IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.968 OF 2020

Rajeshkumar Ghisulal Munot .. Petitioner
Versus
The State of Maharashtra .. Respondent

...

Mr.Aabad Ponda, Senior Advocate with Mr.Bhomesh R. Bellan for the Applicant.

Mr.Swapnil S. Pednekar, APP for the State .

...

CORAM: BHARATI DANGRE, J.
DATED : 24th SEPTEMBER, 2021

P.C:-

1. The Applicant is incarcerated in the wake of his arrest in connection with C.R.No.281 of 2019 registered with L.T.Marg Police Station, invoking Sections 409, 420, 465, 468, 471 read with Section 34 of the Indian Penal Code (for short, **"The IPC"**). From the date of his arrest i.e. 01/11/2019, he continue to languish in jail as his application for bail being rejected by the Sessions Court.

2. Heard learned senior counsel Mr.Ponda for the Applicant and learned APP Mr.Pednekar for the State.

The pivotal question which arises in this case is whether the Applicant, who is a partner in the firm alongwith the Informant, can be made to stand the charge under Section 409 in light of the decision of the Hon'ble Apex Court in case of ***Velji Raghavji Patel V. State of Maharashtra***[1] in the wake of the allegations levelled by the Informant. In order to appreciate the legal position, I have perused the charge-sheet with the assistance of the respective counsel.

3. The Informant, Rajkumar Gupta allege in his complaint that from 2013, he was into the business of sale and purchase of gold and the business was carried out in the name of 'M/s.Dev Bullion' in which the present Applicant is a partner. The partnership deed was entered into between the two on 18/11/2013 and the Informant was partner to the extent of 90% whereas the present Applicant is partner of 5% and the Informant's brother was holding 5% stake in the partnership. After stating the *modus operandi* of the partnership firm, it is narrated by the Informant that he had full trust in the Applicant and the day-to-day affairs of the firm were handled by the present Applicant.

After four years into the business, on 29/11/2017, the Informant was intimated by one of the Traders about the

1 AIR 1965 SC 1433

Applicant having received money from him, but the gold being not disbursed in return. This created suspicion in the mind of the Informant and when he checked the books of account, it came to his knowledge that for a long period, false calculations were placed before him. As far as the Day Register of 21/11/2017 is concerned, four entries reflected the names of the Traders and some amount was scribed against their names. The allegation in the complaint is to the effect that though money was not received from the said Traders, wrong entries were taken in Day Register and by showing that there was purchase of gold and the gold was retained by the Applicant. In the backdrop of these allegations, FIR came to be registered.

4. The charge-sheet reveals that the statements of several Traders came to be recorded during investigation and the Applicant is charged with acting in breach of trust by purchasing gold from six wholesale companies to the tune of 22.994 Kilo valued at Rs.6,89,82,330/-. However, instead of disbursing this gold to the customers, it is alleged that it has been misappropriated, causing financial loss to the Informant. This constrained the investigation agency to invoke Section 409 of IPC. Another accusations which the Applicant is facing

are under Sections 420, 465, 468, 471 where he is accused of taking false entries in the Day Register as regards the balance amount and the stock.

5. The submission advanced on behalf of the Applicant is to the effect that before the offence of criminal breach of trust is invoked, it would be necessary to establish that the person was entrusted with or entrusted with dominion over property, which he is said to have converted to his own use or disposed of in violation of any direction of law. The submission advanced is every partner has dominion over property by reason of the fact that he is a partner, but this dominion cannot satisfy the ingredients of Section 406 as in order to establish 'entrustment of dominion' over property, mere existence of that person's dominion over property is not enough, but it must be shown that this dominion was the result of entrustment and, therefore, the allegation of criminal breach of trust can never survive against the Applicant. As against Section 420 of IPC is concerned, the submission is that there was no dishonest inducement of any kind by the Applicant and it was during the course of the business that the Traders had placed the orders.

6. The Hon'ble Apex Court, as early as in 1965, dealt with the said issue in ***Velji Raghavji Patel (supra)*** about a partner being held guilty of an offence of criminal breach of trust and the following observations are relevant :-

> "Upon the plain reading of Section 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of section 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.
>
> Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular aspect of the partnership was, by a special agreement between the parties, entrusted to the accused person.
>
> If in the absence of such a special agreement a partner received money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be held to have been "entrusted" with dominion over partnership properties."

7. Learned APP has placed reliance upon the decision of Gujarat High Court in case of ***State of Gujarat Vs. Vora Jayantilal Chhotalal and Ors.***[2], but careful reading of the said judgment would reveal that, it concede to the position that decision of ***Velji Raghavji Patel (supra)*** still continue to be a binding law and though the Division Bench of Gujarat High Court made a reference to the earlier decision of the Hon'ble Apex Court in case of ***R.K.Dalmia and Ors. V. The Delhi Administration***[3], at the end, it is accepted that there is no conflict between the decisions of the Honble Apex Court in Dalmia's case (***supra***) and in Velji's case (***supra***).

8. The position of law which has been well settled, can be clearly stated to the effect that, in relation to the criminal liability of a partner for breach of trust, entrustment to a partner has to be proved. A person, in his capacity as a partner alongwith other partners, has general dominion over the property and the monies of the firm. For the purpose of criminal breach of trust, entrustment must be proved and such entrustment can only be by way of special agreement or for that purpose, by conferment of authority to a partner to collect the money, but such conferment can only be by special

2 (1975) 16GLR661
3 [1963] 1 SCR 253

agreement. The principle of law which emerges from the authoritative pronouncement is to the effect that the partner cannot be held liable only because he is a partner and, therefore, has dominion over the partnership property or monies. The entrustment of the property has to be proved by demonstrating that he was in-charge of the partnership property or monies and it must exist in form of a special agreement, which is conspicuously absent in the present case.

9. In light of the material compiled in the charge-sheet and in the light of the decision in case of ***Velji Raghavji Patel (supra)*** , the ingredients of Section 405 cannot be said to be made out prima facie. The offence under Section 405 can be said to be committed by a person in respect of the property, which has been specifically entrusted by another person and which he owns in a fiduciary capacity. The position of law clearly emerging as above and since the investigation is complete, the Applicant need not be incarcerated further and deserves his release on bail.

It is made clear that the observations made above are *prima facie* and limited to the extent of adjudication of the present application and will have no bearing on trial.

: **ORDER** :

(a) Applicant - Rajeshkumar Ghisulal Munot shall be released on bail in C.R.No.281 of 2019 registered with L.T.Marg Police Station on furnishing P.R. bond to the extent of Rs.25,000/- with one or two sureties of the like amount.

(b) The Applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

(c) The Applicant shall report to the concerned Police Station on first Thursday of every month between 10.00 a.m. and 2.00 p.m. till framing of the charge and thereafter he shall abide by the directions issued by the Trial Court.

10. The application is allowed in the aforestated terms.

(SMT. BHARATI DANGRE, J.)