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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.268 OF 2019
WITH
CRIMINAL APPLICATION NO.188 OF 2019

1. Anil S.Dhamejani,
2. Suresh T.Dhamejani,
3. Jayprakash S.Dhamejani,
4. Jacky S.Dhamejani, ..Applicants.

V/s.

The State of Maharashtra ..Respondent.

AND

Harish Kishanchand Wadhwa ..Intervenor.

Mr.Niranjan Mundargi i/b. Kunal Ambulkar for the applicants.

Mr.S.H.Yadav, APP for the respondent-State.

Ms.Meghna A.Gowalani for the intervenor.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 11, 2019

P.C.:-

Heard learned counsel for the applicants, intervenor-complainant and learned APP for the State.

2. In crime No.I-319/2014 for offence punishable under sections 406, 420, 468, 471 read with 34 of the Indian Penal Code

registered with Central police station, District Thane, the applicants are seeking pre-arrest bail.

3. Applicant No.2 Suresh is the father of applicant No.1 Anil, No.3 Jayprakash and No.4 Jacky.

4. The issue in the matter pertains to transfer of FL-II licence which was lying dormant since 2006 for non payment of sales tax and other dues.

5. The case of the prosecution is, the complainant formed a partnership firm of the complainant, decided to purchase liquor vending licence for a valuable consideration. Applicant No.1 Anil came with a proposal for transfer of a Dormant liquor licence, sales tax and other dues of which were in arrears.

6. Since the process commenced way back in 2010, the complainant had parted with consideration towards arrears of taxes and other consideration. Having noticed that the licence was not transferred to the partnership firm for a quite long time, upon enquiry it was noticed, a mandatory no objection to be issued by the department of the State Excise was forged. In the aforesaid backdrop, the offence came to be registered of cheating, forgery, etc.

7. Mr.Mundargi, learned counsel for the applicants submits that so far as applicant No.2 Suresh and his two other sons namely,

applicant No.3 Jayprakash and applicant No.4 Jacky are concerned, no specific role in the crime in question is attributed. He would then urge that though applicant No.1 Anil had participated in the transaction in question, his role is also qualified to the extent of payment of Rs.40 lakhs which he was to get back after the transfer of licence to the partnership firm. According to him, none of the applicants have played any role in processing the transfer of the licence in favour of the complainant, who claimed to be partner in the partnership firm in whose favour the foreign liquor licence was to be transferred. His submission is the offence is based on documentary evidence and that being so, the custodial interrogation is not warranted.

8. Mr.Yadav, learned APP who is assisted by learned counsel for the complainant, would urge that there is sufficient material on record noticed during investigation and also other documentary evidence, which speaks of the liability of the accused persons.

9. It is claimed that once no objection certificate from Excise Department processed through the applicants was found to be a forged, the applicants custodial interrogation is warranted for identifying the mode and also to trace the co-accused.

10. Having considered rival submissions, what is noticed from the documents available on record is, applicant No.1 Anil appears to be a person who is primarily involved in the transaction of giving life to dormant foreign liquor licence, by clearing taxes and other dues, processing with the Excise Department through third person for transfer of the said licence. He stood as a guarantor for the deal of transfer of liquor licence.

11. So far as applicant Nos.2 to 4 are concerned but for the consent deed for honouring commitment of transfer of licence based on parting consideration of Rs.40 lakhs which was received by applicant No.1 Anil, there is no other role attributed to applicant Nos.2 to 4 particularly keeping in mind the offence in question. It can be inferred from the terms of the consent deed executed by the applicants that the same was executed after the registration of offence. As such, there is hardly any material to infer the involvement of applicant Nos.2 to 4 in the crime in question which warrants their custodial interrogation.

12. So far as the role attributed to applicant No.1 Anil is concerned, he had acted as negotiator for the transfer of the licence to the complainant. He has perhaps accepted the amount of Rs.40 lakhs and has agreed to supervise the process to transfer in favour of

partnership firm.

13. The essential document for transfer of licence viz. NOC issued by the State Excise Department, was found to be forged. Considering the corresponding responsibility of applicant No.1 Anil, who was to get transfer licence processed through one Mahesh Dhakolia, as could be inferred from the contents in the F.I.R. *Prima facie* involvement of the applicant Anil in the present crime can be inferred.

14. That being so, having noticed sufficient material against applicant No.1 Anil so as to infer his involvement in the crime in question, the prayer for grant of pre-arrest bail moved by applicant No.1 Anil stands rejected.

15. So far as applicant Nos.2 to 4 namely, applicant No.2 Suresh T.Dhamejani, applicant No.3 Jayprakash S.Dhamejani and applicant No.4 Jacky S.Dhamejani are concerned, a case for grant of pre-arrest bail is made out. Hence the order :-

i) The application for grant of anticipatory bail by applicant No.1 Anil S.Dhamejani stands rejected;

ii) In the event of arrest in Crime No. No.I-319/2014 for offence punishable under sections 406, 420, 468, 471 read with 34 of the Indian Penal Code registered with Central police station, Ulhasnagar, District Thane, applicant No.2 Suresh T. Dhamejani, applicant No.3 Jayprakash S.Dhamejani and applicant No.4 Jacky S.Dhamejani be released on bail on their executing P.R. bond of Rs.50,000/- each nwith one or more sureties each in the like amount;

iii) The applicant shall attend the Investigating officer on 15th, 20th, 23rd and 28th of February, 2019 between 10.00 a.m. to 12.00 noon and thereafter as and when directed;

iv) The applicant shall not influence the prosecution witnesses or tamper with the evidence;

v) The applicant shall co-operate with the investigating agency;

vi) The application stands disposed of accordingly;

vii) In view of disposal of the Anticipatory Bail application, the criminal application also stands disposed of accordingly.

(NITIN W. SAMBRE, J.)