IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.81 OF 2020

1) Nikhil Pramod Shah;
2) Vinod Pramod Shah;
3) Santosh Jadhav;
4) Dattatray Mule;
5) Ashwin Sangvi. .. Applicants

Vs.

State of Maharashtra .. Respondent

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Mr.Subhash Jha a/w. Seoul Shah, Sanjana Pareshi i/b. Prasanna P. Patil, Advocate for the Applicants.

Mr.S.S. Pednekar, APP for the Respondent – State.

Mr.M.J. Kharmavat, Advocate for Original Complainant.

Mr.Sandesh M. Chavan, PSI, Shivajinagar Police Station, Pune City, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 13, 2020.

P.C. :

The applicants are apprehending arrest in connection with C.R.No.157 of 2019, registered with Shivaji Nagar Police Station, Pune City. First Information Report ("FIR", for short) was lodged on 8th February, 2019, alleging offence under Section 406 of Indian Penal Code ("IPC", for short) were invoked.

Subsequently, the offences under Sections 380 and 454 of IPC were invoked.

2 The case of the prosecution is that the complainant is the contractor in Glass and Aluminum Sheets work. In April 2017, he entered into contract with Premier Developers through the applicant. The contract was assigned for Glass Aluminum Sheet in project called “Elite Colossal”, situated at Model Colony, F.C. Road, Pune. The complainant started working as per the work order and the specifications given by the builder/applicants. He had purchased necessary materials from the vendors in Pune and Bhiwandi and was using the same material for completing the work. He was provided room to store the necessary materials and machinery at the site, and, accordingly he used to store different materials and machinery on different floors of the site. In September 2018, the forum work of the building was completed thereby 70 percent of work of affixing aluminum sheets was completed and only iron fittings were left. On 30th September, 2018, the person looking after work of Premier Developers, Dattatray Mule, Nikhil Shah, Vinod Shah told complainant to stop the work. The complainant could not work on the site and decided to shift his workers on another site where work was in progress.

The complainant kept his articles in room provided to him and locked the room. The iron pipes, aluminum sheets, lying on various floors was shifted to another place of work. The complainant insisted for commencement of work. However, there was no response. Subsequently, he learnt that new contractor was inducted to complete the work. On 26th October, 2018, the complainant went to check his articles stored in the room and it was noticed that the room was open and the material and machinery lying therein was missing. He enquired with Santosh Jadhav, Site Engineer. He stated that on instructions of Dattatray Mule, he broke open the lock of room and provided the articles to current contractor Ashwin Sanghvi. The complainant, thereafter, interacted with accused by text messages on mobile and Emails. On 8th February, 2019, the complainant noticed that the accused were using his aluminum sheets. The accused had utilized the goods worth Rs.4,23,592/-, and misappropriated the same.

3 Vide letter dated 19th September, 2019, the applicants were informed that investigation in connection with C.R.No.157 of 2019 for the offence punishable under Section 406 read with 34 of IPC concluded and the charge–sheet is proposed to be filed against the accused, and, therefore, at the time of filing the

charge–sheet, the presence of the accused is required. However, the charge–sheet has not been filed. On 6th November, 2019, letter was issued directing the accused to appear for the purpose of investigation. Subsequently, the offences under Sections 380 and 454 of IPC, were invoked.

4 Applicants had preferred an application for anticipatory bail before the Sessions Court, which has been rejected by order dated 7th January, 2020.

5 Learned counsel for the applicant submitted that the custodial interrogation of the applicants is not called for. The offence as alleged in the FIR as well as the subsequent offences are not attracted.

6 It is submitted that, the letter issued by the investigating officer on 19th September, 2019, would indicate that without subjecting the accused to custody, the investigation was completed and they were only directed to appear before the Court for the purpose of filing charge–sheet. It is contended that the applicants had indeed complied the said directions, but, it was noticed that the charge–sheet was not filed. However,

subsequent letter dated 6th November, 2019, was issued by the investigating agency stating that they should remain present before the investigating officer for the purpose of investigation. The applicants, thus, apprehended arrest and preferred an application for anticipatory bail before the Sessions Court.

7 It is submitted that at the time was essence of contract and there was undue delay from complainant to complete the work assigned to him. Learned counsel pointed out the quotation furnished to the complainant which is annexed to this application. It is submitted that the work order was issued on 3rd April, 2017. The work was not completed within stipulated time. The developer had no other option but to hand over the work to another contractor. Applicant no.2 is not partner of company. The applicant no.1 and 4 are partners of project. Applicant no.3 is a site engineer and applicant no.5 is new contractor. The applicants had cooperated with investigation. Documents were produced and statements recorded. The applicants had paid an amount of Rs.37,71,990/-, to complainant. The applicants have paid more money to complainant. The applicants had filed N.C. complaint against complainant on 11th December, 2018. The complainant has filed civil suit on 24th

January, 2019. It is further submitted that the letter dated 29th December, 2018, forwarded by the complainant to Premier Developers falsify the claim of the complainant against the developer as it provides schedule for completing the work. The said letter do not attribute any allegations as alleged in the FIR. It is submitted that the applicants are willing to further co-operate with the investigation. Custodial interrogation is not warranted.

8 Learned APP submitted that the complainant was assigned the work as alleged in the FIR. 70 percent of the work was completed. The material lying at the place of the incident was used by the applicants-accused for the project. It is submitted that the statements of witnesses were recorded, which show that the lock of the premises was broken and the goods were removed and utilized. It is submitted that the statements of the electrician who is relative of accused recorded during the course of investigation mentions that substantial work was completed by the complainant. In the event any dues are to be paid to complainant, the same would be paid. Learned counsel for the intervener reiterated the submissions advanced by the learned APP. It is submitted that there is suppression of facts. The

applicants had not pointed out that the offence under Section 454 and 380 of IPC has been registered against the applicants. The complainant had completed substantial work and inspite of that, he was asked to stop the work. He had no other option but to direct his workers to shifting to another project. However, the goods were still lying in the premises. It is submitted that the goods were misappropriated by the accused by breaking the lock of the room and removing the same. It is submitted that the FIR would indicate that the offences under Sections 380 and 454 of IPC are made out, and ,therefore, the same are invoked subsequently. The complainant has been deceived by the accused. The payment towards his work was not made and apart from that the goods belonging to the complainant were utilized by the accused.

9 I have perused the documents on record. The quotation referred by the applicants indicate the work assigned to the complainant. It is pertinent to note that in accordance with the quotation and work order, the work assigned to the complainant was to be completed within stipulated time. The letter dated 29th December, 2018, is silent with regards to the allegations reflected in the FIR. It is relevant to note that on the

same initially the offence was registered under Section 406 of IPC. However, subsequently, Sections 380 and 454 of IPC were invoked. Letter dated 19th September, 2019, was forwarded to the accused indicating that charge–sheet would be filed against them. The said letter was forwarded after seven months after the date of registration of the FIR. However, subsequently, by letter dated 6th November, 2019, the accused were directed to appear before the investigating officer for investigation. The said letter was issued after a period of about nine months from the date of registration of FIR. No new facts had gathered after letter dated 19th September, 2019, except the fact that new sections were invoked on the basis of same facts. Apart from that, the matter relates to the accounts and payments of money. Civil Suit is filed by complainant. FIR is lodged subsequently. Considering the factual matrix of the case, custodial interrogation of the applicants is not necessary. Case for anticipatory bail is made out.

10 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Anticipatory Bail Application No.81 of 2020, is allowed;

(ii) In the event of arrest of Applicants in connection with C.R.No.157 of 2019, registered with Shivaji Nagar Police Station, Pune City, they be released on bail on their executing P.R. Bond in the sum of Rs.25,000/-, each, with one or more sureties in the like amount;

(ii) Applicants shall report investigating officer on 20th to 22nd January, 2020, between 11:00 a.m. to 01:00 p.m., and, thereafter, as and when called for, till filing of the charge–sheet;

(iii) Anticipatory Bail Application stands disposed of.

(**PRAKASH D. NAIK, J.)**