**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1435 OF 2016**

Vijay Kumar Bansal. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

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Mr. Parvez Memon a/w. Mr. Dinesh Kadam i/b. MZM Legal, advocate for Applicant.

Mr. A.H.H. Ponda i/b. Mr. Ashish Raghuvanshi, advocate for respondent No. 2.

Mr. Ajay Patil, APP for State.

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**CORAM : SMT.SADHANA S. JADHAV,J**
**DATE : APRIL 5, 2017**

**P.C.:**

1 Heard the learned Counsel for the applicant, learned Counsel for the respondent No. 2. and the learned APP for State. Perused the papers.

2 This is an application under section 438 of the Code of Criminal Procedure, 1973. The applicant here is apprehending his arrest in Crime No. 51 of 2015 being investigated by the Economic Offences Wing arising out of C.R. No. 337 of 2015 for offence punishable under section 406, 420, 467, 468, 471 of the Indian Penal Code.

3 It is the case of the prosecution that on 24/8/2015 Mr. Gopal Goyal lodged a report at the Paidhuni Police Station alleging therein that he happens to be the proprietor of SYMCOM communication and has registered office at Mumbai and divisional office at Indore, Jaipur and Ahmedabad. That he is into the business of purchasing steel scraps of old ships and machinery and the said steel is utilised in rerolling mills. It is alleged that he was acquainted with the present applicant for almost 5 years since he was engaged in the business of purchasing old ships and selling steel and machinery. The first informant had purchased the steel from Bansal Infracon on credit. There was smooth sailing transaction between Vijay Bansal and the

first informant. That in April, 2013 the applicant had visited the office of the first informant and had informed him that he had purchased old ship and that if the first informant is willing to purchase steel and machinery, he should pay money in advance. Since the first informant had purchased the goods on credit in the past, he agreed to pay advance to the applicant. The applicant had assured the complainant that he would deliver the goods within 20 to 25 days from the date of receipt of advance. Till 30/7/2013 the first informant had paid Rs. 21,85,671/- to the applicant. Upon enquiry made by the first informant regarding delay of supply of material, the applicant had informed him that the ship was anchored at a distance and therefore, the breakage work had not commenced. In July 2013 the complainant started receiving scrap material and therefore, from July, to 18th October the complainant had paid a substantial amount.

4 According to the complainant, in all he had paid Rs. 11,05,82,117/- during the period April, 2013 to October, 2013. The

first informant had received goods worth Rs. 3,34,44,211/-. From November, 2013 there was no supply of material. Upon enquiry made by the complainant hollow assurances were given by the applicant. But he was not receiving any goods. Thereafter, the applicant had evaded to answer the calls made by the complainant and therefore, he decided to contact him personally. The applicant had informed the first informant that he had already sold the goods and therefore, it was not possible for him to supply goods any more. The complainant had then demanded refund of the amount paid by him in advance. The applicant had returned Rs. One Crore through RTGS.

5 The first informant has specifically alleged that in first week of January, 2014 the first informant had received an envelope sent by Bansal International. All the invoices were of SYMCOM Communication and it indicated that scrap and machinery worth Rs. 6,71,37,901/- was transported from Alang to Ahemdabad. In fact, no

material worth Rs. 6,71,37,901/- was received by the complainant's company. It transpired that Vijay Kumar Bansal had sent the said courier to the office of the complainant at Ahmedabad by courier and the same were directed to the complainant. The complainant was sure that while receiving the material his staff as well as staff of Vijaykumar Bansal must have signed gate passes. The complainant had in fact paid the transport charges for all the trucks which had delivered the goods. No payments were made to the transport company which was mentioned in the invoices. The invoices further indicated that the complainant had paid the transport charges to the applicant company through RTGS. It was clear that bogus invoices had been sent to the complainant and he had been cheated for an amount of Rs. 6,71,37,901/- by fabricating bogus receipts.

6 The learned Senior Counsel appearing for the applicant submits that in fact, the complainant has initiated the prosecution only to extort money and that the applicant has been falsely implicated.

According to the learned Counsel, no prudent person would continue to make payment if the goods are not received as per the agreement. It is submitted that the ledger statement of Bansal Company would show that the applicant had received an amount of Rs. 11,05,82,117/- from SYMCOM communication and the first informant is indebted to pay an amount of Rs. 1,25,04,906/-. The total credit value for the material received by the first informant is of the value of Rs. 12,30,86,599/-. According to the applicant, in order to evade paying rest of the amount, the first informant has initiated criminal prosecution. According to the applicant, the transport trucks are not permitted to enter Alang ship breaking yard and therefore, no transport freight is paid. It is submitted that it is incumbent upon lifter company to organise for transportation and that their managers and supervisors are physically present on the site for supervising the upliftment of goods and the delivery of the same. According to the applicant, no receipts or invoices have been fabricated and in fact, it is not the responsibility of the applicant company to transport the goods. Their responsibility ends with the loading of the material in the trucks. It is submitted that it is a case of “sale at site”.

7 It is also submitted that since the distance between Alang to Ahmedabad can be covered within four hours, it is possible for a truck to make two trips during a day and therefore, there is repetition of the bills pertaining to a single truck. It is further submitted that the complainant has received the material in the remaining 80 trucks.

8 Perused the papers of investigation. The applicant has placed on record bills of the trucks which were engaged for transportation of goods to complainant's company, namely, (i) Rudra Roadlines, Transport Contractors & Commission Agent, Bhavnagar. The receipt is in favour of Bansal International Ltd. dated 26/8/2013. The same is the case in respect of the bill issued by Rudra Roadlines on the same day i.e. 26/8/2013, (ii) Shiv Shakti Roadlines, Bhavnagar dated 26/8/2013 in favour of Bansal International, (iii) Ambaji

Roadline dated 2/9/2013 in favour of Bansal International, (iv) Bholenath Transport dated 2/9/2013 in favour of Bansal International, (v) Ambaji Roadline dated 2/9/2013 in favour of Bansal International, (vi) Bholenath Transport, Bhavnagar dated 2/9/2013 in favour of Bansal International, (vii) Amar Deep Transport, Bhavnagar dated 2/9/2013 in favour of Bansal International, (viii) Bholenath Transport dated 14/10/2013 in favour of Bansal International, (ix) Ambaji Roadline dated 14/10/2013 in favour of Bansal International, (x) Bholenath Transport dated 14/10/2013 in favour of Bansal International, etc.

9 The learned Counsel submits on the basis of the said transport bills and non-excise invoice issued by Bansal International Ltd. that it can be safely inferred that the goods have been delivered.

10 Heard the learned Counsel for the original complainant. According to the complainant he is admitting the receipt of goods

worth Rs. 3,35,44,211/- and Rs. One Crore by RTGS and has denied the receipt of material worth Rs. 6,71,37,901/-. It is submitted that the bills would indicate that the transportation was done between 25/12/2013 and 28/12/2013 and the same is not corroborated by his own bills. It is also submitted that on 16/1/2014, the complainant had received a notice from the Bansal Impex(Finance A/c), which show that in April, 2013 an amount of Rs. 9 Crore was wrongly received by Bansal Impex (Finance A/c) instead of Bansal International Ltd. The notice dated 16/1/2014 would indicate that the statement of payment made by the complainant is correct and that the payment is received. There is nothing on record to show that Bansal Impex had transferred this amount to Bansal International.

11 The company of the complainant had issued a statutory notice dated 25/1/2014 to M/s. Bansal International Ltd under section 433 and 434(a) of the Companies Act, 1956 informing that Bansal International Ltd. had not delivered the material worth Rs.

6,71,37,482/-. In reply to the said notice, the applicant had submitted that Bansal International Ltd. had orally informed the complainant that they were only supplying goods for balance amount and there is no question of any so-called balance outstanding of Rs. 6,71,37,482/- in favour of complainant. It is stated in the reply that SYMCOM Communication wanted to work as a consignment agent of Bansal International and that they have wrongly deposited the amount into the bank account of Bansal Impex instead of Bansal International Ltd. It is also submitted that Bansal Impex is a proprietary concern. It is stated in the reply that it was incumbent upon the complainant to attend office of Bansal International at Bhavnagar for drawing the Memorandum of Understanding and an agreement for consignment agency and that they had agreed to terms and conditions in the agreement. It was agreed that SYMCOM was to submit Central Sales Tax Form No. F and was also to make a proper security arrangement. The complainant had not complied with the said conditions. According to the applicant, the complainant was to work as his consignment agent and as purchaser of the goods. That he has purchased the goods and taken delivery in Gujrat but has not issued statutory forms i.e. Form No. F and Form No. C. That the complainant has failed to submit the said forms. Instead, a counter notice was issued for submitting Form-C for the goods which they have already purchased and taken delivery. The complainant was threatened of initiation of criminal prosecution.

12 The learned Counsel for the applicant has also filed written submission and stated that no material against the applicant to show that he has committed offence under section 463 and 464 of the Indian Penal Code. The provisions of Section 463, 464 of the Indian Penal Code are reproduced as under :

> “463. Forgery.— [340] [Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or

implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

464 Making a false document. — [341] [A person is said to make a false document or false electronic record— First —Who dishonestly or fradulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any [342] [electronic signature] on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the [342] [electronic signature], with the intention of causing it to be believed that such document or part of document, electronic record or [342] [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with [342] [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [342] [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.]"

13 Learned Counsel for the applicant has relied upon the Judgment of the Hon'ble Apex Court in the case of **Mohammed Ibrahim & ors. v/s. State of Bihar & anr. Reported in (2009) 8 SCC 751**. It is submitted that the said invoices are not forged. It is also submitted that stating of incorrect facts in invoices does not constitute making of false document and therefore, no evidence of forgery is made out and consequently, it cannot be said that the offence under section 467 and 471 is made out. It is lastly submitted that the nature of dispute is a civil dispute which is being converted to criminal proceedings.

14 Heard the respective Counsel at length. In the course of the investigation, the investigating officer has recorded the statement of one Hirenbhai Harshad Mandnani, who is a transport agent, stationed at Bhavnagar. He has disclosed to the police that he is running Rudra Roadline as transport agent. Initially, he was working as a truck driver. It is specifically submitted that he does not own a single truck and only work as transport agent. He has further disclosed that as demanded by the truck drivers/owners, he issues receipts (lorry receipts) by charging Rs. 50/- per receipt. The said bills are restricted to Gujrat jurisdiction. There are several other such transport agent to issue such bills. That they do not maintain any record. Each bill has four copies. Two copies are given to the supplier of the material and two copies are given to the consignee. He has also stated that he has given several bill to Piyush Bhatt. Vijay Kumar Bansal is the owner of two ship breaking plots at Alang and Piyush Bhat works with Vijay Kumar Bansal. That in 2013 Piyush

Bhatt has purchased bills from him which are issued in the name of Rudra Roadline i.e. Bill No. 228 to 237. He had mentioned the numbers of the truck which are mentioned in the said bills. He has also submitted that he does not know the owner of these trucks. He has no knowledge as to whether the said trucks had actually lifted material or supplied the same to SYMCOM Communication. He has also given sample of bills which show that they are subjected to Bhavnagar jurisdiction.

15 The investigating agency has also recorded the statement of Sureshbhai Karjanbhai Jaroya. He is also working as commission agent. He is chairman of Alang Sosiya Truck Transport Association for last 15 years. He has submitted that Bholenath Transport, Raj Transport and Ambaji Transport are not in existence.

15 The statement of Iliyasbhai Isabhai Kalavatar, who is the owner of tempo No. GJ 04 X 5047 is recorded by the investigating agency.

It is stated that the said tempo can carry weight of 8 tones. Therefore, there is no question of transporting material of 18.22 tons. He has also stated that he is transporting goods only from Alang to Bhavnagar and that he has not loaded any goods with Bholenath transport.

16 The owner of truck No. GJ 04 X 9108 has stated that his truck was engaged in transporting lignite coal between Ahemadabad and Rajkot and it was never engaged by Rudra Roadline. The owner of truck No. GJ 04 X 8006 has submitted that he has purchased the said truck from Chittarbhai Khakhubhai just 6 months ago. The statement of Chittarbhai was recorded and he disclosed that his truck Nos. GJ 04 X 8006 and GJ 04 X 8007 were transporting lignite coal. He has also produced the bills to show that they were engaged else where on 27/12/2013 and 25/12/2013.

17 It is also transpired in the course of investigation that four accounts of the applicant wherein he has obtained loan in the sum of Rs. 400 Crores had become NPA and the said bank is in the process of declaring the applicant as willful defaulter.

18 The investigating agency has also attempted to contact Abdul Karim Zaka, who had allegedly issued receipt in the name of Raj Transport and it is revealed that he has expired. The employee of Bombay Weigh Bridge has disclosed to the police that his predecessor Bablu Yadav has issued false receipts in favour of Vijay Kumar Bansal and therefore, his services were terminated. The owner of Bombay Weigh Bridge has also disclosed that Abhay Yadav had given false receipts and in fact, no trucks were weighed during the said period and therefore, his services are terminated.

19 It is transpired in the course of investigation that the applicant has sent a invoice showing truck No. GJ 18 Y 9354 is not a truck, but

in fact it is a S.T. Bus. It is shown by the applicant that truck No. GJ 04 X 9181 had supplied goods weighing 21.30 tons in one trip. However the capacity of the said tempo/truck is 6.4 tons. The truck No. GJ 04 W 8599 is shown to have transported the goods of 20 tons in a single trip. The carrying capacity of the said tempo is 7 tons. The owner of the truck No. GJ 04 X 8496 has submitted that his truck was never hired by Raj Roadlines. The owner of truck No. GJ 04 W 9144 has disclosed that he drives his own truck between Alang to Ahmedabad and his truck was never hired by Raj Roadlines or any other transport company. The owner of truck No. GJ 04 X 7185 has disclosed that his truck transports only salt to various districts in Maharashtra and on the return trip, transports sugar and he had never sent his truck to Alang. The owner of truck No. GJ 04 W 8599 has disclosed that his truck is always engaged only by his brother's transport company M/s. Bhoomi Transport and his truck was never hired by Raj Roadline. The owner of GJ 04 V 5296 has submitted that his truck transports lignite coal and it is only used by M/s. Sitaram Roadline and the same was never to Alang.

20 All the above mentioned material would clearly indicate that the receipts are fabricated by the applicant. It is further clear that the applicant had in fact informed the complainant that the amount is incorrectly credited in the account of Bansal Impex. In fact, the said account number was given by the applicant and therefore, the money was transferred through RTGS to Bansal Impex. It is not the case of the applicant that he had given any instructions to the complainant to deposit the amount in the Bansal International Ltd.

21 The learned APP submits that this is only jugglery of the nomenclature of the company. This has to be read in consonance with the fact that the four accounts have become NPA.

22 The learned Counsel for the applicant has placed reliance upon the Judgment of the Hon'ble Supreme Court in the case of **Mohd. Ibrahim (cited supra).** In fact, the facts of the case of **Mohd. Ibrahim** are rather different from the matter in hand. In that case there was execution of sale deed and the Hon'ble Apex Court had noted the facts as follows :

> "When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in his case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.
>
> It is not the case of the complainant that a**ny of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver** any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the

> complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, forth and fift accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.”
>
> “As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.”

23 In the present case, the complainant was the purported purchaser of the goods. He had made an advance payment in favour of the applicant. The applicant had never informed him that the goods have been transported. On the contrary in reply to the notice, the complainant had been informed that the payment has been wrongly received by Bansal Impex. Moreover, subsequently, the applicant sent the invoices by courier informing the complainant that the goods have been transported. The investigation clearly indicates

that all the 80 bills have been fabricated. As far as section 467 and 471 are concerned, the Hon'ble Apex Court in the facts of the case of **Mohd. Ibrahim (cited supra)** had observed that -

> "Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. But at the same, it should be noted that several disputes of a civil nature may also contain the ingredients of criminal offences and if so, will have to be tried as criminal offences, even if they also amount to civil disputes."

24 It is pertinent to note that the Hon'ble Apex Court has held as follows :

> "The condition precedent for an offence under sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

> In short, a person is said to have made a `false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses."

25 The learned Counsel has vehemently submitted that the bills are not valuable security and therefore, it cannot be said that it is a case of forgery. This Court is of the opinion that the essence of valuable securities lies in its social link with legal right or legal liability. The valuable security denotes a document which is executed and received by lawful holder. Section 30 of the Indian Penal Code denotes valuable security which reads as under :

> "The words "valuable security" denotes a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right."

Therefore, it cannot be said that the applicant has not indulged into forgery and fabrication of documents.

26 In the present case, the documents have been fabricated to create evidence which will be used to settle the claims of the parties concerned and the said documents would be used in the course of proceedings before any authority, court of law and hence, the same amounts to fabrication of false documents. Dishonest making or executing a document, knowing fully well that it is against the record or creating document to depict non-existing fact would also be an offence punishable under section 192 of the Indian Penal Code as well. The matter is under investigation and the investigation carried out till this date clearly indicates that the said bills are forged and fabricated.

27 Upon perusal of the papers of investigation it further reveals that the bills allegedly issued by non-existing companies are forged

by the applicant by purchasing the bills. The contents are filled in by the applicant and his employees and therefore, it can be safely inferred that the applicant has committed an offence punishable under section 467 of the Indian Penal Code.

28 Section 467 of the Indian Penal Code reads thus :

> "Section 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."

The punishment is for a term which may extend to 10 years and shall also be liable to fine.

29 It is in these circumstances that the applicant does not deserve to be granted pre-arrest bail as contemplated under section 438 of the Code of Criminal Procedure, 1973. It is a case where custodial interrogation would be imperative. The investigation further shows that the applicant has obtained blank bills from transport agent and also receipts from Bombay Weigh Bridge.

30 It appears from the record that the applicant is taking inconsistent stand before filing of the FIR by the complainant. Initially, the applicant had not informed the complainant that the goods have been transported and has neither given the number of the trucks or the weight of the material which was transported. In reply to the notice under the Companies Act, the applicant had stated that he had initially informed that the goods are not available and

therefore, had agreed to refund the amount and to show his bonafide had repaid Rs. One Crore by RTGS. Thirdly, the communication was sent to the complainant stating that the amount of Rs. 6,71,37,482/- has been wrongly received in the account of Bansal Impex. There was no communication as to whether the said amount is transferred to Bansal International or that the goods have been delivered as against the said amount etc. Fourthly, the stand is taken that in fact, the complainant owes him some money and to evade the payment of the said amount, he has initiated criminal prosecution and today it is submitted that the goods for which the complainant had paid have been delivered. Receipts are placed on record. In fact, the receipts were sent by courier service to the complainant. The conduct of the applicant clearly shows that he has fabricated the bills and has cheated the complainant to the tune of Rs. 6,71,37,482/-. Fifthly, the case of the complainant is that the consignee has to lift the stock at site. In this eventuality, there was no question of the trucks being hired by the applicant to show that the consignment was delivered. It is rightly said that “a lie is always short lived”. It is in these circumstances that the applicant does not deserve to be granted pre-arrest bail.

31 Hence, the application being sans merits stands rejected. Needless to say that the interim relief granted in favour of the applicant stands vacated.

32 The Application is disposed of accordingly.

33 At this stage, learned Counsel for the applicant makes a prayer that the order be stayed. The prayer is rejected.

**(SMT. SADHANA S. JADHAV,J)**