IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1321 OF 2018

Arunkumar Vijaynandanprasad Sinha & Anr. ...Applicants
Vs.
State of Maharashtra & Anr. ...Respondents

- Mr. Kuldeep Patil I/b Mr.Pankaj Deokar, Advocate for the Applicants.
- Mr. Ganesh Bhujbal, Advocate for Respondent no.2.
- Ms. S. S. Kaushik, APP for the State.
- Mr. Suhas Patil, API, Nhava Sheva Police Station, Navi Mumbai.

CORAM : SARANG V. KOTWAL, J.
DATE : 22nd AUGUST, 2019

P.C. :

1. The applicants are seeking anticipatory bail in connection with CR No. 94/17 registered at Nhava Sheva Police Station under Section 420 read with Section 34 of the IPC.

2. The offence is lodged on 25th October 2017 by one Dayanand Petkar. He has stated that he was working in a private company at Baramati from 1995 to 2007. Since then he was knowing the applicant no.1. Subsequently, the applicant no. 1 went to Romania and he had kept in touch with the informant. In the year 2007, the

informant went to Saudi Arabia for another job. In the year 2013, he formed a private company by the name 'Universal Tube Accessories Private Limited' at Jejuri, Pune. The company was in the business of manufacturing plastic products. The informant's company was granted license to import raw material in the form of plastic granules. Using that raw material they were converting it into plastic. They were granted that license on 21st February 2017.

3. In the month of December 2017, the applicant no.1 contacted the informant and told him that he had returned to India. Both the applicants visited the informant's company. They suggested that they could help him in getting raw material at cheaper rates. It is further mentioned in the FIR that both the applicants showed them two samples from different companies. One was from Vietnam and other one was from China. The informant approved the sample of Chinese company. The applicant no. 1 sent a proforma invoice. The informant wanted to purchase forty tons of plastic granules. The informant opened letter of credit with Vijaya Bank at Sadashiv Peth. But the Chinese company did not accept the letter of credit. The informant, thereafter, executed

a contract for purchasing forty tons of plastic granules worth Rupees Twenty Four Lakhs. The contract was forwarded to the Chinese company. The Chinese company purportedly sent reply and accepted the contract. Again a fresh letter of credit at the same bank was opened.

4. It is mentioned in the FIR that applicants told the informant that they themselves had advanced Rupees Five Lakhs to the Chinese company. In July 2017, the informant was told that the goods were sent through containers, which were to reach JNPT. Therefore, the informant transferred Rupees Twenty Four Lakhs to the Chinese Company. In August 2017, two containers purportedly containing those goods reached JNPT. The informant paid further amount of Rupees Nine Lakhs Ninety Thousand for clearing the goods. When the goods were received, he found that instead of plastic granules, the containers contained calcium powder. The applicant realised that he was cheated and therefore, he lodged this complaint for misappropriation of amount to the tune of Rupees Twenty Seven Lakhs Ninety Thousands.

5. Heard, Mr. Kuldeep Patil, learned counsel for the applicant

as well as Mr. Ganesh Bhujbal, learned counsel for respondent no. 2 and Ms. Kaushik, for the State.

6. Mr. Patil submitted that the present applicants have not acted with dishonesty. Infact, they themselves had invested their own Rupees Five Lakhs with the Chinese Company and that amount was also lost. He submitted that the informant's amount was directly transferred to the Chinese Company and they had not received any part of that amount. He further submitted that the offence, if any, is committed by the Chinese Company and not by the applicants.

7. Mr. Bhujbal and Ms. Kaushik submitted that the informant had acted on the representation made by the applicants and have suffered loss. It is an undisputed fact that the informant had paid huge amount for purchasing plastic granules and in return he received Calcium powder. Thus, cheating was clear.

8. Shri Patil also relied on the documents showing settlement between applicants and the informant. In that document, it was mentioned that both the parties were willing to share the losses suffered in the transaction. In the said document, it was accepted

that the applicant had already paid Rupees Eleven Lakhs and the applicants had to pay only Rupees Nine Lakhs Eighty Five Thousand to the informant.

9. Pursuant to the order passed on 26th March 2019, in this application, the applicants have deposited amount of Rupees Nine Lakhs Eighty Five Thousand in this court. The learned counsel for the applicants submitted that the applicants have no objection if the informant/intervener is allowed to withdraw the said amount.

10. I have considered all these submissions. From the FIR itself it is clear that the amount had directly gone to the Chinese Company. The investigation does not show that any part of that amount was received by the present applicants or that they acted in collusion with the Chinese Company. The documents showing the settlement between the parties is not disputed by the learned counsel for the intervener. However, Mr. Bhujbal points out that the payment was not made in accordance with the scheduled date mentioning in that settlement document i.e. on 10th March 2018.

11. It appears from the statement in the FIR itself that the applicants had suggested to the informant to purchase raw

material from that company. There is nothing to show that they had acted with dishonest intention. The applicant had accepted to pay Rupees Nine Lakhs Eighty Five Thousand. But such amount was not paid on the scheduled date i.e. on 10th March 2019. From these allegations, it is difficult to observe that any offence is committed by the present applicants. They have shown their bonafides by depositing the amount pursuant to the order passed by this court on 26th March 2019.

12. Taking into account all these aspects, custodial interrogation of the applicants is not necessary. The applicants deserve protection of the anticipatory bail. Hence, the following order:-

ORDER

(I) the event of their arrest in connection with C.R. No.94/17 registered at Nhava Sheva Police Station, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) each with one or two sureties each in the like amount.

(ii) The intervener is permitted to withdraw the amount deposited by the applicants in this court pursuant to the order dated 26th March 2019 with this application.

(iii) If, the intervener does not withdraw that amount, Registry shall invest that amount in a Fixed Deposit to be renewed from time to time.

(iv) The trial court shall pass necessary orders in respect of that amount, at the conclusion of the trial

(v) With these observations, application stands disposed of.

(SARANG V. KOTWAL, J.)