IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 867 OF 2019

Ravikumar Ramprakash Sharma .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
CRIMINAL APPLICATION NO. 691 OF 2019

Mr. Ashok Ishwar Tupe …. Intervener

IN THE MATTER BETWEEN

Ravikumar Ramprakash Sharma .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Aniket Nikam i/b. Vivek N. Arote, Advocate for the Applicant.
Mr. Sagar Kursija i/b. T.D.Deshmukh, for Intervener.
Ms. S. S. Kaushik, APP for the State/Respondent.
Smt. Varsha Bambe, PSI, Hadapsar Police station, present.

CORAM :SARANG V. KOTWAL, J.
DATE :07th OCTOBER, 2019

P.C. :

1. The Applicant is seeking his release on bail in connection with C.R.No. 143 of 2018 registered with Hadapsar Police Station, under sections 420, 467, 468 and 471 of the Indian

Penal Code and U/s.66(d) of The Information Technology Act.

2. The FIR is lodged on 06/02/2018 by one Ashok Tupe. He has stated in his FIR that he was in business of exporting grapes. He was functioning through his company Sai Chaitanya Labour Pvt. Ltd. He was Director of the company. He along with his cousin Gaurav Tupe were conducting this business of exporting grapes. He met the applicant who was having his company by name Pune Pulse at Sangvi. The applicant allegedly represented to the first informant that he had good connections in Russia. He had good customers there and he had purchase orders from there. The applicant requested the informant to supply grapes. He represented that he would get good money for the informant. The FIR further mentions that from 05/11/2015 onwards through different invoices and different consignments grapes were sent to Russia. In all, the informant had sent 9 containers containing grapes worth Rs.2,14,74,706/-. The informant could get only Rs.1,12,21,981/- for his grapes through the applicant's company. His balance amount of Rs.1,02,52,725/- was not paid by the applicant and the informant suffered losses to that extent. The

informant, in the meantime, inquired with the applicant about non payment of his dues. The applicant sent him E-mail containing two invoices showing that the amount received from Russia was for his own export and not for the export of grapes supplied by the informant. According to the informant, those invoices were fake invoices because their dates did not match with the dates of export. Thus, the informant was convinced that he was cheated and, therefore, he lodged this FIR. The investigation was carried out and the applicant was arrested on 28/06/2018 and since then he is in custody. The investigation is over and the charge-sheet is filed.

3. Heard Shri. Aniket Nikam, learned counsel for the applicant, Shri. Sagar Kursija for the intervener and Ms. S. S. Kaushik, learned APP for the State.

4. Shri. Nikam submitted that the applicant is in custody since June 2018. The investigation is over and no further purpose will be served by keeping the applicant in custody during the entire period of trial. He submitted that, it is basically a commercial transaction and the applicant at the highest can be

said to have failed in fulfilling his obligation. However, that would not mean that he had committed any offence with the requisite mens-rea. He submitted that the applicant was arrested on similar allegations in a case in Punjab and Harayana, registered vide C.R.No.708 dated 11/09/2017 at Police station Civil Lines, Hisar U/ss.406 and 420 r/w. 34 of the IPC. The Punjab and Harayana High Court vide order dated 21/12/2018 had granted him bail in that case. He submitted that similar view can be adopted in the present case, as well. Learned APP opposed this application for bail and submitted that the applicant has no justification for not paying dues of the informant. The dues are more than Rs.1 crore and, therefore, bail should not be granted to him.

5. I have considered all these submissions. At this stage, it is difficult to observe that the case of the informant is false. The charge-sheet contains the invoices, bills and other documents in respect of the consignments. There are statements of the other Directors of the informant's company and other witnesses which also show that the dues were not paid by the applicant to their company. The statement of Ganesh Shitole shows that, the invoices

sent by the applicant to the informant to show that it was his own dues which he had received from Russia, were not correct. Those invoices are PP/EXP/002 and PP/EXP/002A. Therefore, at this stage, the allegations cannot be really disputed by the applicant.

6. The applicant is in custody since June, 2018. The maximum punishment for the offence punishable U/s.420 of IPC is seven years. Though, section 467 of IPC is also applied, it is doubtful whether the allegations can support the application of that section. The fake invoices were sent through Email to the informant by the applicant. However, those invoices did not create any right in favour of the informant. The applicant had sent those Emails just to make some excuse for not making payments of the dues to him, though, he had received money from Russian company. Therefore, at this stage, the allegations do make a case U/s.420 of the IPC. As mentioned earlier, the maximum punishment would be seven years, however, the trial court would decide whether section 467 of IPC is attracted in this case or not, after the evidence is led.

7. The fact that the applicant is granted bail in similar

case by Punjab and Harayana High Court also merits serious consideration. Taking into account the facts of the case, there is some force in the submissions of Shri. Nikam that it is a commercial transaction, but the trial court will have to decide whether there was an intention on the part of the applicant to cheat the informant right from the inception of their association. At this stage, I am inclined to grant bail to the applicant.

8. Hence, the following order :

ORDER

(i) In connection with C.R. No. 143 of 2018 registered with Hadapsar Police Station, Pune, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakhs Only) with one or two sureties in the like amount.

(ii) The applicant is directed to attend the concerned police station once in three months till conclusion of the trial.

(iii) Application stands disposed of accordingly.

(iv) The Intervention application is also disposed of accordingly.

(SARANG V. KOTWAL, J.)