

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.2352 OF 2021

SANDIP BABURAO MALUSARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

WITH

INTERIM APPLICATION NO.2501 OF 2021

IN

BAIL APPLICATION NO.2352 OF 2021

MRS.SHARMILEE MILIND DHUMDE)...INTERVENOR

IN THE MATTER BETWEEN

SANDIP BABURAO MALUSARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Prashant Gurav, Advocate for the Applicant.

Mr.H.J.Dedhia, APP for the Respondent – State.

Mr.Ramesh Tripathi a/w. Mr.A.N.Upadhyay, Mr.Mahesh Deopandey, Mr.Vijeth Shetty, Ms.Kshitija Chalke, Mr.Sagar Nikambe, i/b. Ramesh Tripathi and Associates, Advocate for the Intervenor.

AVK

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CORAM : V. G. BISHT, J.

**RESERVED ON : 17th NOVEMBER 2021
PRONOUNCED ON : 25th NOVEMBER 2021**

P.C. :

1 The present application has been moved by the applicant under Section 439 of the Code of Criminal Procedure in Crime No.I-232 of 2019 registered with Police Station Khargar, Navi Mumbai, for offences punishable under Section 406, 411, 465, 468, 471 read with Section 34 of the Indian Penal Code (IPC).

2 It is the case of prosecution that the informant along with Bhushan Bhoir and Sandip Malusare (applicant) had started a business under the name and style Vagmi Group of Traders by entering into a partnership agreement and used to trade in onions, potatoes and garlic. The prosecution alleges that the informant had given the goods, namely, onion, potatoes and garlic in the sum of Rs.38 lacs out of which only 5 lacs came to

be returned and remaining 33 lacs were not returned by the applicant and his brother. The prosecution alleges that the applicant also forged various bills and vouchers. In the aforesaid premise, the FIR came to be lodged.

3 Mr.Prashant Gurav, learned counsel for the applicant, submits that the dispute between the parties is of purely civil nature. Even according to the learned counsel, there was a complaint referred to Police Inspector, Palghar, dated 8th September 2018 against the informant wherein the informant had threatened him of false implication. Thus, having regard to the nature of accusations and the fact that investigation is over, no purpose would be served by keeping the applicant behind the bars. Similarly, there are no criminal antecedents against the applicant. Thus, for all these reasons, the applicant deserves to be released on bail, argued learned counsel.

4 Mr.Dedhia, learned APP, assisted by learned counsel Ramesh Tripathi for the intervenor, on the other hand, submitted

that the applicant had forged bills and then invited my attention to the statement of prosecution witnesses namely Nemaram Manglik Choudhary and Ramchandra Kurappa Gholap. Since the applicant committed criminal misappropriation of huge amounts, the application is liable to be rejected, argued learned APP

5 Perused the investigation papers. I have also perused the affidavit and additional affidavit filed by the intervenor. From the record it is more than clear that it was a joint venture amongst the informant, applicant and Bhushan Bhoir who started Vagmi Group of Traders. However, it seems that later on the differences started cropping up and even the applicant was required to file complaint dated 8th September 2018 against the informant with Police Station Palghar. The nature of transaction between the parties appears to be of civil nature. So also, whether Section 406 of IPC can be attracted, in the facts and circumstances of the case, also appears to be doubtful. All the offences are triable by learned Judicial Magistrate First Class. There are not criminal antecedents.

6 In such circumstances, in my considered opinion, the applicant has made out a case for bail. Hence, I pass the following order :

ORDER

- (i) Applicant – Sandip Baburao Malusare shall be released on bail in Crime No.I-232 of 2019 registered with Police Station Khargar, Navi Mumbai, on his executing P.R.Bond in the sum of Rs.25,000/- with one or two sureties in like amount.
- (ii) The applicant shall not tamper with prosecution evidence.
- (iii) Bail before the trial Court.
- (iv) Parties to act on copy of this order duly authenticated by the Sheristedar of this Court.
- (v) It is made clear that the observations made herein are prima facie and the trial Court shall decide the case on its own

merit, in accordance with law, uninfluenced by the observations made in this order.

- (vi) The application is allowed in the aforesaid terms and stands disposed off accordingly.

(V. G. BISHT, J.)