IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.848 OF 2020
WITH
CRIMINAL APPLICATION NO.1818 OF 2020

1. Navnath Narayan Gole
2. Latadevi Yeshvant Kamble
3. Santoshi Kamble
4. Nisha Kumkar …Applicants

Versus

The State of Maharashtra ...Respondent

…

Mr. A.M. Verma, Advocate for the applicants.
Mr. Salgare h/f Mr. N.V. Gaware, for Assist to P.P.
Mr. S.Y. Mahajan, APP for the respondent-State.

...

CORAM : SMT. VIBHA KANKANWADI, J.
RESERVED ON : 11th DECEMBER, 2020
PROUNOUNCED ON : 06th JANUARY, 2021

ORDER:-

. Present application has been filed by the applicants under Section 438 of the Code of Criminal Procedure, as they are apprehending their arrest in connection with Crime No.329 of 2020 registered with MIDC Police Station, District Ahmednagar on 15.05.2020 for the offences punishable under Section 120(A), 120(B), 349, 351, 352, 383, 384, 405, 406, 415, 417, 420, 463, 465, 467, 468, 499 and 500 of the Indian Penal Code.

2. Heard learned Advocate Mr. A.M. Verma for the

applicants and learned APP Mr. S.Y. Mahajan for the respondent-State assisted by learned Advocate Mr. N.V. Gaware for the informant.

3. It has been vehemently submitted on behalf of the applicants that the FIR that has been filed against them is nothing but a concocted story. No doubt, there was a transaction between the applicants and the informant, however, some amount was due from the informant also to the applicants and therefore, after adjusting the account, applicant no.1 company had issued 7 cheques as detailed in clause no. (v) in paragraph no.3 of the petition. It is also to be noted that the informant has filed as many as seven criminal complaints against applicant nos.1 and 2 and their company before the learned Judicial Magistrate First Class at Ahmednagar, contending that they have committed an offence under Section 138 of the Negotiable Instruments Act. The informant had first issued a demand notice on 11.04.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 in respect of the alleged outstanding of Rs.5,86,83,850/-. That notice was duly replied by the applicant company by their reply dated 20.04.2020. The informant had also approached the National Company Law Tribunal by way of two company petitions and the notice of the same has been issued to the applicant no.1 company. The matters are now subjudice before the National Company Law Tribunal. It appears that the informant with an ill

intention, approaching the different forum, which may also amount to forum shopping for him with bogus claims. A complaint was filed by the informant with Navi Mumbai Police, Economic Offences Wing and tried to pressurize applicant no.1. Summons was issued by the police to applicant no.1 for answering the interrogatories. Accordingly, applicant no.1 had visited the office of Economic Offences Wing of Navi Mumbai Police and submitted all the documents. Thereafter, a legal notice was again sent by the informant's advocate, which was under Section 138 of the Negotiable Instruments Act. Now, the informant is contending that he has been cheated. Taking into consideration his earlier actions, the present FIR appears to be belated. When no action was taken by the Economic Offences Wing of Navi Mumbai Police, the FIR has been lodged with the MIDC Police Station, Ahmednagar. The physical custody of the present applicants is absolutely not required for the purpose of investigation. Each and every document has been submitted by the applicants before Navi Mumbai Police. The learned Advocate for the applicants, therefore, canvassed for grant of anticipatory bail to the applicants.

4. Per contra, the learned APP well assisted by the learned Advocate for the informant vehemently submitted that the informant can knock the doors of all the legal authorities, if he has remedy with anyone or with all of them. In fact, the informant who runs M/s. J.M. Industries Company Limited at

Ahmednagar, required import of raw material in aluminum for his company, which he used to import from Malaysia, Dubai and Singapore. Taking into consideration the clumsy procedure for custom clearance, he was required to take help of customs house agency/customs clearance agency. He, therefore, approached the company of the applicant no.1 by name Eashkrupa Shipping and Logistics (I) Private Limited. The informant had imported the raw material during 01.06.2017 to 15.03.2019 and the applicants have provided various services to the company of the informant in respect of the custom clearance. The applicants had recovered an amount of Rs.27,16,39,807/- through RTGS against the custom duty and GST etc., when the raw material arrived at Nhava Sheva Port. The informant, thereafter, tallied his account and it was realized that the applicants/accused persons were required to pay only Rs.21,16,39,807/-, that means excess amount of Rs.5,86,83,850/- was recovered from the informant. Further, the company of the applicant no.1 had no license at all to work as clearing agent. The investigation has been done to some extent and it can be seen that from the period between 01.04.2017 to 31.03.2019, the audit which has been got done through a Chartered Accountant would show that the informant has made excess payment of Rs.6,19,22,960.38 paise. The applicants have prepared about 151 forged invoices to claim excess amount from the informant's company and that forgery has been done by applicant nos.1 and 2 with the help of accused nos.3 and 4. Under such circumstances, their custodial interrogation is necessary. No doubt, it appears that there was a reconciliation meeting, yet, the amount is paid in excess. No doubt, there is an element of civil dispute in the entire transaction, however, when it comes to creation of forged documents namely 151 invoices, then definitely it will not remain exclusive civil dispute. Applicant nos.1 and 2 being the directors of the said company, have prime role and accused nos.3 and 4 being the employees of applicant nos.1 and 2, responsible for the forgery, their custody is also required. It will not be out of place to mention here that the Investigating Officer Ms. Jyoti Chandrakant Gadkari, Police Inspector, Economic Offences Wing, Ahmednagar has filed affidavit-in-reply. It is also submitted by the learned APP that though the applicants have been directed to co-operate with the investigation, yet, the applicants are taking unnecessary adjournments to submit documents. Thereby, they are hampering the investigation.

5. At the outset, we cannot only brush aside the things by saying that the transaction is involving civil dispute only. Entire prosecution story is required to be considered. A particular transaction may give rise to a civil dispute as well as criminal dispute and it may also give remedial measures with various authorities. Merely because the informant has

approached the National Company Law Tribunal, that does not estop the investigation to go on in respect of the forgery that is alleged. So also the pendency of the 7 criminal complaints under Section 138 of the Negotiable Instruments Act, also will not hamper the investigation. The aspect of belated FIR can be considered at the final stage but it cannot be the sole ground for grant of anticipatory bail. Herein, the applicants are admitting the transaction between the company of applicant nos.1 and 2 with the informant's company. Huge amount has been got transferred to the account of company of accused nos.1 and 2, which is stated to be in respect of clearance of custom duty and GST etc. The investigating officer is now pointing that the company of applicant no.1 has no such license. The question, therefore, arises as to in absence of such license, how the company of applicant nos.1 and 2 was allowed to deal with the transport, clear goods from the Port etc. When the applicants are accepting the fact that the applicant nos.1 and 2 had issued 7 cheques in lakhs of rupees to the informant then, at this prima facie stage, it can be considered that those cheques would have been issued towards the legally enforceable debt or liability. Those cheques appear to have been bounced and therefore, it had resulted in those 7 criminal complaints under Section 138 of the Negotiable Instruments Act.

6. The informant is coming with a case that though

the company of applicant nos.1 and 2 was not authorized to operate, yet, by representing him that they would do the work, the company has entered into transaction and further in the FIR itself as well as in view of the investigation that is carried out, about 151 fake invoices were prepared, amount has been recovered by giving those fake invoices and under such circumstances, definitely the investigation will have to be done. Merely because the informant had tried to negotiate, that does not mean that the settlement was acceptable to him and he would be then estopped from making agitation in respect of the fabricated documents. When the investigating officer has raised a point that the applicants are not co-operating, then it should be addressed. Certain documents have been produced by applicants, but it can be seen that by these communications, they are only asking time to submit documents and the reason mentioned therein, is very much trifle. In fact, the ACP, Economic Offences Wing, Ahmednagar, by issuing a detailed letter on 09.10.2020 had called upon the applicant no.1 to submit the documents, but according to the investigating officer, those documents have not been submitted. Thus, when by taking disadvantage of the interim protection granted by this Court, the applicants are prolonging the investigation and acting in such a way to hamper the investigation, they do not deserve the relief under extra-ordinary powers of this Court. Hence, the following order is passed:

ORDER

I) The application stands rejected.

II) The interim protection granted earlier stands vacated.

III) Criminal Application No.1818 of 2020 for assist to P.P., is allowed and disposed of.

(SMT. VIBHA KANKANWADI, J.)

Mujaheed//