Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.246 OF 2020

Ummedsingh S. Rao	]	Applicant
Vs.		
The State of Maharashtra	]	
(L.T Marg Police Station)	]	Respondent

.....

Mr. Ramprasad V. Gupta, for Applicant.
Mr. Nikhil N. Dixit, for Intervenor.
Ms. M.M Deshmukh, A.P.P, for Respondent-State.

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CORAM	**:**	**PRITHVIRAJ K. CHAVAN, J.**
RESERVED ON	**:**	**4th DECEMBER, 2021.**
PRONOUNCED ON	**:**	**14th DECEMBER, 2021.**

P.C:

1. This is an application under section 438 of the Code of Criminal Procedure.

2. Heard Mr. Gupta, learned Counsel for the applicant, Mr. Dixit, learned Counsel for the Intervenor and Ms. Deshmukh, learned A.P.P, for respondent-State.

3. Pending hearing of the main application, this Court by an order dated 29th January, 2020 granted interim protection to the applicant in C.R No.355 of 2019 registered with L.T Marg Police Station, Mumbai by directing his release, in the event of his arrest, on P. R

bond of Rs.50,000/- (Rs. Fifty Thousand only) with one or two sureties in the like amount. This Court, *inter alia,* directed the applicant to report the Investigating Officer on 31.01.2020, 7th February, 2020 and 14th February, 2020 between 11.00 to 1.00 p.m. He was specifically directed not to tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case. He was also directed to furnish particulars of his residential address and contact details to the Investigating Officer.

4. On the basis of the complaint lodged by Mr. Ankit Jain, an F.I.R came to be registered against the applicant at L.T. Marg Police Station of the offence punishable under section 409 of the Indian Penal Code. The complainant runs a shop in the name and style as *"Anantam Jewellers Pvt. Ltd*" at Kalbadevi Road, Mumbai. He deals in the business of sale of gold ornaments. Nature of his job is to purchase gold bars from the merchants and prepare the ornaments as per the demand of the customers. The ornaments are prepared through the artisans.

5. The applicant is an artisan working for the complainant since June, 2018. He informed the complainant that he has a factory of preparing gold ornaments named and styled as "Shiv Shakti Jewellers", at Unit No.234, Vaishali Dham, Arch-2, Mhatrewadi Road, Dahisar, Mumbai. Since he was known in Zaveri Bazar area, father of the complainant decided to give him the work of preparing gold

ornaments. The applicant used to prepare gold chains. The complainant used to deliver gold and the applicant used to manufacture or prepare gold chains of the same weight. The applicant has gained trust of the complainant and his family.

6. Out of the said trust, at the request of the applicant, the complainant had arranged for a chain manufacturing machine which he had purchased from Delhi and directly sent to the factory of the applicant.

7. Accordingly, the applicant used to collect gold from the shop of the complainant and used to manufacture chains of the same weight. The applicant used to prepare gold chains within two to three days and thereafter the complainant used to pay him the wages.

8. Maternal uncle of the complainant namely Dilip Raman had given 872.410 gram gold to the applicant on 2nd May, 2019; so also 1085.060 gram gold on 3rd May, 2019; 763.360 gram gold on 4th May, 2019 and 378.070 gram gold on 6th May, 2019. The said gold was of 22 carat.

9. The applicant was supposed to prepare gold chains and to deliver the same to the complainant, however, despite several days, the applicant did not deliver the orders and was making excuses on one or the other grounds.

10. After a few days, the applicant suddenly informed the complainant that wages are quite inadequate and, therefore, he does not want to work for the complainant. When the complainant asked for the gold given to him between 1st May, 2019 and 6th May, 2019, weighing about 3098.9 grams as well as machine, the applicant stated that he would return it afterwards. Despite repeated requests and sending his maternal uncle to the factory of the applicant, the applicant declined and was reluctant to return the gold as well as the machine. He started avoiding the complainant and was also not answering his phone calls. Ultimately, the complainant lodged a report as above. On the basis of the report, an offence came to be registered.

11. Mr. Gupta, learned Counsel for the applicant, at the outset, would argue that this is a false case against the applicant. To substantiate his contention, he has drawn my attention to two vouchers which are at Exhibit B and Exhibit C on page No.26 and 27. The voucher at Exhibit B depicts that it is of 'Anantam Jewels Pvt. Ltd' dated 25th February, 2019, Invoice Number is KI-260/PUR/18-19. Name of the applicant appears in the second column as "Ummej Singh". Gold bar weighing 700.000 grams is shown as description of the goods and beneath the said voucher, there is signature of the applicant.

12. Similarly, voucher at Exhibit C on page No.27 also bears signature of the applicant which the learned Counsel fairly admits. By

the voucher at Exhibit C, two gold bars weighing 1000.000 grams and 85.060 grams were purchased and delivered to the applicant.

13. My attention has been drawn by the learned Counsel to Pages No.28 to 31. It is a Deed of Partnership between Dilipkumar Bhikamchand Jain, Mr. Ummedsingh S. Rao (applicant) and M/s. Anantam Jewels Private Limited. A bare look at the recitals indicates that the parties hereinabove have entered into a business in the name and style of "Anantam Creations" which shall be situated at Shop No.15, first floor, Javer Baug, 227/G, Kalbadevi Road, Mumbai - 400 002. It would be apposite to extract clauses No.4 to 8 for the purpose of the present application;

> *4. The partnership business shall be that of "Manufacturing, Job Work & Trading of Precious Metal Ornaments of Gold and Silver Ornaments" and also the partners may do such other business as may be mutually decided;*
>
> *5. The Partnership business shall be carried on at Shop no.15, Javer Baug, 227G, Kalbadevi Road, Mumbai-400 002. However, the factory shall be located at B-234, Vaishali Industries, Dahisar West, Mumbai 400 068 or at other place or places as may be agreed between the parties hereto from time to time.*

6. M/s. Anantam Jewels Private Limited, being a Company registered under the Indian Companies Act, 1956 shall be represented by the Managing Director thereof or any other person authorised by him and he will act for and on behalf of M/s. Anantam Jewels Private Limited in relation to the business of the firm and his acts will be binding on the company. The Managing Director or other representative nominated of Anantam Jewels Private Limited will be working as managing partner of the firm;

7. The Capital shall be introduced by all three Partners Rs.15000 each. The additional funds if any required at later stage for the purpose of the partnership business shall be contributed by the partners as may be mutually agreed upon. Interest @ 12% per annum payable by the partnership firm on the amount standing to the credit of the capital/loan account of the individual partners and at 18% to the capital contributed by M/s Anantam Jewels Private Limited. If there is any debit balance in the account of any partner, interest at the same rate shall be payable by partners to the firm. However the partners shall be at liberty to

> *reduce or increase the rate of interest from time to time;*
>
> *8. It is agreed by and between all the parties hereto that all the partners viz., Mr. Dilipkumar Bhikamchand Jain, Mr. Ummed Shanker Singh and M/s. Anatam Jewels Private Limited - Through its Managing Director shall devote their time and attention in the conduct of the affairs of the Firm, and shall be responsible for day to day transactions as the circumstances and business need may require".*

14. Suffice it to say that the complainant and the applicant who are the signatories over the said Deed of Partnership dated 26th December, 2018 are the partners in the business and were entitled to share 1/3 of the profits or loss after deducting all expenses relating to activities of partnership business including rent, salaries and other shop expenses as well as interest and remuneration to the partners in accordance with the said Deed or any supplementary deed as may be executed by the partners.

15. It is pertinent to note that even the applicant had lodged a complaint with L.T. Marg Police Station on 30th August, 2021 against Ankit Jain and his associates under sections 420, 465, 467, 468, 471 of the I.P.C. It is alleged by the applicant that on 6th August, 2021, he received an e-mail from Sadguru Intelligence Unit, making an inquiry

about the transactions between him and Ankit. Along with the said e-mail, some invoices were forwarded to the applicant which indicate that he had taken gold from Ankit. Some invoices indicate that the applicant had returned the gold after making ornaments, however, in respect of last four invoices the gold was not returned and, therefore, the applicant had committed criminal breach of trust. The applicant specifically denied to have any factory at Secunderabad. He had given details of forged, fabricated and false invoices which are as follows;

1. Invoice No.K1-246/PUR/18-19 dated 22, Feb. 2019. Amount 34,59,770.00/-;

2. Invoice No.K1-273/PUR/18-19 dated 20, Mar-2019. Amount 13,10,881.00;

3. Invoice No.K1-274/PUR/18-19 dated 25, Mar 2019. Amount 26,44,319.00;

4. Invoice No.K1-276/PUR/18-19 dated 27, Mar. 2019. Amount 32,97,030.00;

5. Invoice No.K1-001/PUR/19-20 dated 01, Apr. 2019. Amount 26,16,612.00;

6 Invoice No.K1-003/PUR/19-20 dated 02, Apr. 2019. Amount 38,97,645.00;

7. Invoice No.K1-007/PUR/19-20 dated 05, Apr 2019, Amount 22,76,558.00;

8. Invoice No.K1-011/PUR/19-20 dated 08, Apr. 2019. Amount 16,35,743.00;

9. Invoice No.K1-013/PUR/19-20 dated 10, Apr. 2019. Amount 33,05,270.00;

10. Invoice No.K1-014/PUR/19-20 dated 12, Apr. 2019. Amount 22,93,501,00;

11. Invoice No.K1-016/PUR/19-20 dated 15, Apr. 2019. Amount 16,32,292,00;

12. Invoice No.K1-022/PUR/19-20 dated 20, Apr. 2019. Amount 16,20,962.00;

13. Invoice No.K1-023/PUR/19-20 dated 22, Apr. 2019. Amount 22,75,476.00;

14. Invoice No.K1-028/PUR/19-20 dated 24, Apr. 2019. Amount 16,31,520.00;

15. Invoice No.K1-033/PUR/19-20 dated 27, Apr. 2019. Amount 16,48,258.00.

16. It is pertinent to note that Ankit Jain had not disclosed this important document viz; Deed of Partnership in his report to the Police which amounts to suppression of a material fact *qua* the business of partnership amongst the applicant and the complainant as well as his Company.

17. In the event of any dispute, the parties agreed for referring the same to an Arbitrator in accordance with the Arbitration Act, 1996, Clauses 22 and 23 of the said Deed of Partnership read thus;

> *"22. That should there arise any quarrel, dispute or difference between the partners, or their heirs or legal representatives as to these presents or to the account matters or any other things or things, the same shall be referred to an arbitration in accordance with the Arbitration Act, 1996 or to any statutory modification or re-enactment thereof for the time being in force and decision of the Arbitrator shall be binding upon the parties to the dispute and their heirs and legal representatives. The Arbitrator shall have summary powers including power to hear one party in absence of the other or to take such evidence or receive such documents, as he/she shall in his/her absolute discretion deem proper.*

> *23. Anything not provided herein touching the partnership shall be decided by mutual consent of all the partners. Notwithstanding anything stated or provided herein the partners shall have full powers and discretion's to modify, alter or vary the terms and conditions of this partners deed in any manner whatsoever they think fit by mutual agreement which shall be reduced in writing and be signed by all the partners thereupon the said writing shall become on appendage to and part of this deed".*

The dispute could have been resolved in view of the arbitration clause in the Deed of Partnership which, *prima facie*, appears to be a dispute of civil nature. The material on record does not, *prima facie*, reveals that the applicant had any intention of committing criminal breach of trust *qua* the partners. Of course, this is a *prima facie* observation which should not be construed as an expression on the merits of the case.

18. So far as the report of the Investigating Officer is concerned, it appears that he tried to justify custodial interrogation of the applicant by citing as many as eight reasons, the same can also be probed by him after summoning the respective parties. Necessary directions can be issued to the applicant to co-operate with the Investigating Officer in that regard.

19. It is the contention of Mr. Dixit, learned Counsel for the intervenor that the applicant had misled this Court by filing bills and vouchers subsequently which is an afterthought. He submits that the ingredients of section 409 of the I.P.C are precisely attracted in this case, and, therefore, custodial interrogation of the applicant is very much required. He would argue that gold is the most malleable metal which can be converted into any form and it would tantamount to a commercial crime which needs to be unearthed without wastage of time.

20. There are no antecedents brought on record by the Investigating Officer *qua* the applicant.

21. Consequently, following order is expedient;

: **O R D E R** :

(a) The application is allowed;

(b) In the event of his arrest, the applicant be enlarged on bail by furnishing a P.R bond in the sum of Rs.1,00,000/- with two solvent sureties in the like amount to the satisfaction of the concerned Court on the following conditions;

(i)The applicant shall attend L.T. Marg Police Station on every Monday, Wednesday and Friday between 10.00 a.m and 12.00 noon;

(ii)The applicant shall deposit his passport, if any, with the Investigating Officer;

(iii)The applicant shall not leave the jurisdiction of the concerned Court without prior permission of the said Court;

(iv)The applicant shall not, in any manner, tamper the evidence, influence or contact any of the persons concerned with this crime either directly or indirectly;

22. Breach of any of the aforesaid conditions would entitle the Investigating Officer to seek cancellation of bail.

23. Application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]