

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1231 OF 2017

1. Amit Prakash Babar
2. Sumit Prakash Babar
3. Naresh Yuvraj Chauhan .. Applicants

vs

State of Maharashtra .. Respondent

with CRI.APPLICATION NO.705 OF 2017

in

ANTICIPATORY BAIL APPLN NO.1231 OF 2017

Rajendra Dattatray Boraste .. Applicants

Between

1. Amit Prakash Babar & ors .. Applicants

vs

State of Maharashtra .. Respondent

ANTICIPATORY BAIL APPLICATION NO.1265 OF 2017

1. Deepak Dyandeorao Bhosale
2. Prashant Dyandeorao Bhosale
3. Dyndeorao Krishnaji Bhosale .. Applicants

vs

State of Maharashtra .. Respondent

with CRI.APPLICATION NO.706 of 2017

in

ANTICIPATORY BAIL APPLICATION NO.1265/2017

Rajendra Dattatray Boraste .. Intervener

In the matter between

Deepak Dyandeorao Bhosale & ors .. Applicants

vs

State of Maharashtra

.. Respondent

Mr.Abhaykumar Apte for Applicant in ABA No.1231/2017
Mr.Rameshwar N.Gite for Intervener in AAPP No.705/2017
Mr.Aniket Nikam I.b Mr.Aashish Satpute for
Applicant in ABA No.1265/2017
Mr.Prashant Patil for Intervener in AAPP No.706/2017
Mr.S.S.Hulke Additional Public Prosecutor
for State-Respondent
Mr.Jalinder Pale API EOW Nasik (Gramin)

CORAM : T.V.NALAWADE, J

DATE: 29 AUGUST 2017

ANTI. BAIL APPLICATION NO.1265/2017

P.C.

1. The Application is filed for anticipatory bail in C.R.No.66 of 2017 registered in Pimpalgaon Police Station District Nasik for the offences punishable under sections 420,504,506 r/w 34 IPC.

2. Both sides are heard.

3. Papers of investigation were made available for perusal of the Court.

4. Learned counsel for the Applicants also produced on record some papers and those are seen by this Court.

5. Crime is registered on the report of one Rajendra Dattatray Boraste. He is the owner of one cold storage. Copy of the Agreement is produced of the year 2013. There is a contract between the present Applicants and the cold storage owner. The Agreement involved storage of grapes procured by the present Applicants in cold storage and in that case, the Complainant was entitled to recover charges of keeping the goods in cold storage and of labour charges. There was one more possibility and under that the cold storage owner was to procure grapes, he was to hand over the grapes to the Applicants and in that case also the aforesaid charges were to be included in the amount which was to be recovered by the cold storage owner. Allegation is made that in the year 2013, out of the total amount of Rs.88,19,987/- some amount was paid and remaining amount of Rs.51,00,000/- is not paid by the present Applicants. Learned counsel for the Applicants drew attention of this Court to various clauses including the clauses of arbitration. This

Court is avoiding to refer to those clauses as in respect of cold storage in the past also there were some transactions of similar nature and in the past there were no such dispute. Now, some dispute is created by the present Applicants about the entitlement to claim damages and the clauses of agreement prima facie do not support this dispute.

6. This Court is concerned more about other allegations. Admittedly, the present Applicant had purchased grapes worth Rs.17,00,000/- from the parents of Complainant and the price of those goods is not paid and the cheques issued are bounced. It appears that due to the allegations that farmers have been cheated, investigation is made on those lines. This Court has seen the statements of many farmers like Uttam Baburao Aswale, Gorakh Popat Khaire, Shivram Shripat Murkute, Narayan Malode Dattaray Shivaji Pawar, Krishna Niphade etc. Their statements show that peculiar Modus Operandi was used by the present Applicants. It is necessary to remember that farmers have no option than to make transactions and as the grapes are required to be sold when

they are ready for harvesting and if some period passes, the farmers sustain losses and there is virtually no buyer for such grapes and persons like the present Applicants misuse the situation. In some cases, when price of the grapes purchased was more than Rs.17,00,000/- the price in cash was paid of around Rs.1.6 lac and the remaining amount was given by cheque and not a single pie was given in cash in many cases and the entire payment was made by cheque and those cheques bounced.

7. The sale was of the year 2013. In some cases, by account transfers by RTGS mode, some amount was paid but, till this time there are dues to the farmers from the applicants.

8. Learned counsel for the Applicants submitted that the Applicants are ready to pay whatever dues are towards the farmers and most of the dues are already paid. This submission cannot be accepted. Further submission is that the Applicants subsequently settled the accounts with the farmers is also not acceptable as this submission itself shows the Modus-Operandi

of businessmen like the present Applicants that when businessmen owes some amount to the farmers, these farmers are helpless and they accept whatever amount which is tendered to them and they sign on whatever document produced before them. Businessmen like the present Applicants are virtually exploiting the farmers. Due to these circumstances, this Court holds that discretionary relief cannot be given in favour of the Applicants. The dispute of the Applicants. with the owners of the cold storage may be of a different nature but the offence which they have committed against the farmers is serious one. There are more circumstances against the present Applicants. In statements given to police farmers have referred to the use of cold storage etc and it shows that there was some link between aforesaid agreement and transactions made with some farmers.

9. Papers of investigation contain the statement of the Chartered Accountant of the Applicants. The material shows that even when there was no record from abroad to show that some goods were rejected or some loss was sustained by the Applicants in transactions and some correspondence was made

by the Applicants with the owner of the cold storage. The Applicants are trying to misuse the arbitration clause and it can be said that in many cases now it has become Modus Operandi to use the Arbitration clause even when *prima facie* case of cheating is made out. When there is material to make out a **prima facie** case of cheating, the arbitration clause cannot come in the way of investigation and registration of the crime and it can be said that the present matter is also of that kind. Aforesaid things need to be considered in addition to the terms and conditions of the contract between the owner of the cold storage and the present Applicants.

10. Today, attention of this Court was drawn to the history of the present Applicants. It appears that in the year 2017, one crime of similar nature is registered in Gurgaon. Report submitted by the Investigating Officer shows that there are complaints received against the Applicants from Netherland and Thailand. Complaints are that the Applicants have deceived them. The contention of the investigating agency shows that such persons cause damage to the reputation of this country and

for this reason also this Court holds that discretionary relief cannot be granted in favour of the Applicants. As this is not a fit case and the custodial interrogation is a must, Application is rejected. Interim relief granted in favour of the Applicants is vacated.

The Intervention Application is allowed and disposed of.

ANTICIPATORY BAIL APPLICATION NO.1231/2017

1. This application is for grant of anticipatory bail in the same crime of the different applicants. The statement made by the learned counsel for the applicant show that there was partnership agreement between the applicants of the first proceeding and the present applicant dated 2.9.2012. Surprisingly, the partnership was not registered though the business was done in the name of the concern. Learned counsel for the applicants submitted that the applicant retired from the partnership with effect from 7.9.2013. He placed reliance on a

copy of the said resolution which is also on a simple paper and there is no authenticity to this document. In any case, from farmers grapes were purchased from February to April and it can be said that considering the extent of share of these applicants, they have collected their share in the price of the grapes. That amount was not paid to the farmers and it can be said to that extent the present applicants have also cheated the farmers. There is one more circumstance against every partner which shows that they were creating false accounts and that can be seen from the statement of the auditor. Thus, thorough investigation is required to be made and more material will come out and for that purpose custodial interrogation of the partners of the said concern is required. The circumstance that the present applicants have deposited some share as per their share is there but that amount is in respect of the claim made by the Cold Storage Owner and that is not in respect of the dues towards the farmers. Learned counsel for the applicants submitted that the due towards the farmers and their statements cannot be considered in the present crime which is registered on the basis of the FIR of cold storage owner. This point is already

dealt with by this Court and this Court holds that this contention cannot be accepted. The investigation agency got an opportunity to make an investigation of the offences of cheating against the accused due to registration of crime and all the offences are committed in the same transaction. Learned counsel for the applicants submits that the circumstance that the FIR is filed after a span of four years needs to be considered and so relief needs to be granted. This proposition is not acceptable. This Court has already observed about the situation faced by farmers. Thus, no relief can be granted to these applicants also. The interim orders are vacated. Applications stand rejected. Learned counsel for the applicant requests for continuation of the interim relief, that is refused.

2. The intervention applications are allowed and disposed of.

3. The amounts already deposited are to be sent to the concerned Court of Magistrate having jurisdiction over the crime and that amount is to be treated as the property of the crime.

The submission made by the learned counsel for the applicants that only due to the direction given by the Court, the amount is deposited and so is entitled to get back amount is not acceptable as it can be seen that the Court made endeavor to see that the stolen property as defined under section 410 of the IPC is recovered. For interim relief it was condition imposed by the Court and that amount needs to be treated as stolen property and that amount cannot be treated as a condition like the amount of bond taken for bail.

(T.V.NALAWADE, J)

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