IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEALLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 843 OF 2016

Mr. Ashish s/o. Balkrishna Gupta .. Applicant
Versus
The State of Maharashtra .. Respondent

Mr. P.H. Jaggi i/b Mr. A.M. Saraogi, Advocate for the Applicant.
Ms. S.S. Kaushik, A.P.P. for the Respondent – State.
Mr. Ashutosh Thipsay i/b M.V. Kini & Co., Intervener.

CORAM : N.W. SAMBRE, J.

DATED : 24th NOVEMBER, 2016.

P.C. :

1 The applicant is seeking pre-arrest bail in Crime No.179 of 2015 for the offences punishable under sections 409, 420 of the I.P.C.

2 The alleged incident dated 16.11.2013 to 10.12.2013. The prosecution story as appears in the present matter is that the applicant is a Proprietor of one Shri Sati Travels which has entered into an agreement for sale of tickets of the complainant Air India. The Air India thereafter become member of IATA so did the present applicant and as such policy was changed qua the mode of payment to be adopted by the applicant. The applicant was thereafter required to deposit the payment against air tickets sold by him with IATA and the complainant Air India was required to claim its payment from IATA.

3 It is case of the complainant that all went well up to 2013 and from 15.11.2013, the present applicant has stopped depositing the amount

of air ticket sold by him resulting into liability of Rs.10,01,83,574/-. It is claimed in the complaint that since the applicant has not deposited the amount in IATA the complainant is not in a position to get the said amount. It is also claimed that the applicant has already collected the said amount against air tickets that he has sold.

4 In this background the learned counsel for the applicant strenuously urge that the present matter needs to be adjourned in view of invoking the arbitration agreement. The next submission of the learned counsel for the applicant is in view of clause 7.2 of the business agreement between the present applicant and complainant, by taking recourse to criminal proceedings the obligation therein cannot be enforced. The relation between the complainant and the applicant are contractual in nature and at the most a civil dispute will lie. He would rely upon the judgment of Delhi High Court in the matter of Delhi Express Travels Pvt. Ltd. Vs. International Air Transport Association and others delivered on 28.05.2009 in I.A. No.13094 of 2007 in CS (OS) No.1044 of 2007, so as to canvass that liability if any, against the present applicant can be enforceable only against IATA of which the applicant is member.

5 The above referred submissions of the applicant are considered in the light of the material which is available on record. The contents of the F.I.R. prima facie depicts that the applicant initially entered into an agreement with the Air India for sale of its tickets and after deducting the amount of commission, the balance consideration was deposited with the Air India. Subsequent thereto after the change in policy an IATA was brought into in between the applicant and the complainant so as to facilitate the business. The fact remains that the applicant was required to

deposit the amount with IATA and IATA thereafter used to transfer the same to the Indian Air Lines which in the present case is already received by the applicant out of sale of the tickets.

6 It is from 16.11.2013 till 10.12.2013, the applicant has generated business tune of Rs.10,01,83,574/- however has not deposited with IATA or with the complainant Air India, which has promoted them to file the criminal complaint.

7 Upon reading of the contents of the agreement as cited, I hardly see any insulation in the criminal proceedings conferred on the present applicant particularly in case when it is not in dispute that the applicant has received an amount of Rs.10 crores which was payable to the Air India through IATA or directly.

8 The judgment of the Delhi High Court as is relied upon though speaks of the principle liability of the IATA however in this case what could be gathered from the factual matrix is the applicant has even not deposited the amount with the IATA and as such prima facie what could be inferred is the applicant is involved in the commission of crime in question.

9 In this background, no case for bail is made out. Hence, application is rejected.

(N.W. SAMBRE, J.)