IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.1223 OF 2021

1. Mrs. Ravinderkaur Savadi
2. Vinayak Savadi .... Applicants

versus

State of Maharashtra .... Respondent

…....

- Mr.Aabad Ponda, Senior Advocate a/w Hormuz Mehta a/w Jash Shah i/b. M/s. J. Sagar Associates, Advocate for Applicant.
- Ms.A. A. Takalkar, APP for the State/Respondent.
- Ms.Aarti Bhonsle and Arti Gaikwad, Advocate for Original Complainant.

CORAM : SARANG V. KOTWAL, J.
DATE : 30th MARCH, 2021

P.C. :

1. The Applicants are seeking their release on bail in connection with C.R.No.22/2021 dated 05/01/2021 registered with Chakan Police Station, Pimpri Chinchwad, under sections 201, 380, 381, 406, 408, 417, 420, 426, 447, 465, 467, 468, 471, 477, 506, 34 of the Indian Penal Code and under sections 65, 66(B), 66(C), 66, 72, 72 A of the Information Technology Act 2000.

2. The Applicants were arrested on 12/02/2021 and since then they are in custody. The charge-sheet is not yet filed. The investigation is going on. However, the Applicants at present are in magisterial custody and their custodial interrogation is over.

3. Heard Mr.Aabad Ponda, learned Senior Counsel for the Applicants, Ms.A. A. Takalkar, learned APP for the State and Ms.Aarti Bhonsle, learned counsel for Original Complainant.

4. The FIR is lodged by the first informant Uma Ramkrishna Nidmarti. She has stated that she was one of the Directors of 'M/s. Lectrotec Systems Pvt. Ltd.' There were two other Directors Ramkrishna Nidmarti and Amit Nidmarti. Ramkrishna had resigned on 22/02/2019. Amit was resident of Canada. Therefore the informant's company was looking for a Director who had requisite experience and who could look after the business of the company.

5. The Applicants had their company known as 'M/s. Revon Engineering Pvt. Ltd.' One Udayan Jain who was a

Chartered Accountant, assured the informant that the Applicants would be the best persons for her requirements. There was discussion between the parties. An agreement was entered into on 05/02/2019. According to that agreement, both these aforementioned companies were merged and another company known as 'Avontec Automation Pvt. Ltd.' was incorporated. That company was in the business of manufacturing electronic and mechanical parts. According to the first informant, she gave Rs.28,43,246/- through bank transfer to the personal account of the Applicant No.1. The informant had invested Rs.4 Crores in that company. According to the first informant, the Applicant No.1 did not invest anything. As per their agreement, the Applicant No.1 was appointed as a Director in that company. Applicant No.2 was to be appointed as Chief Executive Officer. It was accepted as per the agreement that the Applicants or their family members were not to form any other competitive company in the same business. From 16/02/2019, the Applicant No.1 had resumed charge of one of the Directors. Both the Applicants obtained various powers for conducting of the business. It is alleged in the FIR that both the Applicants were completely in control of the business. They were dealing with the clients, creditors etc. On 27/09/2019, the Applicant No.2 resigned. The informant realized that the accounts were not given by the Applicants to the informant. There are specific three allegations in the FIR;

(i) The Applicant No.1 had removed Rs.1,05,00,000/- from the company's account without permission of the informant and had deposited that amount in the Applicant's company 'M/s. Revon Engineering Pvt. Ltd.'

(ii) The Applicant No.2 formed another company known as 'Sholertec Asia Pvt. Ltd.', which was in the same business and which created competition for the informant's company contrary to the agreement.

(iii) It is alleged that the Applicant No.1 resigned from company on 04/05/2020. The Applicant No.1 was sent an email asking her to return the property of the informant's company such as mails, administrative powers, passwords and other articles. On 14/06/2020 both the Applicants and one Narendra Marathe entered the office of the company and removed laptops, printers, hard disc, original documents, keys, register, PAN card and many other articles. According to the first informant, this theft was committed to destroy the evidence. This incident was captured in CCTV.

6. There are other allegations as well in the FIR, but these are the main allegations. On this basis, the FIR is lodged.

7. Learned Senior Counsel for the Applicants Mr.Ponda invited my attention to the business transfer agreement and the shareholders' agreement. He submitted that there were arbitration clauses and therefore without referring the dispute to arbitration, this FIR could not have been lodged. He submitted that the parties were in the process of referring the matter for arbitration. He further submitted that the dispute is pending

before the NCLT and on 08/11/2020, the NCLT had passed order directing maintenance of status-quo. He further submitted that, at the first instance, the police had not taken cognizance of the complaint given by the first informant. Thereafter the informant had approached the Court of JMFC, Khed, praying for order u/s 156(3) of Cr.P.C. However, the learned JMFC had refused that relief. Against that order Revision Application is still pending in the Sessions Court. In the meantime on 05/01/2021 this FIR was lodged. Mr.Ponda further submitted that on 06/02/2021, the informant withdrew the complaint before JMFC Khed, in which she had prayed for order u/s 156(3) of Cr.P.C.

8. Mr. Ponda invited my attention to various observations made by the learned JMFC, Khed - Rajgurunagar, as well as the learned Additional Sessions Judge, Khed - Rajgurunagar, rejecting the bail applications. He submitted that the informant had accepted that the articles which were stolen, were returned by the Applicants and therefore that issue does not survive any

more. He further stated that the Applicants are ready and willing to deposit Rs.1,05,00,000/- in this Court without prejudice to their rights and contentions as a precondition for their release on bail.

9. He submitted that the allegations that the Applicants No.2 had formed a company which was in the same business and was competition to the informant’s company will have to be decided by a proper forum. It is not a criminal offence.

10. Learned APP opposed this application. She submitted that the investigation is still going on. The amount involved is huge. The allegations in the FIR make out a serious offence against the present Applicants.

11. Learned counsel for the first informant submitted that the present offence cannot be a subject of arbitration clauses. She submitted that the name of the arbitrator is also not agreed upon. The issue before the arbitrator can only be in respect of

civil remedies and if fraud is committed, the FIR is maintainable and therefore investigation is necessary. She submitted that all the articles are not returned.

12. I have considered these submissions. As far as the business transfer agreement is concerned, a copy of the same is annexed to this application. The application was dated 05/02/2019. Article 17 is in respect of Dispute Resolution, which reads thus;

> *"<u>ARTICLE 17 – DISPUTE RESOLUTION</u>*
> *Any and all disputes, controversies or claims arising out of or in connection to this Agreement including disputes on its conclusion, binding effect, amendment and termination, shall be resolved, to the exclusion of the ordinary courts, by arbitration in accordance with the Indian Arbitration and Conciliation Act, 1996 and the Rules prescribed there under, as amended from time to time. The arbitration shall take place in Pune to be conducted by a sole arbitrator who shall be appointed mutually by Parties, India and proceedings shall be conducted*

and documentation presented in English. The award of the arbitrator shall be final and binding on Parties and shall be enforceable in any court of Pune Jurisdiction."

13. The shareholders' agreement dated 05/02/2019 was entered into by the parties. A copy of the said agreement is also annexed to this application. In that agreement also there is a clause for Dispute Resolution, which is clause 14.

14. Sub-clause 14.1 and 14.2 of clause 14 read thus;

"14. Dispute Resolution

14.1 Any and all dispute or differences between the Parties arising out of or in connection with this Agreement or its performance shall, so far as it is possible, be settled amicably through consultation between the representatives of the Parties in the first instance

14.2 If after forty five (45) days of consultation, the Parties fail to reach an amicable settlement, on any or all disputes or differences arising out of or in connection with this Agreement or its

> *performance, such disputes or differences shall be submitted to final and binding arbitration at the request of any of the Parties upon written notice to that effect to the others."*

15. Annexure 'C' of that agreement mentions the unsecured loans standing in the name of earlier two companies M/s Revon and Letrotec. Therefore in this agreement parties had made their stand clear and there was a clause for arbitration. The NCLT vide its order dated 18/11/2020 had directed that status-quo existing on that day should be maintained. The proceedings are still pending before the NCLT.

16. Learned counsel for the first informant submitted that arbitration proceedings would apply only to civil liability and they would not cover criminal proceedings. Regarding this submission, it would be necessary to find out whether any offence is in fact committed by the applicants. That would be matter of investigation. The Applicants are already arrested and as of today they are in magisterial custody. Today, I am only considering question of grant of bail.

17. It is necessary to refer to the history behind the arrest of the present Applicant. At the first instance, the informant had approached the police for her grievance and registration of FIR. A written complaint was given to Senior Inspector of Police, Pimpri-Chinchwad police station. Similar allegations were made in that complaint. But the police had not registered the FIR. Thereafter the informant had approached the Court of JMFC, Court-II, Khed-Rajgurunagar. The learned Magistrate had observed that it was not a fit case for directing investigation u/s 156(3) of Cr.P.C. He had observed that the transaction appeared to be relating to business and the matter required enquiry at the hands of that Court before proceeding further. The matter was directed to be listed for verification u/s 200 of Cr.P.C. This order was challenged by way of Revision Application before the Sessions Court, which according to Mr.Ponda is still pending. In the meantime, the FIR came to be lodged on 05/01/2021 and the informant filed an application for withdrawal of the complaint. Learned Magistrate vide his order dated 06/02/2021

disposed of the complaint as withdrawn. Thus, it can be seen that the police themselves had treated it to be a matter for which FIR could not be registered. Even the learned Magistrate did not find it proper to direct investigation u/s 156(3) of Cr.P.C. The complaint before Magistrate was subsequently withdrawn. The Applicants came to be arrested on 12/02/2021. They had moved an application for bail before the JMFC. The learned JMFC had rejected that application. However in paragraph No.32, the learned Magistrate has recorded that the informant apparently had given no objection to release the Applicants on bail. Paragraph No.32 of the said order reads thus;

> *"32] In respect of above submission, I have gone through the written submission on record, tendered by the informant and her Ld. Advocate today. It is not supported by affidavit. Despite of oral directions, the informant opted not to file supporting affidavit for the reasons best known to her. I have considered submissions made by the informant. She has apparently given no objection to releasing the accused persons on*

> *bail. She has submitted that, the terms of settlement are finalized between her and the accused persons and the accused have undertaken to compromise the dispute with her. The informant further submitted that, she accepts the undertaking in good faith and reserves her right to seek cancellation of bail of accused persons if they fail to comply with the said undertaking."*

18. Even in paragraph No.34 some important observations are made which are as follows;

> *"34] The today's written submission, tendered by the informant on record, somehow shows that, it is the misunderstanding of the informant that she is driving the present criminal proceeding after registration of F.I.R. First, this misunderstanding is liable to be cleared from her mind. Now, it is the State, who is responsible for justice and it is for the investigating officer to find out the truth. The whims and fancies of the informant have no place in the present proceeding."*

Thus, even at that stage, the learned Magistrate had recorded that the informant had no objection for grant of bail.

19. The Sessions Court also rejected the Applicant's prayer for bail. That order was passed on 08/03/2021 by Additional Sessions Judge, Khed, Rajgurunagar. The important paragraph in that order is paragraph No.8, which reads thus;

> *"8. However, material allegations are very serious against the present applicants as regards to fabricating documents for showing amalgamation and under the garb of amalgamation, how the applicants extracted money from the informant. Although, the informant submitted that she has received the amount and other articles i.e. laptop, etc; which were stolen. Learned Investigating Officer submitted that prime accused i.e. accused No.5 is still absconding and he is to be arrested and he is very close to the present applicants and this is very early stage of investigation. Nature of allegations are serious one."*

20. From these two orders it appears that the informant had given no objection if the Applicants are released on bail. The main reason why learned Additional Sessions Judge, did not grant bail to the Applicants was that the accused No.5 was still absconding. In my opinion, that cannot be a ground for rejection of the applicants' bail application. The case against them will have to be decided independently. They cannot be denied bail just because accused No.5 could not be arrested by the investigating agency. The same order mentioned that the informant had submitted that she had received the amount and other articles which were stolen. Considering these observations, now the two other allegations mentioned in the FIR need to be addressed. One of them is that the Applicant No.2 had floated another company which was in the same business. How that company had affected business of the informant's company and how much loss was caused to the informant's business can hardly be subject matter of this investigation. For that purpose, the Applicants' further custody is not necessary.

21. Therefore, the only issue which now remains is regarding the allegations that the Applicants and in particular Applicant No.1 having siphoned off Rs.1,05,00,000/- to her own company without informing the informant. For that purpose, Mr.Ponda has made a categorical statement that the Applicants were willing to deposit the said amount in the Court without prejudice to their rights and contentions. In this view of the matter, I am inclined to grant bail to both the Applicants with certain conditions.

22. Hence, the following order :

<u>O R D E R</u>

(i) As a precondition for release on bail, the Applicants shall deposit an amount of Rs.1,05,00,000/- (Rupees One Crore and Five Lakhs) in this Court without prejudice to their rights and contentions.

(ii) On such deposits, in connection with C.R.No.22/2021 dated 05/01/2021 registered with Chakan Police Station, Pimpri

Chinchwad, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) each, with one or more solvent sureties each, in the like amount.

(iii) The Applicants shall deposit their passports with the Investigating Officer.

(iv) The Applicants shall not leave the country without seeking prior permission from the trial Court.

(v) The Applicants shall attend the concerned police station once every fortnight till filing of the charge-sheet and thereafter once in two months till framing of the charge.

(vi) The amount deposited by the applicants in this Court shall be invested in fixed deposit to be renewed from time to time in accordance with rules framed in that behalf.

(vii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)