

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1256 OF 2015

Ganesh Purshottam Sanwal

.....Applicant

V/s.

The State of Maharashtra

.....Respondent

* * * * *

Mr. C.K. Pendse i/by. Mr. R.A. Kale, Advocate for the applicant.

Smt. Rutuja Ambekar, APP for respondent no.1, State.

Smt. V.R. Raje, Advocate for respondent no.2.

CORAM :- N.W. SAMBRE, J.

DATED :- 16th NOVEMBER, 2016.

P.C. :-

1). Heard.

2). The applicant is seeking pre-arrest bail in Crime No.96 of 2015 for the offence punishable under Sections 408, 420, 465, 468, 471 Indian Penal Code.

3). It is the case of the complainant, a Logistic Company that the applicants services were hired for the purpose of operation

of handling and providing necessary logistic support for transporting the heavy machineries for a period between 13th February, 2012 to 14th July, 2014. It is the case of the complainant in the FIR that present applicant has misappropriated amount to the tune of Rs.2,88,87,350/- while supervising the operation of transportation.

4). Perusal of the FIR depicts that certain instances are narrated and the parties who have hired the services of the complainant have issued communication that the services were not hired by the said agencies of the original complainant still the Account reflects payment.

5). In this background, while trying to make out a case for pre-arrest bail, the learned Counsel for the applicant submits that pursuant to an MOU entered into between the complainant, Lakshya Global Logistics Private Limited and the present applicant on 17th May, 2011 the applicant was working for the complainant. According to him, there is a serious dispute between the complainant and the applicant as regards the payment of salaries/part of profit to which the applicant was entitled to. In addition, he would submit that the instances as placed on record, does not justify the existence of any criminal motive on the part of the applicant as the Memorandum of Understanding (MOU) empowers the present applicant to spend sufficient amount for the requirement of operation of the business in question which requires hard cash. He would then urge that it is only with an intention to

deny the present applicant of his legitimate right of appropriate profit from the business, the applicant is implicated in a false crime.

6). While opposing the application, the learned APP who is assisted by the learned Counsel for the applicant would strenuously urge that the crime in question being an economic offence, the Court should view it vividly and the prayer for pre-arrest bail needs to be rejected as the material placed on the record demonstrates necessity for custodial interrogation. Reliance is also placed on the extract of the applicant's account and it is urged that the applicant has caused loss with an intention to commit the crime in question.

7). Having bestowed my thoughts to the submissions made, it is required to be noted that the relationship between the complainant and the applicant could be borne out from the MOU executed on 17th May, 2011 which is not in dispute. The terms thereof permits the present applicant to have cash from the complainant for the purpose of operation of business of transportation. The said amount for the purpose of operation of business of transportation is required to be given to the applicant in addition to entitlement for profit from the business operations as is apparent from the terms of the MOU.

8). But for the allegations of certain instances, there is hardly any material either in the case diary or in the form of affidavit-in-reply on record so as to infer, *prima-facie*, involvement of the applicant in crime in question. Rather, the instances as are narrated in the FIR and the statement of the employees of the

complainant does not take Court to the only conclusion that the applicant is, prima-facie, involved in the commission of crime in question.

9). What appears from the record is the relation between the applicant and the complainant was that of contractual in nature and there appears to be dispute as regards the payment of amount which could be appropriately gone into before the proper forum.

10). In the above referred background, in my opinion, a case for grant of pre-arrest bail is made out. The application stands allowed. In the event of pre-arrest of the applicant, the applicant be released on P.R. Bond of Rs.50,000/- (Rs. Fifty Thousand only) with one surety in the like amount.

11). The applicant shall attend police station on Monday and Thursday initially for a period of four weeks between 10 to 12 a.m and thereafter as and when called.

12). The applicant shall not tamper with the evidence and witnesses in any manner whatsoever.

(N.W. SAMBRE, J)