IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2231 OF 2017

Paras s/o. Ghevarchand Chajed,
Age : 71 years, Occ. Business,
r/o. Akanksha, Plot No.25,
Guru Ramdasnagar, Jalna Road,
Aurangabad ..Applicant

Vs.

1. The State of Maharashtra,
   Through Economic Wing of
   Crime Branch, Aurangabad

2. Jinsi Police Station,
   Aurangabad

3. Mohan Madhav Raut,
   Age : 69 years, Occ. Business,

4. Jyoti Mohan Raut,
   Age : 66 years, Occ. Business,

5. Amit Mohan Raut,
   Age : 39 years, Occ. Business

   Respondent Nos.2 to 4 are
   resident of Plot No.254-A,
   N-3, CIDCO, Aurangabad ..Respondents

Mrs.Rashmi S. Kulkarni, Advocate for applicant

Mrs.R.P.Gaur, APP for respondent nos.1 and 2

Mr.Abhay Ostawal, Advocate for respondent nos.3 and 5

Mr.K.D.Jadhav, Advocate for respondent no.4

CORAM : SANGITRAO S. PATIL, J.
DATE : SEPTEMBER 12, 2018

JUDGMENT :

The applicant, who is the informant, has filed this application under Section 439(2) of the Code of Criminal Procedure for cancellation of pre-arrest bail granted in favour of respondent nos.3 to 5, by the learned Additional Sessions Judge, Aurangabad, vide order dated 21.04.2017 passed in Criminal Bail Application No.578 of 2017, in respect of Crime No.103 of 2017 registered in Police Station, Jinsi, Aurangabad, for the offences punishable under Sections 420, 406, 120-B, 504 and 506 read with Section 34 of the Indian Penal Code.

2. It is the case of the applicant that he is Director of Proton Electro Motors, which is being run at M.I.D.C., Chikalthana, Aurangabad. Respondent nos.2 to 5 are running a business of solar systems in the name and style as Adiurja Pvt. Ltd. They approached the applicant and his son in the month of

September, 2014 and offered to place a bid in the tender floated by Maharashtra State Electricity Distribution Company Ltd. ("Electricity Company", for short), jointly with the applicant. It was assured that since respondent no.5, being an expert in solar systems, they would win the bid and earn a handsome profit jointly in case the applicant would make the funds available for placing the bid. The tender was floated on 10.06.2015. The last day for placing the bid was 30.06.2015. The earnest money of the bid was Rs.49,90,000/-. Respondent nos.3 to 5 induced the applicant to raise the earnest money by selling his shares. He transferred an amount of Rs.40,00,000/- to the account of Adiurja Company on 27.06.2015 by R.T.G.S. However, respondent nos.3 to 5 neither placed the bid nor returned the amount of Rs.40,00,000/- to the applicant, despite repeated demands. Respondent nos.3 to 5, ultimately, threatened the applicant of dire consequences, in case he demanded his money back. The applicant then realised that he was cheated by respondent nos.3 to 5. Therefore, he complained against respondent nos.3 to 5 to the Commissioner of Police, Aurangabad. The applicant then received a notice dated 24.03.2017 sent by respondent no.3 on behalf of Adiurja company about forfeiture of his amount. Then the applicant again approached the police. Accordingly, the above-numbered crime came to be registered in the Police Station, for the above-mentioned offences against respondent nos.3 to 5.

3. Respondent nos.3 to 5 filed an application seeking pre-arrest bail bearing Bail Petition No.545 of 2017. They were granted ad-interim pre-arrest bail on 30.03.2017. However, they withdrew that application with liberty to file a fresh application. They further filed fresh application for pre-arrest bail bearing Bail Petition No.578 of 2017 on 03.04.2017. The learned Additional Sessions Judge granted interim pre-arrest bail in favour of respondent nos.3 to 5 vide order dated 05.04.2017 and

ultimately, confirmed that interim relief and granted pre-arrest bail to respondent nos.3 to 5 as per the impugned order dated 21.04.2017.

4. The learned Counsel for the applicant submits that the learned Additional Sessions Judge considered the defence of respondent nos.3 to 5, while granting the relief of pre-arrest bail, which was not at all permissible. The learned Additional Sessions Judge did not take into consideration that the offence of forgery also was added subsequently against respondent nos.3 to 5. The learned Additional Sessions Judge did not consider the documents produced on record, more particularly, transcript of the telephonic conversation between respondent no.3 and son of the applicant, making it clear that the amount of Rs.40,00,000/- was received by respondent no.3 towards the earnest money deposit (E.M.D.) for the tender. A joint venture agreement was executed on 28.07.2015, which was signed by the applicant and respondent no.3 on behalf of his company in respect

of the bid that was proposed to be placed in connection with the tender published by the Electricity Company. However, respondent nos.3 to 5 raised a false defence that the amount of Rs.40,00,000/- was received by them towards the down payment in respect of the alleged order placed by the applicant for Solar On-Grid Power plant of 300 kWp having total cost of Rs.2,00,00,000/- and not in respect of the tender that was issued by the Electricity Company. The learned Counsel submits that respondent nos.3 to 5 prepared a false proforma invoice on 23.06.2015, showing that it was issued at the instance of the applicant for purchase of Solar On-Grid Power plant 300 kWp. The learned Counsel submits that the proforma invoice is just a quotation and cannot be termed as an order placed by the purchaser. Moreover, no purchaser would pay a huge amount of Rs.40,00,000/- as advance as against a quotation. The learned Counsel submits that the person, who has prepared this false invoice, is accused no.4. The Accountant of respondent nos.3 to 5 states that he had not prepared this proforma invoice. The learned Counsel submits that in order to create false evidence, respondent no.3 sent the notice dated 24.03.2017, calling upon the applicant to arrange for the remaining amount of Rs.1,60,00,000/- and threatened to forfeit the amount of Rs.40,00,000/- in case the remaining amount is not paid by 31.03.2017. The learned Counsel submits that the facts of the case clearly show that respondent nos.3 to 5 committed the above-mentioned offences. The dispute between the parties is not of civil nature, though, a civil suit has been filed by the applicant to recover the amount of Rs.40,00,000/-. The learned Counsel submits that recording of the telephonic conversation between respondent no.3 and the son of the applicant was sent to the expert for his opinion and he opined that the said conversation was in the voice of respondent no.3 with the son of the applicant. The learned Counsel submits that considering the serious nature of the offences alleged against respondent nos.3 to 5, the learned Additional Sessions Judge should not have granted the relief of pre-arrest bail in their favour, more particularly, when this is an economic offence. The learned Counsel submits that the impugned order suffers from serious infirmities. The learned Additional Sessions Judge did not consider the evidence that was against respondent no.3 and wrongly took into consideration the defence of respondent nos.3 to 5. The learned Counsel submits that the impugned order, being illegal and perverse, is liable to be set aside. In support of her contentions, she relied on certain judgments, which would be considered a little later.

5. The learned Counsel for respondent nos.3 to 5 strongly opposed the application. He submits that the applicant had placed an order for purchasing Solar On-Grid Power plant of 300 kWp from the company

of respondent nos.3 to 5 for a total amount of Rs.2,00,00,000/-. As per the proforma invoice, 20% amount was to be paid in advance as retention amount. Accordingly, the applicant transferred Rs.40,00,000/- through R.T.G.S. in the account of the company of respondent nos.3 to 5. The transaction was to be completed within a period of one year. Since the applicant did not pay the remaining amount and complete his part of contract, the notice dated 24.03.2017 was sent on behalf of the company of respondent nos.3 to 5 to the applicant, calling upon him to perform his part of the contract. After receiving that notice, the applicant lodged FIR against respondent nos.3 to 5 on 31.03.2017. The learned Counsel submits that there is no reference of this notice in the FIR. He submits that there is no element of deception on the part of respondent nos.3 to 5. The alleged telephonic conversation between the son of the applicant and respondent no.3 cannot be considered at this stage. The possibility of creating of a false and doctored conversation cannot be ruled out. It would be subject to cross-examination of the expert, who opined that respondent no.3 was involved in that telephonic conversation with the son of the applicant. No offences alleged against respondent nos.3 to 5 are, *prima facie*, disclosed. The dispute between the parties is purely of civil nature. The applicant has filed a civil suit for recovery of the amount of Rs.40,00,000/-. In that suit, it would be decided, whether the amount of Rs.40,00,000/- was given for placing the bid in respect of the tender issued by the Electricity Company or in respect of purchasing of solar power plant. He submits that respondent nos.3 to 5 have not misused the liberty granted to them. Respondent nos.3 to 5 complied with all the conditions that were imposed by the learned Additional Sessions Judge, while granting the pre-arrest bail. They attended the Police Station regularly. They co-operated with the Investigating Officer in the investigation. The case is solely depending on documentary evidence. All the documents have been collected by the police. Even, the bank account of the company of respondent nos.3 to 5, wherein, there is an amount of more than Rs.37,00,000/-, has been freezed by the police. In case it is ultimately found that the applicant is entitled to recover Rs.40,00,000/- from respondent nos.3 to 5, the said amount would be paid to the applicant. As such, the financial interests of the applicant have been duly safeguarded. The custodial interrogation of respondent nos.3 to 5 is not at all necessary, more particularly, when, after completion of the investigation, charge-sheet has been filed on 06.06.2017. Respondent nos.3 to 5 are permanent resident of Aurangabad. Their presence can be secured for the purpose of trial. The learned Additional Sessions Judge considered the facts of the case and after passing a detailed reasoned order, granted the relief of pre-arrest bail to respondent nos.3 to 5. The impugned order is legal, proper and correct. The learned Counsel for respondent nos.3 to 5, therefore, prays that the application may be rejected.

6. There is no dispute that the amount of Rs.40,00,000/- has been transferred by the applicant in the account of the company of respondent nos.3 to 5 on 27.06.2015. There is dispute between the applicant and respondent nos.3 to 5 as to the cause behind transfer of the amount of Rs.40,00,000/- by the applicant in the account of the company of respondent nos.3 to 5. According to the applicant, the said amount was transferred for being deposited as earnest money for placing the bid in response to the tender issued by the Electricity Company. On the other hand, it is the case of respondent nos.3 to 5 that the applicant transferred the amount of Rs.40,00,000/- towards 20% of the advance as retention amount for purchasing Solar On-Grid Power plant of 300 kWp, having total cost of Rs.2,00,00,000/-. The applicant is relying on the

joint venture agreement dated 28.07.2015, while respondent nos.3 to 5 are relying on the proforma invoice dated 23.06.2015 in respect of their rival claims. This question would be considered at the trial in the above-numbered criminal case or in the civil suit that has been filed by the applicant. The notice dated 24.03.2017 sent by respondent no.3 on behalf of the company through his Advocate to the applicant as well as the proforma invoice dated 23.06.2015, are part of the papers of investigation. If that be so, the contention of the learned Counsel for the applicant that the defence of respondent nos.3 to 5 based on these documents i.e. the notice and the invoice, cannot be considered, while deciding the application for pre-arrest bail, cannot be accepted. In order to see, whether there is a *prima facie* case made out against the respondent nos.3 to 5, all the attending circumstances, including the defence based on documents produced by the prosecution/complainant, would be relevant for being considered. The learned Additional Sessions Judge cannot be said to have committed any mistake in considering the defence of respondent nos.3 to 5 based on these documents.

7. The telephonic conversation between the son of the applicant and respondent no.3 would be a piece of evidence in respect of the case of the prosecution. The opinion of the expert would be subject to cross-examination on behalf of respondent nos.3 to 5. The script of the said conversation, at this stage, would not be an impediment in the way of respondent nos.3 to 5 in enjoying liberty on pre-arrest bail.

8. The learned Additional Sessions Judge has considered the rival contentions of the parties, documents produced on record and passed a reasoned order granting the relief of pre-arrest bail to respondent nos.3 to 5.

9. In the case of **Premchand Bansi Jadhav and anr. Vs. The State of Maharashtra and anr., Criminal Application No.2522 of 2012, decided by this Court on 06.08.2012**, cited on behalf of the applicant, accused no.2 therein was a Counselor and also President of Municipal Corporation during the period when a huge amount of Rs.29,59,09,040/- was embezzled. He was granted bail by the Special Court. In paragraph 15, it was observed as under :-

> 15. The economic offences need to be considered on different footings at all the stages by the Courts. The aforesaid order shows that respondent was not detained, kept behind bars, even for a single day. Though it is not necessary that police should effect arrest in every case only because they have the power to do so, in a case like present one, there must be something to show that attempt was made to collect some material with regard to the benefit received by person like present respondent. Though there is the record like

giving of 5 work orders to the brother of respondent, during custodial interrogation more material could have been definitely collected to show that as to how and to what extent such a person is benefited in such an offence. The aforesaid circumstances show that nothing was done fairly and every favour was shown to the councilors and to the present respondent. This happened probably due to influence which applicant could have over investigating agency. These circumstances are important considerations for bail proceeding. If such influence is allowed to be continued, one cannot expect fair and speedy trial of the case.

It was brought to the notice of the Court that that no speaking order was passed by the learned Special Court, while granting bail. Though bail was not granted to many of the co-accused by the High Court, the Special Court did not consider that circumstance. The criminal antecedents of accused no.2 therein, were not considered by the Special Court. In the circumstances, the bail granted to accused no.2 therein, was cancelled.

10. In the case of **Dr.Yogesh s/o. Duryodhan Murkut Vs. The State of Maharashtra and ors., Criminal Application No.618 of 2013 decided by this Court on 13.08.2013**, cited on behalf of the applicant, the respondents/accused therein were alleged to have joined hands with the members of the Committee appointed by C.C.I.M.; created false record regarding appointment of staff and the compliance of the necessary conditions for giving permission to continue the institution; created false record in respect of appointment of Professors and attendance of the students and misappropriated a huge amount, by cheating the Government. The permission granted to the College of accused/respondents therein, was cancelled. The accused/respondents had filed a Criminal Writ Petition, in which a direction was given to the police for not arresting the

accused/respondents therein, till the next date. Further, the said Writ Petition was dismissed. Thereafter, the accused/respondents therein filed an application for pre-arrest bail contending that the High Court had given interim protection to them. It seems that on this sole ground, the learned Additional Sessions Judge had granted pre-arrest bail to the accused/respondents therein. In the circumstances, the order granting the relief of pre-arrest was cancelled.

11. The learned Counsel for the applicant further cited the judgment in the case of **Kanwar Singh Meena Vs. State of Maharashtra, (2012)12 SCC 180**, wherein it is observed in paragraph 10, as under:-

> ".......... While cancelling the bail under Section 439(2) of the Code, the primary considerations which weigh with the court are whether the accused is likely to tamper

with the evidence or interfere or attempt to interfere with the due course of justice or evade the due course of justice. But, that is not all. The High Court or the Sessions Court can cancel the bail even in cases where the order granting bail suffers from serious infirmities resulting in miscarriage of justice. If the court granting bail ignores relevant materials indicating *prima facie* involvement of the accused or takes into account irrelevant material, which has no relevance to the question of grant of bail to the accused, the High Court or the Sessions Court would be justified in cancelling the bail. Such orders are against the well recognized principles underlying the power to grant bail. Such orders are legally infirm and vulnerable leading to miscarriage of justice and absence of supervening circumstances such as the propensity of the accused to tamper with the evidence, to flee from justice, etc. would not deter the court from cancelling the bail. The High Court or the Sessions Court is bound to cancel such bail orders particularly when they are passed releasing the accused

> involved in heinous crimes because they ultimately result in weakening the prosecution case and have adverse impact on the society."

The above observations are salutary. In the above-cited case, the accused were charged for the offences punishable under Sections 147, 148, 364 and 302 read with Section 149 of the Indian Penal Code. It was brought to the notice of the Hon'ble Apex Court that the High Court overlooked the extremely vital evidence collected by the investigating agency and without assigning any reason, released the accused on bail. It was further pointed out that the brother of the accused, who was an I.P.S. Officer, was trying to exert pressure on the Investigating Officer. Considering these facts and serious nature of the offences, the bail was ordered to be cancelled. In the present case, as stated above, considering the nature of the offences alleged against respondent nos.3 to 5 and the fact that the dispute between the applicant and respondent nos.3 to 5 seems to have arisen out of the contractual rights, the ruling in the case of **Kanwar Singh Meena (Supra)** would be of no help to the present applicant to seek cancellation of pre-arrest bail granted in favour of respondent nos.3 to 5.

12. As seen from the facts of the above-cited cases, there was misappropriation of a huge public money. In the present case, the dispute is between two private parties arising out of the contractual relations. Admittedly, the applicant has filed a Civil Suit for recovery of Rs.40,00,000/- from respondent nos.3 and 5. The case is entirely depending on documentary evidence. All the documents have been produced before the Court. There is no possibility of tampering with those documentary evidence. The charge-sheet has already been filed. The presence of respondent nos.3 to 5 can be secured for the purpose of trial. They have not misused the

liberty granted to them. In view of these distinguishing facts, the relief of pre-arrest bail granted in favour of respondent nos.3 to 4, cannot be cancelled.

13. As stated above, the learned Additional Sessions Judge passed a reasoned order, while granting the relief of pre-arrest bail in favour of respondent nos.3 to 5. There is nothing to show that he ignored the relevant material and considered the material, which was not at all relevant, while granting the relief of pre-arrest bail. The impugned order cannot be said to have caused any serious infirmities resulting in miscarriage of justice.

14. The learned Counsel for the applicant submits that the applicant has sought cancellation of pre-arrest bail on the ground that there is breach of conditions imposed by the Court. However, the learned Counsel, on instructions, seeks leave to withdraw that ground with liberty to approach the

Court which granted pre-arrest bail, for cancellation thereof, on the ground of breach of conditions. Leave granted to withdraw the said ground, with liberty as sought.

15. In the above circumstances, the impugned order passed by the learned Additional Sessions Judge granting pre-arrest bail to respondent nos.3 to 5 cannot be interfered with. The application is, accordingly, rejected and disposed of.

[**SANGITRAO S. PATIL, J.**]

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