

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

CRIMINAL APPLICATION (ABA) NO.694/2017

Nandkishor s/o Gopichand Dandare ..vs.. State of Maharashtra through PSO
P.S. Chittapur, Tq. Shahapur, Dist. Kalburagi and anr.

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

Court's or Judge's orders.

Mr. R. S. Akbani, Advocate for applicant.

Mr. R. S. Nayak, A.P.P. for non applicant-State.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 25, 2017

Heard learned counsel for the applicant. The present application is under Section 438 of the Code of Criminal Procedure. Prayer clause (i) of the application reads as under:

“(i) order the release of the Applicants on bail, in the event of his arrest in Crime No. 60/2017, Police Station Chittapur, Taluka Shahapur, District Kalaburagi, for the offences under Section 420 read with Section 149 of the Indian Penal Code for a period of three weeks to approach the Court of competent jurisdiction”

It is the submission of the learned counsel for the applicant that the co-accused are arrested and they are released on bail. He submitted that though in the prayer clause, three week's protection is prayed, during the oral submission it is prayed that protection may be given for a period of one week only.

FIR is registered at Police Station, Chittapur, Taluka Shahapur, District Kalaburgi in Karnataka State vide Crime No.60/2017. The FIR is lodged on

16.05.2017 by Rajshekar Shivasharanappa Sarasambi, Assistant Manager of Orient Cement Company.

As per the case of the applicant, an agreement was entered into between Orient Cement Ltd. and IBC Impex Pvt. Ltd. of which the present applicant is the Managing Director. In the cause title, the applicant has not stated that he is the Managing Director of the said company. His occupation is shown as business. Further, even in the affirmation also, he has not stated that he is the Managing Director of the said company.

According to the learned counsel for the applicant, arbitration proceeding is going on in between the Orient Cement Ltd. and IBC Impex Pvt. Ltd. In that behalf, proceedings of the arbitrator dated 17.07.2017 is placed on record and it is at page no.40 of the compilation. From the said, it appears that Mr. V.V. Raghavan, Chief Judge (Retired), City Civil Court, Hyderabad is nominated as Arbitrator by M/s. Orient Cement Limited.

According to the FIR, on 26.04.2017 when the railway racks containing coal arrived at Wadi for testing purpose, the representative of the IBC Impex Pvt. Ltd. had also come. At that time, Orient Cement Company's worker one Krantikumar Bikshmaya Yadav also took sample of the coal from the railway wagon for testing purposes and it was taken to the Orient Cement Company's laboratory. That time as per the FIR, it is noticed that the employee of the IBC Company has

removed some good quality of coal from his pocket and mixed the same in the remaining 4 division of coal which was kept for testing. However, when this was brought to the notice, it was informed to the first informant by the employee of the IBC Company namely; Shrinivas s/o Nagareddy Mane and Mahadev the Supervisor of the IBC Company Ltd. of which the applicant claims to be the Managing Director, that they are intimated and instructed that while making laboratory testing they should mix up good quality of coal and for that they are being paid bonus amount.

The agreement dated 19.01.2017 is placed on record. The IBC Impex Pvt. Ltd. is Service Provider and its services and scope is in clause (3) of the said agreement. Sub clause (iv) of clause (3) is in respect of the acts to be performed by the IBC Impex Pvt. Ltd., after allotment of the coal. Clause (b) sub clause (iv) shows that it is the duty of the IBC Impex Pvt. Ltd. to supply the required quality of coal to be sourced from target collieries. So also from the agreement, it is clear that it is the responsibility of the IBC Impex Pvt. Ltd. to provide good quality of coal to the Orient Cement. According to the FIR, good quality of coal is not being supplied. It was further noticed that there is a deliberate mixing of good quality of coal at the time of testing.

There is nothing on record to show that recently the applicant has learnt about registration of the offence. The learned counsel for the applicant has

invited my attention on the paper cutting. The said paper cutting is in Kannad language and no English translation of the same is placed on record.

The FIR discloses a serious offence. The applicant who is the Managing Director of the Service Provider cannot escape his responsibility. No case is made out for interim protection. The application is therefore rejected.

JUDGE

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