Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 991 OF 2017

Sanjay Chhabalani ...Applicant

Versus

The State of Maharashtra & anr. ...Respondents

Mr. Aniket Vagal, for the Applicant.
Ms. Rutuja Ambekar, APP for the State/Respondent no.1.
Ms. Monica Parikh, for Respondent no.2.
Mr. Kharat, API, Govandi Police Station.

CORAM: A. S. GADKARI, J
DATED: 11th JULY, 2018

PC:-

1. The applicant was granted interim relief by an Order dated 12th June, 2018.

Heard the learned Counsel for the applicant, the learned Counsel for respondent no.2 and the learned APP. Perused the record of investigation.

2. The first information report is lodged by Mr. Rajiv Midha, Chief Finance Officer of Supreme Nonwoven Industries Pvt Ltd ("SNIPL", for short). The prosecution case in brief is that, the applicant works as a Custom Clearing

Agent. That the first informant used to import certain machineries and other goods required for his business from foreign countries. That on an earlier occasion the applicant was entrusted that the work of clearing of the consignment of the informant company from Custom Department. That being a Customs Clearing Agent, the informant company used to entrust work of clearance of those goods to the applicant. The applicant used to claim his professional charges and other ancillary charges including custom duty to the informant. That between the period form May-2015 to June-2016, a SNIPL company imported 11 different consignments from foreign countries for the utilization of their company. The informant company entrusted the work of clearing of said 11 consignments of Custom Department to the company of the applicant namely Abba Logistics Company. The applicant raised a bill in the name of Royal Tiyara Logistics Ltd, run by Mr. Harish Surve for an amount of Rs.73,56,380/- and the said amount was paid to the said concerned Royal Tiyara Logistics. It is the case of the informant that the applicant's company namely Abba Logistics also raised invoices and accepted the sum of

Rs.79,05,000/- from the first informant company for releasing the said consignments form Custom Department. That the applicant did not provide any services to the first informant's company and therefore the informant requested the applicant to return the said amount of Rs.79,05,000/-, for which the applicant refused and gave various excuses. Thus, the informant company had to pay Rs.73,56,380/- to M/s. Royal Tiyara Logistics owned by Mr. Harish Surve so also Rs.79,05,000/- to the applicant's company namely Abba Logistics for the release of same 11 consignments from Custom Department. Despite repeated demands from the informant, applicant did not return the said amount of Rs.79,05,000/- and therefore it is alleged that the applicant has committed criminal breach of trust and cheated the first informant.

3. Mr. Vagal, the learned Counsel appearing for the applicant submitted that as a matter of fact out of the said Rs.79,05,000/-, the applicant has transferred an amount of Rs.73,56,380/- in favour of M/s Royal Tiyara Logistics owned by Mr. Harish Surve. He submitted that the applicant is not an authorised agent of Customs

Department and therefore he through Harish Surve used to clear the consignments of his customers. That the said Mr. Harish Surve of Royal Tiyara Logistics has in fact cleared the said consignments and therefore the informant cannot have any grievance about non-clearance of the said goods in that behalf. He further submitted that the transaction between the applicant and first informant is purely of civil nature and the applicant has already submitted all the necessary documents to the Investigating Officer and therefore, the custody of the applicant is not necessary for further investigation of the crime. He prayed that the applicant may be protected by pre-arrest bail.

The learned APP and the learned Counsel for Respondent no.2 vehemently opposed the application.

4. The first information report is eloquent enough and makes out a clear case against the applicant that, after receipt of the amount of Rs.79,05,000/- through NEFT/RTGS from the informant, he did not comply with his part of obligation and has failed to clear the said consignments of the informant's Company and he further failed to return the said amount after repeated demands.

The record further indicates that the informant company had to further pay an amount of Rs.73,56,380/- to the said M/s Royal Tiyara Logistics for the work done by the said company of releasing the said 11 consignments from Customs Department. The applicant, thus, has committed an offence as contemplated under Section 420 of the Indian Penal Code. There is sufficient material available on record to indicate the clear complicity of the applicant in the crime as apparent.

5. After taking into consideration the aforesaid facts, the record of the investigation, the serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that the applicant does not deserve to be protected by pre-arrest bail.

6. Application is accordingly rejected.

[A. S. GADKARI, J.]