IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1820 OF 2018

Hitesh Narendra Kanungo … Applicant
Vs.
State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO. 1107 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1820 OF 2018

Vallourec … Intervenor

In the matter between

Hitesh Narendra Kanungo … Applicant
Vs.
State of Maharashtra … Respondent

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Mr. Subodh Dharmadhikari, Sr. Advocate a/w Mr. D.V. Chavan I/by Mr. Dilip H. Shukla for the applicant.
Mr. S.R. Agarkar, APP for the Respondent.
Mr. Mehul Shah for the intervenor
Mr. Nitin Chavan, API, V.P. Road is present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th DECEMBER, 2018.

P.C.

Applicant is apprehending arrest in connection with C.R. No. 166 of 2018 registered with V.P.Road Police Station for offence punishable under Sections 420, 465, 467, 468, 471 read with 34 of Indian Penal Code.

2. The case of the prosecution in nutshell is that on 16th February, 2017, complainant company had received an e-mail from DNOW Company stating that Mill Test Certificate (MTC) issued by complainant company in favour of International Pipeline Structural Solutions Ltd (IPSS) and further sought verification of the material by the complainant company in favour of which said certificate was issued by the complainant. E-mail also contained scan copy of the said certificate. E-mail was forwarded to the Senior Officers of the complainant company on 19th February, 2017. The employee of the complainant-company received another e-mail id with similar contents in respect of another transaction by DNOW Company. On 20th February, 2017 one of the employee of the complainant-company namely Naree Kim issued an email to DNOW Company seeking information regarding IPPS company based at UK and the steel material supplied by the said company on the same day DNOW replied to complainant company that IPSS had received the said steel material from India. It is further alleged that thereafter two Mill Test Certificates (MTC) were tested by German Consultant of the complainant-company and the same were found to be false for five different

reasons. It is alleged that the aforesaid DNOW Company cancelled the order placed on IPSS and contended by M/s Trident Steel and Engineering Company situated at C.P. Tank, Mumbai, and requested them to take back the steel material which the applicant to accept stating that there are problem in the Customs Department and also refused to return 33385 USD involved in transacction. The complainant also received the complaint from Arabian Industries Manufacturing LLC (situated at Muscat, Oman) alleging that Trident steel and Engineering Company is involved in similar MTC false certificate matter concerning the complainant. Subsequently, the complainant filed a commercial suit in this High Court and during the pendency of the suit inquiry were made by the High Court and directions were issued for investigation into the matter. Subsequently, First Information Report was registered on 29th June, 2018 for the aforesaid offences.

3 Applicant preferred an application for anticipatory bail before the Court of Sessions which was rejected by order dated 28th August, 2018. The applicant therefore preferred this application for anticipatory bail before this Court.

4. Learned Senior Advocate Shri Dharmadhikari submitted that applicant has been falsely implicated in this case. The prosecution has not made out the case for custodial interrogation. The co-accused arrested were granted bail. There is no cogent evidence on record to establish that the applicant was involved in preparing fabricated Mill Test Certificate. It is submitted that the applicant had no deal with Dharampal Singh directly. The prosecution case is based on the statement of the co-accused which is not corroborated by any evidence. There is no material on record to substantiate that the applicant is involved in the crime. It is submitted that the applicant has co-operated with the investigating machinery. After filing of commercial suit, the applicant was summoned by the Civil Court and in pursuant to that they appeared before the Court. Learned counsel for the applicant drew my attention to the order passed by this Court in Commercial Suit wherein it is observed that the applicant is co-operating with investigation and also deposited the amount of Rs.30,50,000/- in this Court which comprises of the profit and payment made by him to Mr. Dharampal Singh. It is submitted that in the said order dated 12th June, 2018, this Court has also observed that the

Investigating Officer not to take action on the basis of contents of paragraph 3 of the order dated 13th February, 2018 and shall proceed with the investigation on its own merit. It is therefore submitted that in the light of the said observation, the applicant cannot be subjected to custody. The statement of the applicant is also recorded by the Investigating Machinery and he appeared before them which shows that he has co-operated with the investigation. It is submitted that subsequently the Court wherein the commercial suit was filed, has directed to carry out the investigation into the matter by making certain observations and in pursuant to that FIR was registered. Learned counsel for the applicant pointed out the order passed by the Division Bench of this Court in commercial appeal No. 434 of 2018 wherein the order passed by the Single Judge of this Court in the commercial suit was under challenge and while disposing of the said appeal, this Court had made observations with regards to the directions for investigation issued by Court on certain observations made by the learned Single Judge in the said commercial suit. Learned counsel for the applicant drew my attention to various observations of the Division Bench in the said order. It is submitted that the applicant is a business man. He has been falsely implicated on the basis of the statement of co-accused Dharampal Singh. The applicant is carrying the business in the name and style of M/s Trident Steel and Engineering Company. The complainant instituted an IPR Suit under Section 27, 29 of the Trademarks Act and Section 63 of the Copyright Act, 1957 claiming certain interim relief. Considering the nature of disputes which is apparently civil in nature, the applicant cannot be subjected to custody. All payments were made in relation to the said invoices were made through RTGS / NEFT as per the bank details provided by the co-accused. In case of payments by cheque issued in the name of Accurate Multi Trade were handed over to Mr. Upadhyay. The cheques have been presented and the demand drafts have been received by Accurate Multi Trade. The said entries are duly reflected in the books of account. The photocopies of Mill Test Certificate in relation to the said supplies were also handed over to applicant by Mr. Upadhay. C.S. Seamless pipes had been supplied to applicant by Accurate Multi Trade and Mr. Upadhyay were of Vallourec brand, which belongs to the plaintiff/complainant. These pipes were thereafter dealt with by the applicant. It is submitted that transactions were fortified by requisite documents. It is submitted that Dharampal Singh who has played a major role has been arrested and he has been granted bail and other accused were arrested and were also granted bail. Applicant has co-operated with the investigation and also willing to co-operate the investigating machinery in whatever manner. Considering the fact that the matter relating to the document, the custodial interrogation of the applicant is not necessary. The applicant may be granted.

5 Learned counsel for the applicant further pointed out the statements of wife of Satish Upadhyay recorded during the course of investigation which form part of the chargesheet filed against the co-accused. It is submitted that said statement indicate that Shri Lalchand Upadhyay was acting as broker in steel business. Amount received by him was being deposited at Ahmedabad Mercantile Bank. However, she is not aware about the details of the transaction. She has expired on 13th January, 2018. Learned counsel for the applicant also pointed out the statement of other witnesses recorded during the course of investigation and documents collected by the Investigating Machinery. It is submitted that there is no cogent evidence to establish that the applicant was involved in fabricating of manufacturing the pipe.

6 Learned APP submitted that there is strong evidence against the applicant. After registration of the FIR, the applicant has not made himself available for investigation. Although, intimations were given to him to attend the police station. He had not responded. It is submitted that the application for anticipatory bail preferred by him was rejected on 28th August, 2018 by the Sessions Court by assigning cogent reason. The applicant is absconding and not made himself available for the purpose of investigation. It is submitted that applicant is the main person who is involved in the case. He is responsible for false and fabricating Mill Test Certificate. The co accused were arrested and they were interrogated. During the course of investigation, they had disclosed the complicity of the applicant in the crime. Learned APP brought to my notice, the statement recorded during the course of investigation. It is further submitted that while applicant had appeared before the learned Single Judge of this Court dealing with the commercial suit had admitted the receipt of the amount and the false certificate. It is submitted that although, the applicant has deposited the amount as reflected in the order passed by the Commercial Court, the evidence collected during the

course of investigation discloses his involvement in crime and he has not made himself available for effective investigation.

7 Learned counsel for the intervener opposed the grant of bail. It is submitted that the applicant has played active role in this crime. Learned counsel for the intervenor submitted that although the Division Bench of this Court in 16th / 17th October, 2018 has made certain observations with regards to the directions issued by the learned Single Judge while hearing the commercial suit in paragraph 75 of the said it is observed that since all the reports of the investigation carried out till date are on the file of the civil suits in this Court, the same be forthwith transferred to the file of the competent criminal court. It is for the competent criminal court to then decide as to whether a *prima facie* case has been made out against the persons named therein and can a charge be framed against them. Once these reports are placed before the competent criminal court, it is its duty and function in accordance with the Criminal Procedure Code, 1973 to take an appropriate decision. That decision will be taken strictly in accordance with law. While taking that decision, the criminal court shall not be influenced by any opinion or expression of any opinion in the orders under

challenge. It is further submitted that the evidence collected by the police during the course of investigation clearly indicates the involvement of the applicant. Applicant had played the major role in the crime. Infact, he is the main accused who instrument in committing the alleged act, the custodial interrogation of the applicant is necessary.

8 Having heard both the sides. I have perused the documents on record. The case relates to fabrication of MTC. The First Information Report was registered on 29th June, 2018. On perusal of documents it appears that in the civil proceedings certain directions were issued. It was observed that the brand name of the complainant company is used and forged MTC certificate was issued by applicant in connivance with other accused. Although, the applicant has deposited the amount after the arrest of co-accused, investigation reveals his complicity. The applicant has not made himself available. It is true that applicant had preferred this application for anticipatory bail before the Sessions Court which was rejected and subsequently he has preferred an application before this Court. The record indicates that purchase order was issued by the accused which was supplied by the present applicant.

According to the prosecution, the applicant had issued the fabricated certificate. The contention of the applicant is that the same was received by him from Upadhay. The investigation is still going on. During the investigation, the statement of arrested accused were recorded by the police which discloses the involvement of the applicant in the said crime. It is true that statement of all accused cannot be relied upon, however, for the purpose of investigation and to collect leads in investigation. The same are referred to. The investigating authority has collected evidence. Apart from the circumstances put-forth by the prosecution it shows the involvement of the applicant in the crime. While granting bail to Dharampal Singh, the Sessions Court has observed that initially the Investigating Officer had alleged that the goods in question were purchased from the Dharampal Singh. But at the conclusion of the investigation, it was found that the main accused is Hitesh Kanungo (applicant) who is not available. The record shows that the accused Dharampal Singh had issued company bills, e-bills which is of together a different transaction to that for gaining commission. He has issued several purchased bill without jurisdiction in actual transaction. The case of the prosecution in the present case is with regards to manufacture, selling of pipe alongwith issuance of duplicate and fabricated MTC Certificate. The other accused were arrested and they were interrogated and subsequently they were granted bail. However, considering the nature of evidence and the material collected during the course of investigation, I find that custodial interrogation of the applicant is necessary and submission advanced by the applicant cannot be accepted at this stage to grant relief under Section 438 of Code of Criminal Procedure. The applicant has apparently played major role in the said crime and hence, no case for grant of bail is made out.

9 Hence, I pass the following order.

ORDER

i. Anticipatory Bail Application No. 1820 of 2018 stands rejected.

ii. Criminal Application No. 1107 of 2018 stands disposed off.

iii. The observations made in this order are *prima-facie* for adjudicating the application for anticipatory bail and trial Court shall not be influenced by the same at the time of trial.

(PRAKASH D. NAIK, J.)