

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (ABA) NO. 628 OF 2020

(Ajaykumar s/o Chiranjilal Choudhary and others ..vs.. State of Maharashtra, through PS In-Charge
MIDC PS, Butibori, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. A.S. Agrawal, Counsel for the applicants,
Mrs. S.S. Jachak, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.

DATED : 21-10-2020

Hearing was conducted through video conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. The applicants are seeking pre-arrest protection apprehending arrest in Crime 336/2019 registered with MIDC Police Station Butibori, Nagpur for offence punishable under Sections 406 and 409 read with Section 34 of the Indian Penal Code and Sections 13 and 14-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

3. Applicant 1 was admittedly the Chairman of M/s. Spentex Industries Limited during the relevant period. He claims to have resigned on 31-3-2020. Applicants 2 and 3 are the General Manager and Assistant General Manager, respectively, of the said Company.

4. Admittedly, the applicants deducted and retained employees' contribution to the tune of Rs.3,29,27,857/- (Rupees Three Crore Twenty Nine Lakhs Twenty Seven Thousand Eight Hundred Fifty Seven only) during the period 2016 to 12-1-2019 and did not deposit the same with the Provident Fund Office.

5. The applicants admit that recovery of Rs.3,29,47,403/- (Rupees Three Crore Twenty Nine Lakhs Forty Seven Thousand Four Hundred Three only) was ordered in proceedings under Section 7-A of the said Enactment. The applicants further admit that the said amount was not deposited and the justification given in paragraph 8 of the application is financial crunch. The applicants contend that the secure creditors of the Company have approached the NCLT and the management of the Company is taken over by virtue of order dated 03-1-2020. In sum and substance, the applicants claim that inability to pay due to the financial crunch entitles them to pre-arrest protection.

6. The conduct of the applicants may now be noted, since a discretionary relief of pre-arrest protection is sought. The applicants challenged the show cause notice dated 08-2-2019 in Writ Petition 1830/2019. This Court directed that the applicants shall not be arrested if an amount of Rs.33,00,000/- (Rupees Thirty Three Lakhs only) is deposited within two weeks and monthly

installments of Rs.16,50,000/- (Rupees Sixteen Lakhs Fifty Thousand only) are deposited thereafter. The indulgence was shown in view of an undertaking given by the applicants to deposit the said amount. However, the undertaking was breached and the amount of Rs.33,00,000/- (Rupees Thirty Three Lakhs only) was not deposited. It appears that a paltry amount of Rs.8,99,606/- (Rupees Eight Lakhs Ninety Nine Thousand Six Hundred Six only) was deposited on 12-4-2019.

Undeterred, and unabashedly, the applicants sought quashment of the first information report by approaching the Division Bench in Criminal Application 433/2020. The Division Bench dismissed the application under Section 482 of the Code of Criminal Procedure. The Division Bench rejected the contention that Sections 406 and 409 of the Indian Penal Code are not attracted. The Division Bench further held that the precise individual role of the applicants would be a matter of evidence to be considered in the trial. The Division Bench further noted that the applicants did not abide by their undertaking given to the Division Bench in the earlier proceedings. Significantly, the Division Bench noted that the proceedings before the NCLT were instituted much after the registration of the first information report.

7. Considering that the hard earned amount of the

employees is misappropriated from 2016 to onwards, and the conduct of the applicants, no indulgence can be shown. Custodial interrogation may be necessary to trace the amount which is deducted and not deposited.

8. The application is dismissed.

JUDGE

adgokar

**Prafulla
Adgokar** Digitally signed
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