IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 168 OF 2017

Rajesh Narayanlal Agarwal. … Applicant.
V/s.
The State of Maharashtra. … Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 169 OF 2017

Rajiv Munnalal Gupta. … Applicant.
V/s.
The State of Maharashtra. … Respondent.

WITH
CRIMINAL BAIL APPLICATION NO. 172 OF 2017

1 Juglesh Suresh Gupta.
2 Santoshkumar Narsingh Narayan Singh … Applicants.
V/s.
The State of Maharashtra. … Respondent.

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Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Hrishikesh Mundargi, advocate for applicant in BA 168/2017.

Mr. Jaydeep Chatterjee a/w. Ms. Sonali Parab, advocate for applicant in BA 169/2017.

Mr. A.H.H. Ponda i/b. Mr. Tarun S. Sharma, advocate for applicants in BA 172/2017.

Mr. Ajay Patil, APP for State in all applications.

CORAM : SMT. SADHANA S. JADHAV, J
RESERVED ON : FEBRUARY 1, 2017.
PRONOUNCED ON : FEBRUARY 23, 2017.

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 These are applications under Section 439 of the Code of Criminal Procedure, 1973. The applicants herein are arrested in Crime No. 405 of 2016 registered at Bhayander Police Station for offence punishable under section 419, 420, 465, 467, 471, 120(B) of the Indian Penal Code.

3 The learned Counsel for the applicants submitted that the income tax department has also no grievance against the present applicants and that the complainant cannot make any grievance as far as the offences in respect of income tax or any other taxes are to be paid. This Court had requested the learned APP to take instructions from the income tax department. The learned APP submits upon

instructions from the Investigating Officer that the income tax department has no say in the present case. The learned APP upon instructions from the Investigating Officer submits that there is no complaint for evasion of taxes against any of the applicants.

4 It is the case of the prosecution that on 15/12/2016 Ravikumar Jaiswal lodged a report at the police station alleging therein that since 2012, he was working with Rajiv Gupta, the applicant in Cr. Bail Application No. 169 of 2017 as Collection agent in his Shivsai Cooperative Credit Society. Since July, 2015, he was working as office boy with Suraj Nandola. Before that, during the period 2008 to 2012 he was working with Chartered Accountant Rajesh Agarwal i.e. the applicant in Criminal Bail Application No. 168 of 2017 at Kalbadevi as office boy.

5 According to the complainant, on 5/5/2016 he had received a letter from Custom Department. He had taken the copy of the summons and shown the same to Chairman Rajiv Gupta. That Rajiv

Gupta had taken the said summons from him and also warned him to keep silence in respect of the said summons. The complainant had stated that he had taken the images of the summons on his cell phone before handing it to Rajiv Gupta. He had shown the copy of the said summons to Suraj Nandola, who advised him to go to Delhi and give the statement of account to the authorities and to disclose the truth.

6 The complainant then approached Rajiv Gupta and informed him that he would be going to Delhi pursuant to summons and tell the truth. Rajiv Gupta had then assured him that he would direct him to another Chartered Accountant Rajesh Agarwal and had further advised him to maintain silence till that date.

7 In May, 2016 Rajesh Agarwal had allegedly called upon the complainant to see him at Shagun Hotel, Maxes Mall. The complainant had been to Hotel Shagun. At Shagun Hotel, the complainant met Rajesh Agarwal, Rajiv Gupta and Bhupendra Thakur. They disclosed to him that they had used his documents and

had obtained Vodaphone SIM card and were doing business on the said SIM card. He was also cautioned that he should not bother about the notices and also should not show any anxiety. They had also once again requested him to maintain silence. He requested the said persons to solve the matter according to their capacity and see that he is not harassed by any authority. He had asked Mr. Agarwal to return SIM card. Mr. Agarwal not only denied to part with the same, but had informed him that it is damaged and they have obtained another cellphone number. The complainant was given another SIM card number.

8 The complainant had disclosed to Mr. Nandola the development of the events subsequently. He had given PAN Card number to Mr. Suraj Nandola and upon causing search, it was revealed that the complainant was running Shreyans Corporation. He had informed Mr. Nandola that he was acquainted with Rajiv Gupta as they were staying in the same area. Through Rajiv Gupta, he met Mr. Rajesh Agarwal. He had parted with his driving licence, pan card and other

relevant documents in favour of the Rajesh Agarwal and Rajiv Gupta. Suraj Nandola had suspected foul play. Being a chartered accountant, he had taken search of the firms, that were floated in the name of the complainant and it was revealed that Zeme Real Tech. Pvt. Ltd. was floated in the name of the complainant and the transactions were done in Vijaya Bank. Upon further enquiry, the complainant had learnt that there are some more directors in Zeme Real Tech Pvt. Ltd.

9 It is also alleged that Rajesh Agarwal and Rajiv Gupta had floated Statford Textile Specialty Pvt. Ltd. and the complainant was shown as a director.

10 The complainant has further specifically submitted that on 14/12/2016 at about 5.30 p.m. he had met accused Juglesh Suresh Gupta, who is an applicant in Criminal Bail Application No. 172 of 2017, at Malad. He had informed the accused Juglesh that he has been receiving notices from income tax department and therefore, he had requested Juglesh Gupta to accompany him to the office of Mr.

Suraj Nandola. That upon being confronted with the documents/notices received from various departments, Juglesh Gupta had informed Mr. Nandola that Rajesh Agarwal and Rajiv Gupta had floated several firms in the name of Ravi Jaiswal and shown him as a director. That Rajesh Agarwal was earning a lot of commission in the transactions of the said firm by fabricating bogus bills and claimed TDS. It was also learnt that Rajesh Agarwal and Raju Pandey had also floated the bogus Gas Company and used to import R-22 Gas from China. The said gas was imported in the name of Ravi Jaiswal and therefore, DRI had issued notice to Ravi Jaiswal. Juglesh Gupta had also admitted that the bank accounts which were opened in the name of Ravi Jaiswal were being operated through Juglesh Gupta and Santosh Kumar Singh (applicants in Cr. BA No. 172/2017). Initially the accounts were being operated by Juglesh Gupta and at the time of lodging of FIR, the accounts were being operated by Santoshkumar Singh by forging the signature of the complainant.

11 The complainant has specifically stated that Mr. Suraj Nandola had recorded the disclosure statement of Juglesh Gupta. The CCTV footage also shows that Juglesh had visited the office at the relevant time. At the time of filing of FIR, C.D. of the statement of Juglesh and the images captured in CCTV footage were given to the police.

12 All the accused were arrested on 16/12/2016. They were remanded to police custody by remand order dated 17/12/2016. The remand yadi dated 20/12/2016 clearly indicates that at the time of conducting search of the office of Rajesh Agarwal, the police had seized several documents pertaining to Zeme Real Tech Private Ltd., Statford Textile Pvt. Ltd., Poorvi Realty Pvt. Ltd., Kurmi Developers Pvt. Ltd., Shreyans Corporation, EVI Enterprises. They also seized rubber stamps of all these companies. That blank cheques allegedly signed by the complainant were also seized from the house of Santoshkumar Singh. The statement of accounts of several firms allegedly floated by the complainant were also seized. The remand yadi further indicates that several cheques signed by Juglesh Gupta

and Santoshkumar Singh in the name of the complainant were also seized. It had transpired in the course of investigation that 8 companies were floated in the name of the complainant and 10 bank accounts were opened. The total amount of transaction was Rs. 2,86,82,51,900/-. Juglesh Gupta and Santoshkumar Singh were working in the office of accused No. 1 Rajesh Agarwal.

13 This Court has perused the papers of investigation, including the transcript of conversation between the accused interse and with the complainant. It is a scam run by a chartered accountant with the aid of Accused No. 2 Rajiv Gupta. In the absence of any physical trade, Receipts of payment of taxes are fabricated to claim TDS and other tax benefits.

14 The respective Counsel submit that there is an inordinate delay in lodging the FIR. That the complainant was fully aware of the companies floated in his name. That only because he was receiving notices, he had lodged the FIR at the behest of Suraj Nandola, who

happens to be a chartered accountant. That there is professional rivalry. It is submitted that neither the complainant nor the State has suffered any loss on account of floating of the said company. It is also submitted that the issue of payment of taxes is subjudiced before the respective tribunal. Therefore, no implicit reliance can be placed upon the statement of the complainant.

15 The conduct of the complainant has been criticized by all the three Counsel and all of them had stated that there is neither any loss to the State exchequer i.e. to income tax department, excise department, etc. and nor there is any loss to the complainant. Therefore, according to the respective Counsel, the applicants deserve to be enlarged on bail.

16 This Court would not hesitate to record that what is being investigated is the 'offence' and the role attributed to each of the accused in the commission of the offence. The complainant has only

set the law in motion. Prior to filing of charge-sheet, it would not be appropriate to comment upon the conduct of complainant.

17 As far as Juglesh Gupta and Santoshkumar Singh, the learned Counsel submits that Juglesh had allegedly made a statement before Suraj Nandola that he was operating the said accounts opened in the name of the complainant and he cannot be held liable for any such implications. He cannot be held liable by any stretch of imagination for floating of firms in the name of the complainant.

18 As far as the applicant Rajiv Gupta in Criminal Bail Application No. 169 of 2017 is concerned, it is clear from the submissions that the applicant has not approached the Court with clean hands. The Counsel appearing for the accused Rajiv Gupta also had no information about the business of Rajiv Gupta and only upon perusal of the papers of investigation, when the Court had made queries, the learned Counsel upon instructions had submitted that Rajiv Gupta had received notices from Excise Department, Custom Department

etc. and he has cleared the taxes and as on today, nothing remained to be paid to any of the agencies.

19 The learned Counsel appearing for Juglesh Gupta and Santoshkumar Singh submits that the cell phones were obtained in the name of the firms and since, the identity of the holder of SIM card had to be shown, the complainant was shown as the person holding SIM card. The same is the case in respect of Poorvi Realty, Shreyans Corporation etc.

20 It is a matter of record that the investigation is in progress. It is also a matter of record that the original documents of the complainant were acquired by accused Nos. 1 and 2 and that they had floated bogus companies showing him as a director and had also done huge transactions. The possibility of accused No. 1 and accused No. 2 tampering with records cannot be ruled out. It is true that the complainant was receiving notices and only then he had flung into action. The Court cannot be oblivious of the fact that applicant Nos.

1 and 2 are also being prosecuted under section 467 and 471 of the Indian Penal Code, which is punishable with imprisonment for life or with imprisonment of either description for term which may extend to 10 years and shall also be liable to fine. The firms floated in the name of the complainant are fictitious firms. The fact that the complainant was receiving notices from the income tax department, DRI, Excise, Customs etc., it is clear that the taxes are being paid in the name of fictitious firms. The possibility that vulnerable people having been induced to invest in the said fictitious firms cannot be ruled out at this stage.

21 Section 467 of the India Penal Code reads as follows :

> "**467. Forgery of valuable security, will, etc.**—Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or

> an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

22 The respective Counsel have submitted that all the taxes are paid to the respective authorities and therefore, the complainant cannot have any grievance. The investigation is in progress and it would not be appropriate to consider the application seeking enlargement on bail, as maximum period during which the charge-sheet would be filed is 90 days. As far as applicants Juglesh Gupta and Santoshkumar Singh is concerned, it is clear from the remand yadi that they have forged signature of the complainant and have operated the accounts in the name of the complainant.

23 The submission that the statement of Juglesh Gupta could be hit by section 25 of the Indian Evidence Act is unwarranted as the said statement was made before Mr. Suraj Nandola prior to registration of

FIR. It is an extra judicial confession, which is electronically recorded and submitted alongwith the first information report.

24 The papers of investigation clearly indicate that the applicants have committed fraudulent acts by floating bogus firms, fabricating documents to show the complainant as director of the said firms. They have paid taxes in the name of the complainant. That the signatures of the complainant have been forged. It is a serious offence, which is under investigation and upon perusal of papers of investigation, this Court is of the opinion that the applicants herein do not deserve to be enlarged on bail at this stage.

25 The activities of the accused Nos. 1 and 2 would clear clearly indicate that they have rather indulged into a fraudulent acts and the complainant has only set the law into motion. At the stage of granting bail, it would not be appropriate to simplicitor criticise the initiation of prosecution at the behest of the complainant. In these

circumstances, the applicants do not deserve to be enlarged on bail before filing of charge-sheet.

26 The applications being sans merits stands rejected and disposed of accordingly.

(SMT. SADHANA S. JADHAV, J)