15 lakh liters of SDS to the complainant, he misrepresented the complainant about same and induced the complainant to part with the huge amount of Rs.4,01,25,000/-. The record reveals that said amount has been deposited by the complainant in the account of the Applicant at Bank of Baroda, Amar Jyoti Nagar Branch, Bangalore. It is further clear from the record that the Applicant had thereafter siphoned all that amount and has defalcated it. After perusing the entire record available before me, it appears that the applicant, since inception, was having an intention to commit the present offence as alleged against him. The applicant did not enter into the agreement with

bonafide intention and it was the malafide intention since inception at the command of the Applicant, due to which he persuaded the complainant to deposit the said huge amount in his account.

6. The learned APP, on instructions, submitted that there are antecedents at the discredit of the Applicant. The learned APP, on instructions, submitted that the Applicant is also an accused in C.R. No. 121 of 2014 registered with Subramaniam Police Station, Bangalore, under Sections 406, 420 read with 120 B of the Indian Penal Code. He further submitted that the Applicant is alleged to have adopted the same *modus operandi* while committing the said crime. That when the Applicant was on pre-arrest bail in the said crime, he has committed the present crime which makes him disentitled from getting a relief of pre-arrest bail in the present crime.

7. After taking into consideration the serious allegations against the Applicant, the gravity of the offence and the necessity to unearth the entire truth behind the crime, in the considered view of this Court, the Applicant is not entitled for grant of pre-arrest bail. The application is, accordingly, dismissed.

(**A. S. GADKARI, J.**)