

IN THE HIGH COURT OF JUDICATURE AT BOMBAY:
NAGPUR BENCH : NAGPUR

Criminal Application [ABA] No. 518 of 2018
[Vikas Devidas Kulkarni & others Vs. State of Mah., Akot City PS, Distt. Akola]

WITH
Criminal Application [ABA] No. 495 of 2018
[Shyam Haribhau Sapkal Vs. State of Mah., Akot City PS, Distt. Akola]

WITH
Criminal Application [ABA] No. 496 of 2018
[Mukund Shridhar Joshi Vs. State of Mah., Akot City PS, Distt. Akola]

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

Criminal Application [ABA] No. 518 of 2018 :

Mr. Rohan Chandurkar, Adv., for the applicants.
Mr. S. S. Doifode, APP for non-applicant-State.
Mr. A. A. Naik, Adv., for assisting the prosecution.

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Criminal Application [ABA] No. 495 of 2018 :

Mr. Rohan Chandurkar, Adv., for the applicant.
Mr. S. S. Doifode, APP for non-applicant-State.
Mr. Avinash Gupta, Senior Adv., with Mr. N.R. Tekade, Adv., for the complainant.

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Criminal Application [ABA] No. 496 of 2018 :

Mr. Rohan Chandurkar, Adv., for the applicant.
Mr. S. S. Doifode, APP for non-applicant-State.
Mr. Avinash Gupta, Senior Adv., with Mr. N.R. Tekade, Adv., for the complainant.

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CORAM : NITIN W. SAMBRE, J.

DATE : 09th August, 2018

01. In Crime No. 190/2018 for offences punishable under Sections 420, 467, 468, 471 and 120-B read with Section 34 of Indian Penal Code, all the applicants are seeking pre-arrest bail.

02. The prosecution story is that the complainant - Narendra Jot on 25th May, 2018 lodged an FIR alleging that the New Akot Ginning & Pressing Company Ltd., Akot, Distt. Akola, started its functioning in 1903, shares of which were 318 in numbers. All the applicants before this Court are shareholders. Said Company floated Rights Issues [shares] to be allotted in proportion of 1 : 2 so as to raise the capital of the Company. The price of the issue was fixed at Rs. 150/- with a premium of Rs. 2850/- making a total of Rs.3,000 to be the value of each share.

03. Some of the shareholders filed an application alleging misconduct and mismanagement in the affairs of the Company and illegal transfer of shares, which proceedings are pending before the National Company Law Tribunal being Application No. 50/MB/2016. Based on the aforesaid factual background, it is alleged in the complaint that before the proportionate shares could be allotted, the applicants-shareholders have entered into agreements on the basis of their prospective holding with third persons and as such have committed the

crime in question. It is also claimed that the agreements of transfer of the prospective shares were notarized which amounts to practising a fraud.

04. In the aforesaid background, the crime in question came to be registered.

05. Shri Rohan Chandurkar, learned counsel for the applicants, while inviting attention of this Court to the various agreements entered into would urge that under the Contract Act, contingent contract can always be entered into. According to him, the consequences of honouring or not honouring contingent contract will follow, provided the parties to the contract have any objection. According to him, the applicants have neither practised any fraud on the Company nor on the public exchequer. He would urge that perusal of the First Information Report and other material available on record will depict that there is no criminal intention on the part of the applicants to commit the crime in question, much less when the plain reading of FIR does not disclose any cognizable offence. He would then urge that the National Company Law Tribunal will deal with the issue which was brought before it and that the same has hardly any bearing on the transaction alleged to have been entered into by virtue of various agreements on record.

06. The learned counsel then would urge that in any

case, no custodial interrogation is warranted in the case in hand as the entire transaction is documented.

07. Per contra, Shri S.S. Doifode, the learned Addl. Public Prosecutor, would strenuously oppose the claim and would urge that the custodial interrogation of the applicants is necessary so as to recover the original copies of agreements and other relevant documents. According to him, the transaction of the shares in relation to the Company, namely New Akot Ginning & Pressing Company, is sham and bogus. He would then urge that a further investigation is warranted so as to find out whether the alleged transfer of shares which were never issued could be termed as a financial offence. He sought rejection.

08. Learned Senior Counsel Shri A. V. Gupta and learned Adv. Shri A. A. Naik appearing for the complainant would toe the line of argument of learned Addl. Public Prosecutor.

09. Considered rival submissions. In my opinion, the copies of the agreements which are placed on record speak of a contingent contract. It is not in dispute that all the applicants are owners of the shares of the Ginning Company and by virtue of above referred agreements, have received part consideration, in case if the additional proportionate shares are allotted to them. Neither the learned Addl. Public Prosecutor nor the

learned counsel for the complainant could demonstrate before this Court as to how the transaction as entered into is forbidden by law or amounts to any criminal offence.

10. Apart from above, the entire crime in question is based on the documents and that being so, this Court hardly notices any necessity to permit custodial interrogation.

11. Upon perusal of the material on record, this Court is not satisfied that the ingredients of relevant Sections of Indian Penal Code under which the offence is registered against the applicants are attracted.

12. In view of above, in my opinion, a case for grant of pre-arrest bail is made out. Hence, the following order:-

[a] In the event of arrest of the applicants in Crime No. 190/2018 registered with Akot City Police Station, Distt. Akola, for the offences punishable under Sections 420, 467, 468, 471 and 120-B read with Section 34 of Indian Penal Code, the applicants be released on furnishing a Personal Bond of Rs. 25,000-00 [rupees twenty-five thousand only] each with one or two sureties in the like amount.

[b] The applicants-accused shall attend the

concerned Police Station on 13th and 14th August, 2018 in the morning between 10-00 a.m., and 12.00 noon, thereafter, in the week commencing from 19th, 20th and 21st August, 2018 and thereafter as and when directed by the Investigating Officer at Akola Crime Branch.

[c] The applicants shall not tamper with the evidence of prosecution or influence the witnesses.

13. Criminal Applications are allowed in above terms.

Judge

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