

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1210 OF 2015

Prashant K. Jha alias Banti ... Applicant

Vs.

The State of Maharashtra ... Respondent

with

ANTICIPATORY BAIL APPLICATION NO.1211 OF 2015

Rajan Kumar Mishra ... Applicant

Vs.

The State of Maharashtra ... Respondent

Mr.J.S. Kini i/b Suresh Dubey for the Applicantss
Ms.Rutuja Ambekar, APP, for Respondent – State

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: MARCH 15, 2016

P.C.:

1. The applicant-accused are facing charges under sections 420, 109 r/w section 34 of the Indian Penal Code in C.R. No.76 of 2015, which is registered on 24.7.2015 at Sewree police station, Mumbai. It was registered at the instance of one Yogita Patil. It is the case of evasion of octroi by the applicants-accused and the co-accused. It is the case of the prosecution that the applicants-accused alongwith the co-accused and also the officers from the Octroi checkpoint had conspired and used to prepare forged documents and fake invoices in the name of one Shubham

Enterprises and by showing less quantity and weight of the goods facilitated more goods and weights to enter Mumbai and thus, evaded octroi which is payable under the Municipal Corporation Act and also committed offence under section 478 of the said Act.

2. The learned Counsel for the applicants-accused submitted that the applicants-accused is innocent and even if, according to the prosecution, it is considered that he has committed an offence, he is covered under the ratio laid down in **Arnesh Kumar vs. State of Bihar & anr**¹.

3. The learned Prosecutor appearing for the State submitted on instructions from the Investigating Officer, that the applicants-accused are required for custodial interrogation as there is a forgery and fraud and a particular modus operandi is used to evade the octroi tax.

4. The offences under which the applicants-accused are prosecuted are all described and the punishment is upto 7 years and, therefore, covered directly under the ratio laid down in **Arnesh Kumar (supra)**. In **Arnesh Kumar (supra)**, section 41 of the Criminal Procedure Code is explained and specific directions are given to the police officers to give notice to the applicant-accused, if it is not given. On query, the learned Prosecutor has made statement that such notice under section 41A is not served in the present case.

1 (2014) 8 SCC 273

5. In view of this, therefore, it is directed to serve notice on the accused persons immediately and steps to be taken under section 41A of Criminal Procedure Code. After issuance of such notice, if the police wants to arrest the applicants-accused, they shall give an advance 24 hour notice to the applicants-accused.

6. Anticipatory Bail Applications are disposed of accordingly.

(MRIDULA BHATKAR, J.)