

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRI ANTICIPATORY BAIL APPLICATION NO. 2488 OF 2018

Rajshekhar Manikchand Pandey	...Applicant
<i>Versus</i>	
The State of Maharashtra	...Respondent

Mr. Ram Mani Upadhyay, for the Applicant.
Mr. A. R. Kapadnis, APP for the Respondent/State.
Mr. S. P. Galve, PSI, Narpoli Police Station, present.

CORAM: PRAKASH D. NAIK, J
DATED: 5th December, 2018

PC:-

1. This is an application for anticipatory bail in CR No. I-418 of 2018 registered with Narpoli Police Station, Bhiwandi, Thane, for an offence punishable under Section 407 of Indian Penal Code.
2. The case of the prosecution is that the complainant is importing yarn material from China and Indonesia and thereafter delivered to the parties as per orders in all over India. The said material was stored at the warehouse of the applicant – accused. But there was no agreement in that regard with the accused. The complainant used to pay charges for storage at the rate of Rs.8/- per bag. The complainant used to take orders from the parties in his office at Mumbai. As per the order, the parties take delivery of the material which was being sent to the applicants warehouse. The material was stored in the warehouse of the applicant. When the complainant had gone to check the status of stock in cargo, it was noticed that 240 bags of the material were not found. Hence, an FIR was lodged on 25th October, 2018.

3. The contention of the applicant is that goods were delivered to the warehouse of the applicant. However the complainant had not paid the dues towards storage of the said goods. Hence, notice dated 21st May, 2018 was issued to M/s. Poly Chem Import and Export Co. as well as M/s. BM Industries Pvt. Ltd. stating that in the event of the complainant doesn't remove goods within three months, the applicant reserve his right to sell the goods in open auction by deducting the requisite charges. It is further contended that the auction was conducted on 30th May, 2018 and cash credit was provided to the complainant. Learned APP, however, submitted that the applicant had not given his correct address. He is not cooperating with the investigation. There was no agreement between the applicant and the complainant with regards to storage of goods. There is no explanation of the goods which were missing from the warehouse of the applicant. He is not providing requisite information for the purpose of investigation of the case. Admittedly the goods were delivered to the applicant.

4. The nature of transaction as stated hereinabove that the storage of goods in the warehouse of the applicant on the basis of charge at the rate of Rs.8/- per bag. The invoice annexed to this application stipulates certain terms and conditions. Condition no.13 indicates that if the assignee does not take delivery of the goods within two months, the company reserve rights of putting the same in auction and collect the dues from the unsanctioned balance, if any, will be recovered from the assignee. The applicant had not deposited the receipt of the goods. However, the defence of the applicant is that the charges were not paid in order to the goods were removed within stipulated time and hence auction was conducted and also auction credit was given to the complainant. It is further case of the applicant that still the complainant has to

pay charges to the tune of Rs.6.5 lakh. It is supported by debit notes and to avoid the payment, the complaint has been lodged. In the circumstances, no case of custodial interrogation is made out and the application is required to be allowed. The applicant shall co-operate with the investigation.

5. Hence the following order:

: O r d e r :

- (i) Anticipatory Bail Application No.2488 of 2018 is allowed.
 - (ii) In the event of arrest of the applicant, in CR No. I-418 of 2018 registered with Narpoli Police Station, Bhiwandi, Thane, for an offence punishable under Section 407 of Indian Penal Code, be released on bail on furnishing Personal Bond of Rs.20,000/- with one or more sureties in the like amount.
 - (iii) Applicant shall report the Investigating Officer on 10th, 11th and 12th December, 2018 between 11.00 am. to 1.00 pm. and thereafter as and when called for till filing of charge-sheet.
 - (iv) Applicant shall not tamper with the prosecution evidence.
6. Application stands disposed of.

[PRAKASH D. NAIK, J.]