IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. 3160 OF 2019

Sanjay Bhaskar Vaidya .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
CRIMINAL BAIL APPLICATION NO. 289 OF 2020

Ashish Kantibhai Nimavat .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Jitendra Gautam for Applicant in B.A.No.3160/2019.
Mr. Sunny A. Waskar for Applicant in B.A.No.289/2020.
Mr. Amit A. Palkar, APP for State/Respondent in both B.As.

CORAM : SARANG V. KOTWAL, J.
DATE : 25th NOVEMBER, 2020

P.C. :

1. Both these applications are decided by this common order because they arise out of the same offence i.e. C.R.No.234 of 2019 registered with Amboli Police Station, on 23/06/2019, under sections 406, 408, 420, 465, 467, 468, 477(A) r/w. 34 of the Indian Penal Code.

2. The FIR is lodged by one Salim Diwan. He was employed with Rajasthan Aushadhalaya Pvt. Ltd. The said company was distributing Ayurvedic medicines throughout India. The company had appointed one Co-ordination officer for every State and four employees were appointed under him to assist him. Their job was to visit various doctors, get orders, collect amount of sold medicines and deposit the amount in the company's account. The co-ordination officer was supposed to keep record of the amount received. The FIR mentions that, one Hemant Vitlani was appointed as a co-ordination officer for Gujarat State. Both the applicants and one Mayurkumar Visawadia were appointed to assist him. In the month of June, 2019 the company came to know that many doctors were having difficulty in getting supply of medicines. On inquiries, it was found that, the aforementioned Hemant Vitlani had misappropriated the amount given by the doctors and, therefore, company treated this amount as outstanding bills against those doctors. Those doctors were not supplied with medicines. Further inquiries revealed that, some amounts were deposited in Hemant Vitlani's wife Rajani's account.

The FIR mentions that, a false list of doctors was prepared and on the basis of that list some medicines were directly sold in the market. With this modus operendi the company was put to the loss to the tune of Rs.27,43,400/-.

3. Both the applicants were arrested on 23/06/2019 and since then they are in custody. The investigation, as far as they are concerned, is over and the charge-sheet is filed against them. The investigation revealed that till filing of the charge-sheet the investigating agency found that there was loss of Rs.67,04,009/- caused to the informant's company.

4. The charge-sheet mentions role of the present applicants as under:

i) Applicant Sanjay Vaidya was appointed as Area Sales Manager in Gujarat and he was working since 16/01/2017. He used to collect the amount from the customers but used to deposit that amount in the bank account of wife of Hemant Vitlani. He had used his wife Rekha's mobile phone for receiving orders and collecting amount from M/s. Thiya Distributors. He had helped Hemant Vitlani in preparing the bogus list. It is specifically alleged that he had received Rs.35,000/- from Dr. Jagir Patel but had not deposited that amount in the company's account. He had accepted Rs.90,000/- from Dr. Kayur Balodiya but had not deposited that amount in the company's account. Similarly, he had received Rs.50,000/- from Dr. Niraj Bhansali and had not deposited it in the company's account. He also received Rs.91000/- from Dr. Kuldeep Yagnik and had deposited that amount in Hemant Vitlani's wife Rajani's account.

ii) The allegations against applicant Ashish Nimavat are that, he had accepted the amount from the customers and had deposited it in the account of Hemant Vitlani's wife Rajani. He had received Rs.16,000/- from Dr. Paresh Solanki and had deposited it in the account of Rajani. Similarly, he had accepted Rs.20,900/- from Dr. Kalpesh Goswami and deposited it in Rajani's account. He had accepted the amount from Dr.Chitaliya and Dr.Pravin but nothing was deposited in the company's account.

5. Learned counsel for the applicants submitted that they were mere employees and the main offence is committed by Hemant Vitlani. It was submitted that, they had no option but to follow the orders. In good faith they followed the orders of Hemant Vitlani because they believed his version that due to G.S.T. issues, the amount had to be deposited in Hemant Vitlani's account and then it would be paid to the company. Shri. Waskar submitted that applicant Ashish had joined the company only six months prior to registration of FIR, therefore, he could not be a part of alleged conspiracy. It was submitted that in spite of complete investigation nothing was recovered from them which shows their innocence.

6. Learned APP submitted that the offence could not have taken place without actual active participation of both these applicants. He submitted that the offence is clearly made out. The

documentary evidence and bank statements show that the applicants had collected various amounts and instead of depositing those in the company's account, those amounts were deposited in the personal accounts of accused and those amounts were misappropriated. He therefore opposed grant of bail.

7. I have considered these submissions. The applicants are in custody since 23/06/2019. The investigation is already over, therefore, their custody for investigation purpose is not necessary. There are no criminal antecedents against them. The entire evidence is based on the bank statements and other documentary evidence, as well as, statements of Doctors. However, it appears that there was no recovery of money from either of these applicants. This shows that the amount was taken away by the main accused Hemant Vitlani. The applicants were basically used as pawns by him. There is some substance in the submission of both the learned counsel for the applicants that since the applicants were employees working under Hemant Vitlani, they were bound to follow his instructions and that they believed that

the amount was temporarily deposited in the personal account till GST issues were settled. Though, at this stage, it is difficult to accept this contention in totality, the fact remains that the applicants stood to lose their job if they had not followed the instructions given by Hemant Vitlani. It is perhaps a case of professional compulsion. That of course will not exonerate them from the allegation of commission of the offence, if they had knowingly done it. However, this remains a matter of trial and this fact can be established only on the completion of trial. For the time being, at this stage, their application can be considered sympathetically for grant of bail, particularly taking into account the fact that they are in custody since 23/06/2019 and the main accused Hemant Vitlani is still absconding. Nothing is recovered from these applicants in spite of proper custodial interrogation. In this view of the matter, I am inclined to grant bail to both these applicants. Both the learned counsel for the applicants make a statement that applicants are in position to furnish local sureties. The statement is accepted.

8. Hence, the following order :

<u>ORDER</u>

(i) In connection with C. R. No.234 of 2019 registered with Amboli Police Station, both the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.50,000/- each (Rupees Fifty Thousand each Only) with one or two local sureties each in the like amount.

(ii) The applicants shall attend the court on every date during the trial, unless prevented by reasonable cause.

(iii) The applicants shall deposit their passports, if any, before being released on bail and if they do not have passports, they shall inform this fact to the Investigating Officer in writing.

(iv) Both applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)