IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.942 OF 2019

Amit Kishor Shah] … Applicant

Versus

The State of Maharashtra] … Respondent

WITH
CRIMINAL APPLICATION NO.994 OF 2019
IN
CRIMINAL BAIL APPLICATION NO.942 OF 2019

Dr. Avesh Palod] ...Intervener

IN THE MATTER BETWEEN

Amit Kishor Shah] … Applicant

Versus

The State of Maharashtra] … Respondent

Mr. A.P. Mundargi, Senior Advocate a/w Mr. Hrishikesh Mundargi i/b
Ms. Manjula Biswas, Advocate for the Applicant.
Mr. Prashant Jadhav, APP for the State/Respondent.
Mr. Vivekanand V. Krishnan, Advocate for the Intervener.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 28th AUGUST, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with

C.R.No.364/2018 registered with Sarkarwada Police Station, District Nashik u/sec. 406, 409, 420 r/w 34 of I.P.C.

2. The applicant is arrested on 29/10/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. The FIR is lodged on 29/10/2018 by Dr. Avesh Palod. He has stated that, he was Chairman of Indian Medical Association, Nashik. In the year 2017, few members of their association had gone to Egypt on a tour. The present applicant had satisfactorily arranged that tour. In the year 2018, their members wanted to go to Turkey. They had called for quotations. The quotation of M/s. Rovercation Firm were the lowest. The present applicant was described as representative of said firm. It is mentioned in the FIR that, in all, 78 persons had decided to go on that tour and had deposited Rs.85 Lakhs with the applicant between July 2018 to October 2018. It is mentioned in the FIR that, on 01/10/2018 the applicant informed that, the tour at that price was not feasible and demanded Rs.11,000/- more by 10/10/2018. An additional amount was also deposited with him. The passports and other documents were handed over to the applicant.

The tour was arranged between 10/11/2018 to 18/11/2018. However, on 29/10/2018, the informant received a notice mentioning that, the applicant was suffering losses in the tour and he was not in a position to return the money. On these allegations, the FIR is lodged.

4. Heard Mr. A.P. Mundargi, Ld. Senior Counsel for the Applicant, Mr.Prashant Jadhav, Ld. APP for the State/Respondent and Mr.Vivekanand V. Krishnan, Ld. Counsel for the Intervener.

5. Mr. Mundargi, Ld. Senior Counsel for the applicant submitted that, initially the informant had represented that 160 members wanted to go on that tour. Thereafter, this number was brought down to 120 and the contract was entered into on 19/07/2018 for 120 people. There was a cancellation clause in the said agreement. He submitted that, the contract was signed by the first informant himself along with others. Mr. Mundargi pointed out that, the applicant had made payment to M/s. Murtuza Travels Shop at Turkey for more than Rs.32 Lakhs. Similarly, he had made payment through Riya Travels for booking tickets of Turkish Airline. He submitted that, thus the applicant had taken steps to fulfill his obligations. He submitted that,

the informant's association had not brought 120 members and instead only 78 persons paid money to the applicant and therefore, it was not possible to arrange the tour within that amount. Mr.Mundargi pointed out that, the applicant had sent notice dated 29/09/2018 pointing out that informant's association had failed to comply with their obligations and the contract was liable to be cancelled. In the notice dated 08/10/2018, it was mentioned that, the informant's association failed to honour their commitment made under the agreement dated 19/07/2018. It was liable to be revoked. He further submitted that another notice was sent on 24/10/2018 wherein it was mentioned that, since the informant's association had not fulfilled their part of the contract, the applicant's firm was forfeiting the amount except Rs.10 Lakhs which would be returned. Immediately, thereafter the FIR was lodged by the first informant on 29/10/2018 and the applicant was arrested on the same date. He submitted that, the applicant is only a representative of the firm. According to the prosecution case, Accused No.2 – Naomi Walker is the owner of firm who was still absconding. He submitted that, the present applicant was merely working in the firm and the money was deposited initially in the account of the absconding accused.

6. As against these submissions, Ld. Counsel for the informant as well as Ld. APP submitted that, though the applicant's firm had paid more than Rs.32 Lakhs to the foreign party and some money was utilized for booking tickets ; rest of the amount was misappropriated by the accused and therefore, the offence is committed and he should not be released on bail.

7. Ld. Counsel for the informant pointed out that, there was clause in the agreement for termination of that contract after acceptance of deposit but prior to commencement of tour without assigning any reason. If it was so terminated then the company was liable to refund the amount taken.

8. I have considered these submissions. It is not in dispute that, the applicant had accepted the amount to the tune of Rs.85 Lakhs. However, the applicant has taken definite steps in performing his part of obligations. The amount was paid to the foreign party and for making payments to the air lines for blocking air tickets. So it is more than clear that, the applicant did not have dishonest intentions. The clause referred to by the Ld. Counsel for the informant was in respect of the termination of contract by the applicant's firm without assigning

any reasons. The correspondence or the notice sent by the applicant has no where shows that, he was terminating the contract without assigning any reasons. In fact, he called upon the informant's association to fulfill their part of the obligation. Therefore, this clause cannot come to the aid of the informant in submitting that the applicant's firm was liable to refund the entire amount. In any case, it will at best be a civil dispute between the parties. As discussed earlier, the allegations did not show that, the applicant had any dishonest intention as he had made payments to other parties. As far as the balance amount is concerned, he has offered to pay Rs.10 Lakhs which was not acceptable to the first informant. The informant's association is entitled to approach other forums to claim damages in accordance with law. However, for that purpose further custody of the present applicant is not necessary. Even as per the prosecution case, the owner of the firm is absconding. The money has not gone to the account of the present applicant. The applicant is already in custody since 29/10/2018. He has no criminal antecedents. In this view of the matter, further custody of the present applicant is not necessary and therefore, I am inclined to grant bail to the present applicant. Hence, the following order.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.364/2018 registered with Sarkarwada Police Station, District Nashik, on his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.

2. Application stands disposed of accordingly.

3. Intervention Application No.994/2019 also stands disposed of accordingly.

(SARANG V. KOTWAL, J.)