

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 1299 OF 2019

Deepak Dnyandev Bhosale & Anr. ...Applicants

V/s

The State of Maharashtra ...Respondent

Sumant Deshpande for the applicants.

Geeta P Mulekar APP for the State/Respondent.

(I.O.) - PSI - Mr. Eknath T. Bhoir, Economic Offences Wing,
Nashik.

CORAM : PRAKASH D. NAIK, J.

DATE : 3rd JANUARY, 2020

PC :

1. The applicants are accused in CR. No. I-09 of 2018, registered with Ojhar Police Station, District - Nashik for the offences punishable under Sections 406, 409, 420, 504 and 506 r/w. 34 of Indian Penal Code, 1860 ('IPC' for short). The investigation was transferred to EOW, Nashik. Subsequently, charges under Sections 465, 467, 468, 471, 120(B) of IPC were added.

2. The First Information Report ('FIR' for short) was lodged by Kailas Laxman Shinde on 15.01.2018. The informant is grape farmer and also conducting business of

exporting grapes and cold store facility in the name of M/s. Trimurti Grapes Export. It is alleged that in February 2010, the applicants had approached the informant and discussed with him about the purchase of grapes from him. The discussion had culminated into an agreement dated 10.02.2010 executed between D.P. Sales Corporation and Trimurti Grapes Exports. The complainant was paid an amount of Rs. 11 Lakhs towards an advance for the transaction. The informant had delivered several container of grapes to the applicants firm. During the period of 10.02.2010 and 12.04.2010, the complainant's firm had parted the grapes worth Rs. 4,48,31,901/- to the applicants firm. The accused paid an amount of Rs. 3,01,00,000/-. The balance amount of Rs. 1,47,31,901/- was not paid and thus the balance amount was misappropriated. The FIR was lodged against the applicants, Dnyandev Krishnaji Bhosale (Father of applicants) and four other persons on 15.01.2018. It is further alleged that the applicants had floated firm abroad and cases were registered against them. The applicants had obtained two PAN cards with false information for using the said documents. The transaction were executed through the period from 10.02.2010 to 12.04.2010. The FIR was lodged on

15.01.2018.

3. The applicants preferred an application for bail before the Sessions Court at Niphad, District- Nashik. The said application was rejected by order dated 3.04.2019.

4. The co-accused Dnyandev Bhosale was arrested on 08.02.2018. The applicants were arrested on 5.10.2018.

5. Learned counsel for the applicants submitted that the applicants was arrested in the present case from 05.10.2018. It is further submitted that there is delay in lodging FIR. Although, the transaction were executed in 2010, the FIR was lodged on 15.01.2018. It is further submitted that the investigation is completed and charge-sheet is filed. No case under Sections 406, 409, 420, 465, 467, 468, 471, 120(B) of IPC is made out. There is no explanation for delay in lodging the FIR. The transaction between the complainant and the applicants was of commercial nature. There is no intention to cheat the complainant. The agreement dated 10.02.2010 would reveal that it was the responsibility of the complainant to provide the grapes of the specific standards. It was further

provided in the said agreement that any loss incurred due to sub-standard grapes would be borne by complainant. It is submitted that the products supplied by the complainant were rejected at the destination due to higher berry temperature and non-compliance of EU MRL (Minimum Residue Limits). The applicants had suffered heavy losses due to rejection of produce at the destination. The applicants had intimated about the same to the complainant at the relevant time through Emails and Notices. The complainant had accepted the responsibility for the losses suffered by the applicants. Reliance is placed on the copies of email between complainant and applicants, Debit Notes, Ledger Account maintained by applicant's firm, Test Reports of the produce supplied by the complainant. The complainant owes huge amount to the applicants. Arbitration proceeding initiated by the applicants were dismissed due to non-prosecution. The FIR was lodged to avoid payment due to the applicants. The co-accused Dnyandev Bhosale has been released on bail by this Court by order dated 29.10.2018. The applicants are in custody from the date of arrest. Further detention is not warranted.

6. Learned APP submitted that the applicants are

involved in CR. No. 66/2017, 22/2018 and CR No. 32/2018 and other cases. It is submitted that statement of several witnesses were recorded which supports the prosecution's case. There is delay in lodging FIR, since the accused had initiated Arbitration proceedings. The complainant in the present case was duped to the tune of Rs. 1,47,31,901/-. The co-accused was granted bail on the ground that he was Senior Citizen. The cumulative effect of all the cases registered against the applicants is that the victims were deceived of huge amount.

6. Apart from this application, the applicants have preferred Bail Application No. 1160/2019 in CR. No. 32/2018, Bail Application No. 1659/2019 in CR. No. 22/2019, Bail Application No. 2328/2019 in CR. No. 66/2017 which are listed for hearing today. In all these cases there is delay in lodging FIR. I have perused the documents on record. The FIR was lodged on 15.01.2018. The agreement between the accused and complainant was executed on 10.02.2010. The grapes were allegedly delivered in during the period of 10.02.2010 to 12.04.2010. There is no explanation for lodging FIR, after period of about 7 years. The documents on record would indicate that there was issue of rejection of

produce. The applicants have relied upon Emails, Debit Notes, Ledger Account, test Reports etc. The Arbitration petition dismissed on 24.08.2012. Even, thereafter, the FIR was lodged after the period of about 6 years. Undisputedly, amount of Rs. 3 Crores was received by the complainant and the dispute was with regards to the balance amount. The co-accused Dnyandev Bhosale (father of applicant) granted bail by this Court. On perusal of the said order it can be seen that bail was granted on merits of the case. It is observed that the FIR was lodged belatedly. The Emails and Notices placed on record, prima-facie indicate that the grapes delivered by the first informant did not meet the require MRL at the destination and some of the containers were rejected and had to be destroyed. It was further observed that, there is dispute as regards to the liability of the applicants to pay the amount. Under the circumstances, the record prima-facie did not indicate that the applicants had intention to cheat from inception. The Court has also considered the fact that the accused was in custody from 31.01.2018 and that the investigation in the crime has been concluded, and charge-sheet is filed.

7. The prosecution is relying upon the other complaints

registered against the applicants. All the complaint were lodged belatedly. The prosecution has filed an affidavit stating that apart from the three other cases referred to here-in-above, the applicants were also involved in CR. No. 57/2018, 13/2018 and CR. No. 121 of 2018. The learned counsel for the applicants submitted that the applicants are on bail in all other cases except the cases in which the applicants have preferred an application for bail before this Court.

8. Considering the aforesaid circumstances, the applicants can be directed to be released on bail.

ORDER

- (i) Bail Application No. 1299 of 2019 , is allowed;
- (ii) The applicants are directed to be released on bail in connection with C.R. No. I-09 of 2018, registered with Ojhar Police Station, District- Nashik, on his furnishing Bail Bond in the sum of Rs.50,000/-, each with one or more sureties in the like amount;
- (iii) The applicant shall not tamper with the prosecution evidence and witnesses. The applicants shall attend the trial Court regularly on the date of the

hearing, of the case unless exempted by the Court.

(iv) Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)