

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

ANTICIPATORY BAIL APPLICATION NO. 370 OF 2019

Bhausahab Bapurao Janjire Applicant

Versus
The State of Maharashtra Respondent

**WITH
CRIMINAL APPLICATION NO. 312 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 370 OF 2019**

Pradip Yashwantrao Patil Intervenor

In the matter between

Bhausahab Bapurao Janjire Applicant
Versus
The State of Maharashtra Respondent

Mr. Vikas Shivarkar, for the applicant.
Smt. A.A. Takalkar, APP for the State/Respondent.
Mr. Kalpesh Patil, i/b Pratik B. Rahade for Intervenor,

**CORAM: SARANG V. KOTWAL, J.
DATE : 2nd MARCH, 2021**

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. I-211 of 2018 registered at Sinnar

MIDC Police Station, Nashik under sections 420, 406 of the Indian Penal Code.

2. Heard Mr.Vikas Shivarkar, learned Counsel for the applicant, Mr. Kalpesh Patil, learned Counsel for Intervenor and Smt. A.A. Takalkar, learned APP for the State.

3. The FIR is lodged by one Pradip Patil on 29/11/2018. He has stated that he was working as General Manager with Sinnar Taluka Vibhagiya Sahakari Dudh Utapadak Sangh Maryadit, Sinnar, Taluka Sinnar. (hereinafter referred to as "the society"). It is a registered co-operative society. Under one scheme of the State Government, the society was given permission to establish a dairy at village Harsule Taluka Sinnar in gat No. 61. For establishing the dairy, tenders were invited by giving an advertisement in newspapers in August 2012. The applicant's Company M/s Indotech Industrial Solution Pvt Ltd. had submitted a tender and after due

process his tender was accepted on 18/09/2012. On 20/09/2012, purchase order was issued in the name of M/s. Indotech Industrial Solution Pvt Ltd. for Rs. 5,43,30,588/-. An agreement was entered into between the society and the company of the applicant. It was stipulated in the agreement that initially 50% of the entire cost was to be given to the applicant. Accordingly, Rs. 2,71,65,294 were paid to him through a joint account held by the society with the Government. The Government had given finance with depositing funds in the joint account. There are allegations in the FIR that in all the applicant was paid Rs.3,40,97,156/-, but the applicant had supplied machinery worth Rs. 2,51,00,551/-. He had not supplied the material worth Rs.89,96,605/-. It is alleged that the society, in addition to this amount had also given Rs. 69,87,983/- to speed up the process of supply of material. Thus, there are allegations that the applicant had not supplied the material worth Rs. 1,59,84,588/- though he had accepted the amount. The society pursued this matter with the applicant but he did

not respond and therefore this FIR is lodged.

4. Mr. Shivarkar, learned Counsel for the applicant submitted that there is no criminal offence involved in the entire transaction. The society had not paid 50% of the amount as stipulated on the date of issuance of purchase order in the year 2012. Rs. 2,71,65,294/- were actually paid on 28/11/2014 when they were to be paid on 20/09/2012. He submitted that the agreement was actually executed between the complainant's society and the applicant's company on 21/09/2012. The terms of payment referring to 50% of payment at the time of placing of the order was mentioned in clause 12 of that agreement which is at page 35 of this application. He submitted that thereafter a separate agreement was executed on 25/1/2017. It was a tri-partite agreement between Eram Engineering, the complainant's society and the applicant's company. In that agreement in clause 3.3, it was mentioned that buyer shall pay remaining amounts under that agreement to the contractor as per

the schedule of payments of purchase order dated 20/9/2012. That means the society was to pay remaining amount to the third party i.e. M/s Eram Engineering, as per the schedule of the payment of purchase order. He therefore, submitted that this agreement indicates that there was balance amount remaining to be paid on the part of the informant and it was to be paid to the third party.

5. Learned APP has filed an affidavit of investigating officer. It is mentioned in the affidavit that the applicant has not supplied machinery even after accepting the amount as mentioned in the FIR and custodial interrogation of the applicant is necessary for recovery of huge amount because the applicant has cheated the government. It is necessary to find out whether any staff of the Applicant's company was involved in the matter.

6. Learned Counsel for the intervenor on the other

hand emphasised on the allegations in the FIR to contend that inspite of making payment to the applicant, the machinery was not supplied.

7. I have considered these submissions. Very significantly FIR does not make any reference to tri-partite agreement entered into between the aforementioned three parties on 25/1/2017. By that agreement the informant's society had to pay balance amount to the new party i.e. Eram Engineering and responsibility of supply of those machinery were taken over by that third party. This importance aspect is not even referred to in the FIR.

8. The clauses in the subsequent tri-partite agreement dated 25/1/2017 shows that it is relatable to the earlier agreement between the informant's company and the applicant's company executed on 21/09/2012. Thus primarily it appears to be a civil dispute, requiring adjudication on the terms of the contract. The

agreement under which machinery was to be provided was executed in the year 2012. There was subsequent tri-partite agreement executed in the year 2017 and FIR is lodged in November 2018 suppressing the material fact of execution of tri-partite agreement.

9. In this view of the matter, considering above factors, the applicant has raised sufficient doubt about the informant's case. Therefore, custodial interrogation of the applicant is not necessary. He can be protected by an order of anticipatory bail.

10. Hence the following order.

ORDER

- (I) In the event of his arrest in connection with C.R. No.I-211OF 2018 registered with Sinnar MIDC Police Station, Nashik, the Applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

- (ii) The Applicant shall attend the concerned Police Station as and when called and shall co-operate with the investigation.
- (iii) The Application stands disposed of accordingly.
- (iv) With disposal of this application, Criminal Application No. 312 of 2019 does not survive and it is also disposed of. In any case, I have heard learned Counsel for the Intervenor.

(SARANG V. KOTWAL, J.)