

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO. 459 OF 2016

(Ravi Omprakash Agrawal Vs. The State of Maharashtra)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders

Shri Avinash A. Gupta, Senior Advocate with Shri Aakash Gupta and
Shri P. S. Jaiswal, Advocates for the applicant.
Shri S. S. Doifode, A.P.P. for the State.

CORAM : S. B. SHUKRE, J.

DATED : SEPTEMBER 14, 2016

This application filed under Section 438 of the Criminal Procedure Code, 1973 seeks release of the applicant on anticipatory bail in Crime No.156/2016 registered at Police Station, Lakadganj, Nagpur at the instance of Economic Offences Wing, Nagpur for offences punishable under Sections 420, 468, 471, 477(A), 120-B and 201 of the Indian Penal Code and also for an offence punishable under Section 23(1) of the Securities Contracts (Regulation) Act, 1956 (for short, the Act, 1956). This crime has been registered against the present applicant, his brother Niraj Agrawal and one Nimit Mehta, alleged to be an employee of the present applicant.

The allegation is that, this applicant is the Director of L-7 group, an entity consisting of several registered companies, having an office situated at Plot No.36, Gandhi grain market, Telephone Exchange Chowk, Central Avenue, Nagpur and the applicant, with the

help of the co-accused, used to run a parallel Stock Exchange/Multi Commodity Exchange, not recognized by the Securities and Exchange Board of India (SEBI) or the competent authority and to that extent, the applicant and the co-accused carried on illegal trading in shares as well as different commodities.

For carrying on trading of shares and commodities, a person or association of persons must possess the license issued by the competent authority and the shares or the commodities being traded in must be listed on the recognized stock exchange or multi-commodities exchange and the trading must be carried out by using the platform of recognized exchange. If any person uses another platform, not recognized by the SEBI or the competent authority for such trading, it would be against the provisions of the Act, 1956. Such illegal trading in shares and/or commodities is called in colloquial language, the “*Dabba Trading*”. By indulging in such illegal trading in shares and/or commodities, loss is caused to the public exchequer as there is evasion of Government taxes.

It is the case of the prosecution that all these softwares, which enabled carrying on of such illegal trading in shares and/or commodities, were found to be installed at the office of L-7 group at Nagpur and one of the co-accused, Nimit Mehta, as per the statement made by him, was found to be carrying on such illegal trading in

shares and/or commodities. According to the prosecution, such business of illegal share trading was being carried out by Nimit Mehta on the directions of this applicant and with the help of the co-accused Niraj Agrawal and another employee Raunak Suchak, who is not made an accused in this crime. This was discovered on 12/5/2016 when, on a secret information received by the Investigating Officer, a raid was conducted on the office of L-7 group, Nagpur. On that day, search cum seizure panchanama was also drawn out and some articles and documents were seized. This panchanama, dated 12/5/2016, however, shows that no incriminating documents were found.

Shri Avinash Gupta, learned Senior Counsel for the applicant submits that this is a case wherein even no suspicion against the applicant could be raised. He submits that this applicant was Director of L-7 Software Private Limited Company in the year 2013 and w.e.f. 21/7/2014, he ceased to be the Director of this Company. He further submits that there is no such entity as L-7 group in existence and, therefore, there is no question of this applicant being the Director of L-7 group. He submits that the applicant is Director of some other companies which had nothing to do with the development of softwares or dealing in softwares. He further submits that the applicant being not the Director of L-7 Software Private Limited

Company, had no control over the affairs of that Company which were also being carried on in the office of L-7 group of companies at Nagpur. He further submits that if any data or the hard disks have been seized from the Mumbai office of L-7 Software Private Limited, the applicant, having no concern whatsoever with that Company, could not be connected in any manner to those seizures or data contained in the hard-disks. He further submits that as per the own case of the prosecution, one Sanket Khemuka is the Director of L-7 Software Pvt. Ltd. Company and, therefore, he could be the person who may be having knowledge about the affairs of that Company being carried on from its Mumbai office and not this applicant. But, he points out, Sanket Khemuka has not been made an accused in the present case.

Learned Senior Counsel further submits that although Nimit Mehta, the co-accused, as per the prosecution case, may have stated that some share trading was done by him by using the softwares installed in the office of L-7 group at Nagpur, the law would require that there is some corroboration to what Nimit Mehta has been saying or at least it is found that prima facie, the offence of illegal share trading has been committed. But, he further submits, in spite of ample time and opportunities having been given to the prosecution, the Investigating Officer could not point out a single

transaction carried on the computers of L-7 group. He submits that all the computers, laptops, hard-disks and other articles have been seized by police from L-7 group's office at Nagpur as well as L-7 Software Pvt. Ltd. Company's office at Mumbai and till date the prosecution has not been able to show that any of them contains any circumstance, which would incriminate the applicant in any way.

Learned Senior Counsel further submits that the chit containing some rough notes, as per the prosecution case, has been recovered not from the office of L-7 group but from the pocket of the full-pant of Nimit Mehta, the co-accused and, therefore, no connection could be seen between that chit and the allegations made against the applicant. He also submits that the prosecution is also not clear as to who was involved in the development and installation of the softwares on the computers being used in L-7 group's office at Nagpur. Thus, the learned Senior Counsel submits that if the circumstances are such as to not disclose any particular act or instance of trading in shares at the L-7 group's office at Nagpur, no suspicion could be raised against this applicant on the basis that one co-accused is saying that some share trading was carried out on the instructions of applicant and as such, this applicant is entitled to be released on anticipatory bail.

Shri Doifode, learned A.P.P. for the State, strongly

opposing this application, has contended that although it may be true that L-7 group may not be a legal entity but it is an entity which consists of several companies on the Boards of some of which this applicant is one of the Directors. He also submits that the statements of witnesses disclose that many of them were working as employees at L-7 group's office at Nagpur and were either appointed by the applicant or were working on the directions being issued from time to time by the applicant and this would show complicity of the applicant in commission of the offences alleged against him.

Learned A.P.P. further submits that one of the co-accused Nimit Mehta has categorically stated that he was carrying out works relating to share trading and that he had also transacted some business of trading in shares and commodities relating to Natural Gas and one lot of Silver International. He further submits that it is well settled law that raising of reasonable suspicion against the applicant is sufficient for denial of anticipatory bail to him, particularly in cases where the offences alleged are of high magnitude and that statement of co-accused can also be considered to be relevant for this purpose. He further submits that there are witnesses who have stated that softwares installed and networking facility provided at L-7 group's office at Nagpur enabled live streaming of process of shares and commodities with their necessary indicators thereby suggesting that

trading in those shares and commodities was possible while sitting at the office of L-7 group, Nagpur. He further submits that if all this material is considered together, it would raise reasonable suspicion against this applicant thereby dis-entitling him from seeking relief of anticipatory bail.

Learned A.P.P. further submits that even the chit recovered from the person of co-accused Nimit Mehta, as explained by him, would show that in the night of 11/5/2016 at about 9.00 p.m., he traded in eight lots of Natural Gas at Multi Commodities Exchange without his possessing client I.D. He further submits that Nimit Mehta has informed the Investigating Officer that he was appointed as Trading Operator on the directions of the applicant and it was only on his directions that he carried on the illegal trading in commodities with the help of co-accused Niraj Agrawal and employee, Raunak Suchak. According to him, all these facts and circumstances would clearly show that this applicant was involved in the business of illegal trading in shares and/or commodities and, therefore, his custodial interrogation would be necessary. Learned A.P.P. further submits that the applicant being Director of L-7 group, has in his possession all the computers and also all the details regarding illegal trading in shares and/or commodities and, therefore, his custodial interrogation is necessary to unearth the crime and complete the chain of

investigation. He further submits that in another crime, being Crime No.204/2016 registered with Police Station, Sitabuldi, Nagpur, several entries pertaining to illegal share trading standing in the name of this applicant have been found and similar entries have also been found in another crime, being Crime No. 151/2016 registered at Police Station Lakadganj, Nagpur, which only go to show that this applicant is connected with the business of illegal share and/or commodities trading. He also submits that during the pendency of this application, one crime, being Crime No.4779/2016 came to be registered on 12/8/2016 against this applicant and another person for offences punishable under Section 336 read with 34 of the Indian Penal Code and Section 30 of Indian Arms Act at Police Station, Kalamna, Nagpur. Therefore, the learned A.P.P. submits that this applicant is not entitled to be released on anticipatory bail.

In support of his contentions, learned A.P.P. has referred to me several cases, which are as follows.:

1. Sudhir Vs. State of Maharashtra – (2016) 1 SCC (Cri) 146.
2. Jai Prakash Singh Vs. State of Bihar – 2012 (3) SCALE 484.
3. Headmaster, Lawrence School Lovedale Vs. Jayanthi Raghu & another – 202(3) SCALE 491.
4. Director of Enforcement Vs. P. V. Prabhakar Rao – AIR 1997 SC 3868.

5. Kalyan Chandra Sarkar Vs. Rajesh Ranjan – 2004 CRI. L. J. 1796 (SC).
6. Muraleedharan Vs. State of Kerala – AIR 2001 SC 1699.
7. State of Andhra Pradesh Vs. Bimal Krishna kundu – AIR 1997 SC 3589.
8. Narinderjit Singh Sahni Vs. Union of India – AIR 2001 SC 3810.

The principles of law laid down in the afore-stated cases are well settled. They indicate that when the facts and circumstances of the case warrant custodial interrogation of the accused, the anticipatory bail should not be granted. While granting anticipatory bail, the Court must ensure that the per-requisites for grant of anticipatory bail, such as; prima facie involvement of accused in crime alleged or strong suspicion being raised against the accused, nature and gravity of the accusation, the antecedents of the applicant, the possibility of the applicant to flee from justice or tampering with the prosecution witnesses, whether the accusation has been made with the object of injuring or humiliating the applicant by having him arrested, impact of crime on the society and other relevant conditions are complied with. It also becomes clear from these cases that there has to be temperate use of discretion regarding grant of anticipatory bail and whenever there is material pointing an accusing finger towards the applicant, and the other

factors go against the applicant, the anticipatory bail should not be granted to him. In the light of these principles, we have to see whether there is any material available on record sufficient to raise a reasonable suspicion that the applicant is involved in commission of the offences alleged against him.

Before we deal with the offence punishable under Section 23(1) of the Act, 1956 registered in this Case, it would be appropriate that the other offences registered against the applicant along with other persons, which are under various Sections of the Indian Penal Code, are also examined from the view point of prima facie involvement of the applicant in commission of those offences. On perusal of the first information report as well as the statements of the witnesses and other material available on record, it is clearly seen that there is not a single accusation that this applicant or any of his co-accused made dishonest inducement to anybody, created false/forged documents or used false/forged documents as genuine or falsified the accounts. The learned A.P.P. for the State also graciously concedes this position. It is obvious that, prima facie, involvement of the applicant in the offences punishable under Sections 468, 471, 477-A and 420 of the Indian Penal Code, at this stage, is not made out. Similarly, there is also no dispute about the fact that there is no material available on record prima facie showing

that any particular piece of evidence has been tampered with or made to disappear. There is also no material available prima facie showing that there was any criminal agreement or indicating that there was at least a possibility of the accused persons entering into a criminal agreement for doing the offences punishable under the afore-stated sections of the Indian Penal Code. So, one has to say that at this stage there is no material available on record sufficient even for raising suspicion of commission of the afore-stated offences.

Now, let us deal with the main offence punishable under Section 23(1) of the Act, 1956. Section 23(1) provides for penalties to be imposed upon any person who contravenes any of its various clauses. Clause-(b) thereof prohibits entering into any contract of sale or purchase of any security between persons who are not the members of recognized stock exchange or through persons, not being the members of recognized stock exchange. Clause-(c) prohibits carrying on the business of dealing in securities without obtaining license granted by the Securities and Exchange Board of India (SEBI) and it also prohibits any person from organizing or assisting in organizing the transactions relating to performance of contracts in securities, except with the permission of the Central Government. Clause-(e) prohibits owning or keeping a place other than that of recognized stock exchange. Clause-(f) prohibits managing,

controlling or assisting any person in keeping a place which is not a recognized stock exchange. There are also other clauses prohibiting some other acts, which do not appear to be relevant in the context of the allegations made against this applicant. In nutshell, the offence alleged to be committed by the applicant, which is punishable under Section 23(1) of the Act, 1956, is of owning or keeping a place other than that of recognized stock exchange and using it for the purpose of entering into or performing contracts in securities or commodities otherwise than through a recognized stock exchange and dealing in these securities without having any license from the competent authority. Such being the nature of allegation against the applicant, the first and foremost consideration for exercise of discretion under Section 438 Cr.P.C. would be whether or not any transaction disclosing trading in shares and/or commodities has been carried out by using the softwares installed in the office of L-7 group at Nagpur. If the answer to the question is found to be in the affirmative, the statement of the co-accused to the effect that he was doing share trading on the directions of the applicant would assume significance from the view point of effective investigation thereby necessitating custodial interrogation of the applicant. But, if the answer goes in the negative, then there would be a serious doubt if any suspicion could be said to be raised against this applicant.

There is also another question involved and it is of this applicant taking part in the affairs of the office of L-7 group at Nagpur and according to the prosecution, statement of witnesses do indicate that this applicant was not only sitting in that office but also involved in giving various directions to the employees working there as to how to carry out their different duties.

According to the learned Senior Counsel, there is no such entity as L-7 group and, therefore, there is no question of this applicant being its Director and if by L-7 group, the prosecution is meaning L-7 Software Pvt. Ltd., having its main office at Mumbai, then, the applicant could not be fastened with any liability much less criminal liability in view of the fact that he has already ceased to be its Director w.e.f. 21/7/2014. Learned A.P.P. submits that this being a matter of defence of the applicant, it would have to be considered appropriately on the merits of the case and at this stage, this Court only has to go by the nature and extent of interest shown by the applicant in the affairs of L-7 group of companies.

I think, learned A.P.P. is partly right when he submits that what is relevant for the purpose of deciding this bail application is the extent and quality of involvement of the applicant in giving directions to his various employees so that the affairs of the office at Nagpur called, "L-7 group" are carried out properly. So far as

concerned his other submission regarding the applicant not being the Director of L-7 Software Pvt. Ltd., is a matter of defence to be considered on merits of the case, I would say that by the own case of the prosecution, this aspect does not seem to be now relating to only the defence of the applicant. The prosecution case itself shows that all the data relating to various operations and transactions carried on the computers and laptops kept at the office of L-7 group at Nagpur were being saved at Mumbai office of L-7 Software Pvt. Ltd. of which Sanket Khemuka is the Director as well as its Chief Executive Officer. This is clearly seen from the reply of the prosecution and statement of Sanket Khemuka. The reply of the prosecution is absolutely silent regarding cessation of Directorship of the applicant on the one hand and the statement of Sanket Khemuka recorded by the investigating agency is eloquent on the other. It discloses that this applicant has ceased to be the Director of the said company w.e.f. 21/7/2014. All said and done, what appears from the statement of witnesses recorded by the prosecution that prima facie, this applicant was sitting in the office of L-7 group at Nagpur and was taking some interest in its affairs. Therefore, at this stage, it could not be said that the applicant, prima facie, had kept himself entirely aloof and away from the affairs of L-7 group at Nagpur. At the same time, it would also have to be said that, prima facie, the applicant having ceased to

be the Director of L-7 Software Pvt. Ltd. Co., Mumbai w.e.f. 21/7/2014, had no connection whatsoever with the affairs of that Company and it were its C.E.O., Sanket Khemuka, who prima facie pulled the strings in that office.

Now, we would have to consider the material collected by the prosecution so far. On going through the replies of the prosecution, there are two affidavits filed in reply, and the material available in the case-diary, the relevant portions of which has been perused by me with the assistance of the learned A.P.P., I find that although the allegation made against the applicant and others is that the softwares installed at the office of L-7 group at Nagpur were shares and commodities trade ins enabled and were used for illegal trading in shares and commodities, the computers, laptops, mobiles, DVR and other articles seized from L-7 group's office at Nagpur, do not prima facie disclose any transactions in trading in shares and/or commodities. The co-accused, Nimit Mehta, has stated that he was doing business of share trading on the directions of this applicant and with the help of the co-accused Niraj Agrawal and also an employee Raunak Suchak. If such is the statement, the hardwares and softwares seized from the office of L-7 group at Nagpur are expected to disclose at least a few such transactions. After all, it is not difficult to retrieve the data in that regard from the hard-disks of the

computers. The reply of the prosecution, in fact, shows that cloning work of the hard-disks seized from the Nagpur office has already been completed and that cloning work relating to 56 hard-disks seized from the Mumbai office is still pending. The relevance of 56 hard-disks seized from the Mumbai office, according to the prosecution, arises because the data generated at Nagpur office were also being saved in the main server installed at Mumbai office. But, the fact remains that cloning of the hard-disks seized from L-7 group's office at Nagpur has been completed and this would reasonably indicate that the data in all these hard-disks are now available. However, the prosecution's replies maintain silence regarding presence or absence of any incriminating circumstance in these data.

In any case, learned A.P.P. has neither pointed out to me nor has shown to me that any incriminating material or circumstance has been discovered from these data. Search cum seizure panchanama dated 12/5/2016 also shows that no incriminating documents were found from the office of L-7 group at Nagpur. If such is the material available on record, one would have to say that even though the co-accused Nimit Mehta has stated that he carried on some illegal trading in shares, the fact of carrying on of such illegal share trading could not be ascertained and verified from the

data recovered from L-7 group's office at Nagpur. If this is so, there would be a reasonable doubt about existence of link between his doing share trading and using softwares and hardwares in L-7 group office at Nagpur for that purpose. In law, a statement of co-accused, from the view point of the investigating agency, can raise a suspicion against another co-accused. But, such suspicion must be reasonable and the reasonableness of the suspicion can be ascertained only when the act alleged against the co-accused is found to be committed. If the act complained of has been committed, then the questions, who did the act and on whose directions it was done, would arise and in that case, the statement of one accused would provide a clue to the Investigating Officer for making effective interrogation of and investigation against the co-accused. But, if the act complained of itself is not found to be prima facie committed or in existence, the suspicion could not be said to be reasonable and would provide no clue to the Investigating Officer. This is what has happened, at least at this stage, in the instant case.

Learned A.P.P. has invited my attention to the one chit recovered from the person of co-accused Nimit Mehta to substantiate his contention that the contents of this chit reveal some transactions in a commodity. I have perused this chit and I find myself unable to accept the argument of the learned A.P.P. It contains some vague

references, which by themselves could not be understood as dealings in commodities and that too at the instance of this applicant. In any case, it was not recovered from the office of L-7 group and it was found and seized from the pocket of full-pant of Nimit Mehta. Even the statement of Nimit Mehta shows that those references relate to buying and selling eight lots of Natural Gas in the night of 11/5/2016 and nothing more. He does not say anything about those transactions being done by him either by himself or on the directions of the applicant and by resorting to and by using which platform. This chit, therefore, by itself does not leave us anywhere in order to point an accusatory finger towards the applicant.

Shri Doifode, learned A.P.P. has submitted that there are 57 more hard-disks seized from the office of L-7 Software Pvt. Ltd., Mumbai and the work relating to their cloning and forwarding them to Forensic Laboratory for analysis is still under way and there is a possibility that those hard-disks may reveal some incriminating circumstance against the present applicant.

I must say that since the work relating to cloning of these 57 hard-disks was going on and there was a chance of the Investigating Officer coming across some incriminating material, this Court acceded to several requests of the prosecution to grant time to it for filing of additional reply and the additional reply was filed but

it was filed quite belatedly on 31/8/2016. Even, in this additional reply, nothing has been stated about what kind of data or materials have been found from these 57 hard-disks, whether they disclose any transaction of trading in shares or commodities or not.

In the previous reply filed on 20/7/2016, a statement has been made to the effect that, “..*That all the code word of the customer are with the applicant and all the details regarding illegal trading are with the applicant hence custodial interrogation of the applicant is very essential and necessary ...*”.

I have already found that the prosecution has not been able to point out presence of any incriminating material from the data stored in the hard-disks of the computers kept at the office of L-7 group at Nagpur. I have also pointed out, from the own case of the prosecution, that it is Sanket Khemuka, who being C.E.O. of L-7 Software Pvt. Ltd., would have control over the Mumbai office of this Company and not this applicant, who has ceased to be its Director much before registration of the offences. The prosecution case is that by using virtually the machines at Nagpur office, the data used to be transferred and saved in the main server kept at the office of the said company at Mumbai. But, Sanket Kehmuka has not been made an accused in this case. He is a prosecution witness. It is not the case of the prosecution that Sanket Khemuka is not cooperating

with it or he has raised his hands and says that *de facto* control over the affairs of L-7 Software Pvt. Ltd., Mumbai is with this applicant. Therefore, it is surprising that even today, the prosecution is saying that the process of cloning of 57 hard-disks is still going on and as soon as it is completed, the position will become more clear. In fact, already more than sufficient time has been granted to the prosecution and having regard to the fact that so far the prosecution has not been able to show that the computers were used for trading in shares and commodities, it would have to be said that there is nothing available on record showing that prima facie any act prohibited by Section 23(1) of the Act, 1956 has been committed in this case. If the softwares installed in the L-7 group's office at Nagpur prima facie show that they enabled trading in shares and commodities, it would only suggest the possibility of preparing for carrying out the business in trading and shares and/or commodities. Mere presence of these softwares by itself would not lead to any inference that any of the acts prohibited by Section 23(1) of the Act, 1956 is/are committed, unless there is some more material or other circumstances suggesting commission of these acts. Such material or circumstances could have been discovered through scanning the data stored in the various hard-disks. I have already found that so far this data do not disclose any such incriminating circumstance and,

therefore, the question would be as to for how long this matter be kept in suspended animation and no final order be passed. I would only say that if such is the nature of the material collected during the course of the investigation, the discretion under Section 438 Cr.P.C. would have to be exercised in favour of the applicant, at least for the present.

The prosecution has also opposed this application on the ground that the offence is prima facie of high magnitude. The argument cannot be accepted for the simple reason that the investigating agency is yet to come across even a single transaction carried out by or on the directions of this applicant on the platform of L-7 group at Nagpur and, therefore, there would be no question of making any prima facie assessment of the economics involved in this case, at this stage.

As regards the contention of learned A.P.P. that in two other crimes, the entries showing illegal trading in the name of this applicant have been revealed and during the pendency of this application, Crime No. 4779 for an offence punishable under Section 336 read with Section 34 I.P.C. and Section 30 of Indian Arms Act has been registered against this applicant and, therefore, the applicant is not entitled to be released on anticipatory bail, I must say that in the two crimes wherein entries standing in the name of this

applicant have been discovered, this applicant has not been made an accused and the registration of Crime No. 4779/2016, during the pendency of this application, would be relevant only when a reasonable suspicion for involvement of the applicant in the present crime is raised. That being not so, I find no substance in this ground of resistance taken by the prosecution.

In the circumstances, I find that at this stage, there is no sufficient material available on record on the basis of which it could be said that a reasonable suspicion arises against this applicant in the offences registered against him and, therefore, this application deserves to be allowed. However, if the investigating agency is able to collect some material reasonably pointing an accusatory finger towards this applicant in the commission of the offences alleged against him, the investigating agency would have to be given liberty to apply for cancellation of the anticipatory bail granted to this applicant.

The application is, therefore, allowed and the interim bail granted to the applicant by this Court on 20/7/2016 is hereby confirmed on the same conditions with liberty to the prosecution as stated in the foregoing paragraph.

JUDGE

CERTIFICATE

“I certify that this order uploaded is a true and correct copy of original signed order.”

Uploaded by : W. W. Lichade

Uploaded on : 20/9/2016