

Rane

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ABA-122-2015
A/W. ABA-254-2015
A/W. ABA-195-2015
Monday, 21.11.2016
sr.no.9

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 122 OF 2015

Arun Kamal Minocha

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 254 OF 2015

Parag Vinodrai Vora

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

ALONGWITH
ANTICIPATORY BAIL APPLICATION NO. 195 OF 2015

Harshadkumar Kantilal Modi
and anr.

.....Applicants

V/s.

The State of Maharashtra

.....Respondent

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Mr. S. Mukri i/by. India Law, Advocate for the applicant in ABA-122-2015.

Mr. Ayaz Khan, Advocate for the applicant in ABA-195-2015.

Smt. Rutuja Ambekar, APP for respondent, State.

CORAM :- N.W. SAMBRE, J.

DATED :- 21st NOVEMBER, 2016.

P.C. :-

- 1). Heard.
- 2). All these applicants are seeking pre-arrest bail in Crime No. 05 of 2015 for offences punishable under Sections 120(B), 420, 468, 471 read with Section 34 Indian Penal Code.
- 3). The prosecution story, as appears from the record is, Tata Housing Corporation had an understanding with accused, Parag Vora for procurement of TMT Reinforced Steel Bars, who in turn procured the same from accused, Harshadkumar Modi and Rushid and supplied it to TATA Housing Corporation of which accused no.4, Arun Minocha appears to be Vice President (Procurement).
- 4). It is the case of prosecution that, the entire material was

procured from the complainant as he was given an understanding that the supplies which were made by the complainant will be adequately paid. It is claimed in the complaint that, supply of TMT bars was made against the Letter of Credit and the Letter of Intent, the Delivery Challan.

5). In the above referred background, while trying to make out a case for grant of bail, the learned Counsel for the applicants would urge that, there are no criminal antecedents and the applicants are very much available for investigation and if so required for further prosecution. A submission is also made at bar hereto that, the applicants are trying to settle the matters. It is then claimed that, since 2015 the ad-interim protection that is ordered since is not misused, looking to the observations made by the Apex Court in the case of **Siddharam Satlingappa Mhetre V/s. State of Maharashtra and Ors., reported in (2011) 1 Supreme Court Cases page 694**, the applicants bail needs to be confirmed.

6). The learned APP, strenuously opposes the application on the ground that there is sufficient material on record to indicate the applicants active participation in the matter and hatching out a conspiracy, practising fraud thereby cheating the complainant for an amount of more than Rs.3 crores. The APP then submits that, the applicants custodial interrogation is necessary and as such sought rejection.

7). Having bestowed my thoughts to the submissions made,

it is required to be noted that the applicant, Arun Minocha appears to be the Vice President (Procurement) of TATA Housing. So far as, applicant Arun is concerned, he was never a party to the order of procurement which was issued by TATA Housing Corporation through some other senior officers. In that view of the matter, it is really difficult to infer that the applicant, Arun has played an active role in the commission of crime in question. There is one more facet to the matter and that is, accused no.3, Parag Vora was given an order to supply TMT bars to TATA Housing Corporation and against advance payment of about Rs.3 crores towards security, the said accused has given cheques and also executed a bond. The said accused has admittedly not supplied the material and was required to be prosecuted for an offence punishable under Section 138 Negotiable Instruments Act in which he appears to have come out with a novel idea of settling the said proceedings initiated by TATA for an offence punishable under Section 138 of Negotiable Instruments Act by promising supply of TMT bars as promised earlier and made them withdraw the said prosecution. Said accused, thereafter caught hold of Harshad Kumar and Rushi Modi and got the order of supply of TMT Bar executed. Accused, Parag Vora in an calculated manner practised fraud alongwith other accused on the complainant.

8). The accused, Parag as such got settled his proceedings under Section 138 Negotiable Instruments Act with TATA Housing Corporation, however, has hatched a conspiracy and practised fraud

in the matter on the present complainant by securing supplies of TMT bars based on the alleged Letter of Credit, Letter of Intent, Delivery Challans through other co-accused.

9). The Letter of Credit, though appears to be a blank document (the format of the bank), the same hardly connects accused Arun Minocha of TATA Housing to the crime in question.

10). So far as the remaining transaction qua procurement of TMT bars, supplies thereto and non-payment, the applicants namely, Harshad, Rushi Mody and Parag Vora appears to be the main accused who has actively participated in the commission of crime.

11). The statement of the witnesses, Ankur Thakkar and the witnesses who happen to be the employees of the complainant and also independent witnesses speaks voluminous about the *prima-facie* involvement of the rest of the accused. In this background, in my opinion, it will be appropriate to reject the application being Application No. 254 of 2015 moved by accused, Parag Vora and Application No. 195 of 2015 moved by accused, Harshad and Rushid Mody. Their Bail Applications are hereby rejected.

12). So far as accused, Arun Minocha is concerned, in the event of arrest, be released on P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one surety in the like amount and shall attend the police station as and when called.

13). Though the learned Counsel for the applicants, was right

in pointing out that, for almost for a period of one year, the applicants were enjoying protection from this Court, however what is reflected from the record is that the protection was with an intention to settle the dispute between the parties. However, it appears that the applicants have misused the same and are trying to claim benefit out of it for confirmation of pre-arrest bail.

14). At this stage, the learned Counsel for the applicants, whose bail applications are rejected, seeks 4 weeks time which is opposed by the learned APP. However, looking to the fact that, the applicants were on bail throughout a period of almost one year, the protection is extended by a period of 3 weeks.

(N.W. SAMBRE, J)