

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

CRIMINAL BAIL APPLICATION NO. 2664 OF 2018

Abdul Wahab Jalauddin Sayed ... Applicant
Vs.
The State of Maharashtra Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 2505 OF 2018

Rajesh Tukaram Desai ... Applicant
Vs.
The State of Maharashtra Respondent

WITH

CRIMINAL BAIL APPLICATION NO. 2847 OF 2018

Ramdas Keshav Rahate ... Applicant
Vs.
The State of Maharashtra Respondent

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Mr. Rizwan Merchant I/by Mr. Abdul B. Ansari for the applicant in
Bail Application No. 2664 of 2018

Mr. D.S. Manerkar I/by D.S. Manekar & Associates for the
applicant in Bail Application No. 2505 of 2018

Mr. Rajendra Desai a/w Mr. Nikhil Waje I/by Thodur Law
Associates for the applicant in Bail Application No. 2847 of 2018.

Mr. A.R. Kapadnis, APP for the Respondent-State.

Mr. R.I. Sayyed, Police Inspector, Property Cell CID, Mumbai is
present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 29th NOVEMBER, 2018.

P.C.

1. Applicants have preferred these applications for bail under
Section 439 of Code of Criminal Procedure. Applicant in Bail

Application No. 2664 of 2018 was arrested on 19th May, 2018 and applicants in Bail Application No. 2505 of 2018 and Bail Application No. 2847 of 2018 were arrested on 28th May, 2018.

2. The brief facts of the prosecution case are that the informant is the is the brand protector of Hindustan Unilever Limited. He received information to the effect that some spurious and duplicate products are being manufactured by some persons using the brand name of 'Lakme' 'Ponds' etc of Hindustan Unilever Limited and sold in the Indian market to consumers. Commercial suit bearing No. 275/2018 was filed before this Hon'ble High Court of Bombay alleging that the defendants were manufacturing cosmetic product inter alia by using their brand names 'Lakme' and 'Ponds' and also their logos. The Commercial Suit No. 275 of 2018 as stated above, notice of motion was preferred for interim relief. By order dated 5th March, 2018, interim relief was granted. The Court Receiver, High Court, Bombay was directed to arrange simultaneous action at defendants premises. The Court receiver was also directed to seize the impugned goods as well as the book of accounts of the respective defendants under his seal in the safe custody of defendants. The Police Officers were directed to accompany representative of the Court Receiver for execution of

the order. Subsequently by virtue of order dated 5th March, 2018, the action was initiated by the Court Receiver and certain documents and books of account were seized and seizure report was submitted to the Court. The defendants were directed to appear before the Court. The defendants were directed to appear before the Court. The Court receiver conducted seizure of goods and books of account. By order dated 2nd April, 2018 High Court issued directions in the above suit directing Commissioner of Police to appoint DCP for examination of case in the light of facts set out in the order of the High Court and to ascertain whether *prima-facie* case for commission of offence is made out. If the officer so nominated comes to the conclusion that case of commission of offence is made out, the Criminal Law shall be forthwith set in motion by registering a First Information Report. Compliance report was called for by High Court. In pursuant to that First Information Report was registered on 19th May, 2018 vide CR No. 58 of 2018 with Sewree Police Station for offence punishable under Sections 420, 468, 471 read with 34 of Indian Penal code and Sections 51, 63 and 65 of Copy Right Act and Sections 103 and 104 of Trade Mark Act. The investigation was than conducted by DCB, CDI, vide CR No. 31 of 2018.

3. Learned Advocate Mr. Desai submitted that the applicant in B.A. No. 2847 of 2018 was doing the work of lamination to earn his livelihood. The job of cutting, punching and such other routine work in the field of lamination. There is no evidence to show that he had knowledge of accused No.1 in the manufacture of duplicate products of Hindustan Unilever Limited. None of the offence under Section 420, 468, 471 of Indian Penal Code, Section 51, 63 and 65 of Copy Right Act and Section 103 and 104 of Trade Marks Act are attracted to applicant. There is no material to establish that applicant has either directly or indirectly made any false representation and induced anybody to part with possession of any property to him. There is no evidence to establish charge of forgery. The lamination work has been done in good faith. Learned advocate Mr. Merchant appearing in B.A. No. 2664 of 2018 submitted that there is no material / cogent evidence to even remotely suggest that the applicant have committed any offence. The dispute is of civil nature. The entire case is based on documents. The applicant had voluntarily joined the process of investigation. There is no recovery of any spurious article from the applicant. The case is based on circumstantial evidence. There is no sufficient evidence to show complicity of applicant in the crime.

Mr. Manerkar, learned advocate for applicant submitted that allegedly applicant used to print in his printing press the boxes which were used to pack Lakme and Ponds. Raj Art was having required licences and it is proprietary concern of Nitin Tukaram. Co-accused Kishore gave some job work. He is not involved in circulation of duplicate products. The contention of the applicants in Bail Application No. 2505 of 2018 and 2847 of 2018 is that they were laminator and printer. There is no evidence against them about conspiracy. At the most they have received the orders of printing and lamination. Learned counsel for the applicant in Bail Application No. 2664 of 2018 submitted that maximum punishment which can be awarded to the Trade Marks Act is upto three years. There is no evidence to constitute the offence under Section 467 of Indian Penal Code and no case of forgery is made out. It is submitted that the required ingredients of Section 467 of Indian Penal Code is that there has to be forgery of valuable security. There is no evidence of forgery. It is submitted that no goods were seized at the instance of the applicants. From applicant in B.A. No. 2664 of 2018 there is seizure of photograph of Kareena Kapoor, one challan copy, invoice of Krishna Printers, e-mail copy etc. It is further submitted that applicants are in custody since May, 2018.

Investigation is completed and chargesheet has been filed. Further detention of the applicants is not necessary.

4. Learned APP vehemently opposed the application for bail. It is submitted that accused had conspired to commit the said offence. They were involved in manufacturing, selling the goods in the branded name of the reputed company i.e Hindustan Unilever Limited. During the course of investigation, the evidence is collected against the applicants to show their involvement in the present crime. It is submitted that the statements of the applicants were recorded during the inquiry conducted by the Hon'ble High Court and they could not give proper explanation, hence directions were issued to the police to initiate enquiry and criminal action. It is submitted that the statement of the employees of the applicants in Bail Application No. 2550 of 2018 and Bail Application No. 2847 of 2018 were recorded. Logo of the reputed company was used which is a valuable security.

5. I have perused the documents. First Information Report was registered on 19th May, 2018. On completing investigation, the chargesheet has been filed. It is pertinent to note that initially the complainant had not resorted to the setting criminal law in motion and the FIR have been registered in pursuant to the direction

issued by the High Court in the Commercial Suit filed by the complainant. For substantial period of time, the applicants are in custody. The investigation is completed and the chargesheet has been filed. As far as the other applicants in B.A No. 2847 of 2018 and B.A. No. 2505 of 2018 are concerned they were printing and laminating and purportedly conducting the work after the receipt of the order. Primarily the offence relates to violation of Trade Mark and Copy Right Act. The offences enumerated under the provisions of said Act are punishable with maximum imprisonment of three years. Further detention of the applicants is not warranted. The investigation is already completed and the chargesheet has been filed. There are no criminal antecedents against the applicants. The case is primarily based on documents which are already in possession of the investigating agency. It is not the case that duplicate finished products were seized from the applicants. There is no evidence of manufacturing and distribution of duplicate products against applicants. Some of the arrested accused are granted bail. The applications for bail preferred by applicants were rejected by Sessions Court. Section 51 of Copy Right Act relates to offence of infringement of Copy Right and Section 63 deals with other rights conferred by the Act. Section 65

deals with possession of plates for purpose of making infringed copies. Section 103 deals with penalty for application of false Trade Mark and Section 104 deals with penalty for selling goods or providing services to which false Trade Mark or false trade description is applied. The evidence to support charge is *prima-facie* lacking. In the circumstances, the case for grant of bail is made out. Hence, I pass the following order.

ORDER

- i. Criminal Bail Application No. 2664 of 2018, Criminal Bail Application No. 2505 of 2018 and Criminal Bail Application No. 2847 of 2018 are allowed;
- ii. Applicants in Criminal Bail Application No. 2664 of 2018, Criminal Bail Application No. 2505 of 2018 and Criminal Bail Application No. 2847 of 2018 are directed to be released on bail in connection with Crime No. 31/2018 registered with DCB-CID on furnishing PR bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;
- iii. Applicants are permitted to furnish cash security of Rs.25,000/- each for a period of four weeks;
- iv. Applicants shall attend the dates of hearing before the Trial Court, unless exempted by Court;

v. Criminal Bail Application No. 2664 of 2018, Criminal Bail Application No. 2505 of 2018 and Criminal Bail Application No. 2847 of 2018 stand disposed off.

(PRAKASH D. NAIK, J.)