IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1708 OF 2021

Manish Rajendra Bothra .. Applicant
Versus
The State of Maharashtra .. Respondent

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Mr. Aabad Ponda with Shailesh Kharat for the applicant.
Mr.Yusuf Iqbal i/b Y & A Legal for intervenor.
Mr.A.R. Kapadnis, APP for the State.
PI Shri Arun Phuge and PSI Anil Shaikh present.

CORAM: BHARATI DANGRE, J.
DATED : 2nd SEPTEMBER 2021.

<u>P.C</u>:-

1 The applicant is apprehending his arrest in C.R.No. 141 of 2021 registered with Solapur police station, thereby invoking Sections 406, 408, 420 and 477-A of the IPC. The offence came to be registered on a complaint filed by the Manager of Betul Oil Mill, Kondi, Solapur, Mr. Khwaza Maula Sheikh and investigation of the FIR is being made over to the Economic Offences Wing (EOW) on its registration.

2 The complaint allege that the applicant came to be appointed as Unit In-charge in Betul Oil Ltd since last 16 years.

The Board of Directors of the Company had authorized the applicant to look after entire business and working of the Company and he was also authorized to sign on behalf of the Company.

It is specifically alleged that at the time of the appointment of the applicant, he did not own any immovable or valuable articles.

3 It is reported that on 18th February 2021, the Income Tax Department, Solapur and Bhopal had conducted a raid in the Company and the bungalow belonging to the Company where the applicant was residing with his family came to be sealed by the Income Tax Department. Two days thereafter i.e. 20th February 2021, the applicant and his accomplice barged entry into the bungalow by cutting grill and it is alleged that cash worth Rs.7,45,38,950/- and gold diamond ornaments worth Rs.30,28,545/- were stolen. While the aforesaid property was being transmitted, the applicant was apprehended along with his associate and this resulted in registration of an FIR, invoking Section 380, 454, 457, 120B, 201 and 188 of the IPC.

4 The present FIR in which the applicant is seeking his release came to be registered pursuant to a Forensic Audit of the Company being carried out by the Chartered Accountant who noticed that on 8th February 2021, five tankers containing 90.15

metric tonnes (MT) of Soya Refined Oil were dispatched, however, entry was made in the record of the Company showing that only four tankers (total weighing 66.612 MT) were dispatched. The complainant, H.R. Manager of the Oil Company informed that the entire transaction was designed at the instance of the present applicant who telephonically informed the cashier of the said Company, Mr.Sancheti not to prepare any bills, tax invoice, e-invoice or e-way bill in respect of fifth tanker carrying 24.88 MT of Soya Refined Oil which was worth Rs.28,66,176/-. It is alleged that the said amount was received in cash by the cashier of the said Company to be given to Raj Kumar Jhod. The applicant is therefore, accused of misappropriating amount of Rs.28,66,176/- for not putting the transaction pertaining to the fifth tanker on record and thus, committing offence of criminal breach of trust and cheating. He is also further accused with falsification of accounts of the Company.

5 Learned Senior Counsel Mr.Ponda for the applicant, assertively submit that the applicant is falsely implicated in the subject C.R and his association as Unit In-charge of the said Company for 16 years, is an absolutely incorrect statement. His submission is, the applicant never hold any post in the Company but one of the shareholder of Betul Oil Ltd, who was the Ex-Managing Director, is in close relation of the applicant and that is how he was permitted to reside in the bungalow of the Company,

and the Company had given him authority to sign on his behalf. It is, however, denied that he received any salary or any amount in any form whatsoever from the said Company, except the loan amount. Itis submitted that the applicant is engaged in construction business and has no connect with the oil company. In this background, the allegation that the Company had entrusted any property to him or that he had any dominion over the property of the Company, as alleged is a misconceived perception. The submission is the basic ingredient of the offences alleged against the applicant i.e. entrustment of property to the applicant as a Clerk or Servant and dishonest inducement to deliver the property is totally absent. It is asseverated that false complaint is lodged by the complainant at the instance of the management so as to safeguard itself from the consequences flowing from the Income Tax Raid and he has been made a scape-goat to evade their illicit unaccounted to Rs.7,45,38,950/- which was seized by Income Tax Department.

6 Heard learned APP Mr.Kapadnis, who has placed on record the relevant papers justifying the claim of the prosecution for a Custodial Interrogation.

I have also heard Mr.Yusuf Iabal, counsel for the intervenor, who back by the learned APP in his submissions, in opposing the application and his specific submission is that the allegation levelled against the applicant is not limited to the amount mentioned in the FIR in respect of the cash amount received against one tanker of Soya Refined Oil but the allegation is this modus-operandi was adopted by the applicant since several years and that is how he has amassed huge property and valuables, thus require a thorough investigation.

7 Learned APP has placed on record a compilation of documents which include a Forensic Audit Report of the Solapur plant and the report pertain to the unaccounted material manufactured and dispatched in Solapur Plant of Betul Oil Ltd for the period from 1st November 2020 to 28th February 2021. The Chartered Accountant by the said report confirm to the accusations levelled in the complaint and report about the material produced and dispatched without invoices of 24.880 MT of Soya Refined Oil on 8th February 2021 at market value on 26,96,470/-. The preliminary report is submitted after the auditor visited the factory, examined the records of raw material, finished goods, godown reports, weighbridge report, sales invoices, etc. and on inquiry with the staff.

The invoices and other records were also examined along with the production report on daily basis from 1st November 2020 till submission of the report.

8 The Audit conclusions confirm the allegations that on 8th February 2021, the dispatch of Soya Refined Oil of 66.62 MT

as per *Mal-Rokkad,* dispatch were made in the four trucks. In Oil Station Report dated 8th February 2021, the dispatches were shown as 91.500 MT but quantity accounted in *mal rokkad* as well as in sales was 66.62 MT which reflect shortage of 66.62 MT. This means 24.88 MT soya refined oil was dispatched to some party, but not billed, nor shown as sales. The weighbridge report ERP was checked which reported only 4 trucks on 8th February 2021. When the offline weigh bridge report was checked, it was found that the 5th truck was taken with oil amounting to 24.88 MT. The Audit Report clearly conclude that total dispatches in the books on 8th February 2021 was 66.62 MT for total sale value of Rs.72,20,202/-, average sale value is 108,379 MT, so the material which was dispatched but not accounted as sales was 26,96,470/-. When the gate out pass in the Register is checked, it confirm that fifth truck passed out of the gate. The preliminary report corroborate the accusation against the applicant.

9 Learned Senior Counsel Mr.Ponda has urged that the applicant was not present at the site on the said date and there is no material to reflect that he was a part of the transaction. Dealing with the said submission, learned APP would submit that the complainant alleged that the applicant had established contact with the cashier and Mr.Jhod on 8th February 2021 and issued them directions. To that effect, a CDR has been obtained during

the course of investigation which establish that the applicant established contact with Mr.Jhod as well as Mr.Sancheti at the relevant point of time which is alleged in the complaint and the submission of the applicant about his nexus in the transaction, fall to the ground.

Apart from the Forensic Report, the learned APP has placed on record, records of attendance of the employees of the Company which clearly depict that on 8th February 2021, Mr.Jayesh Sancheti, Cashier, Mr.Jhod, Manager and Laxman Shinde, Sales Manager were present on duty. Apart from this, the statements of Mr.Jhod and Mr. Sancheti is also compiled in the papers of investigation. Mr.Jhod has narrated the details about the amount disbursed by him in favour of staff and persons along with the details of the amount and the dates on which the amount are made over to these persons at the instance of the present applicant. Statement of one witness is recorded who has identified the applicant as the Unit In-charge and was assigned the duty of transferring the cash in his bungalow. The witness has stated that he used to sign on the cash memos and deliver the money bags in the bungalow of the applicant and at the same time, he used to make over the bag containing money to cashier Sancheti as per directions of the applicant. He account of the said transactions between 2013 to 2015. The statement of several persons who receive money from Raj Kumar Jhod on the directions of the present applicant are also compiled in the charge-sheet. The statements of the several persons which are recorded during the course of investigation call for a thorough investigation, in the wake of allegations of siphoning of the valuable assets of the Company and converting them for his own use.

10 When the affidavit filed by the complainant is perused, the complainant has alleged that the applicant has siphoned off huge amount which is estimated by him to be not less than 60 crores during his working with Betul Oil Ltd and sister concern including Vision Millennium Exports Pvt.Ltd. The break-up of the amount is found to be contained in the affidavit under various captions and it is alleged that this amount has been doled out in various investments by the Banking Manager on the instructions of the present applicant. List of properties, valuables owned by the applicant are enlisted in the said affidavit.

This is no stage for verifying the truthfulness of the said amount but I pertinently asked Mr.Ponda to show the source of income of the applicant, upon which my attention is invited to the Income Tax Returns which are placed on record by the applicant. The Income Tax Returns spread over from the year 2006-07 to 2015-16 speak volume. Though Mr.Ponda has asserted that the applicant is not an employee of Betul Oil, he is on pay roll of Vision Millennium Exports Pvt.Ltd which is a sister concern of Betul Oil and the salary received by the applicant from the said Company is exhibited as the prime source of income in the tax returns of the applicant. The Income Tax Returns reflect to he being Partner of one Vighnaharta Construction but the income shown is 'Nil'. Some remuneration is also shown from Vighnaharta Corporation, one Trimurti Infracom, but largely the income of the applicant is from other sources and shown as interest received on various amounts.

11 These circumstances being relevant for determining the guilt of the applicant by investigating into the accusations faced by him, definitely warrant a custodial interrogation.

12 Application is rejected.

Needless to say that the observations made are prima facie in nature and limited to the adjudication of the present application and the Trial Court shall not be influenced by the above observation while the applicant is put on trial.

SMT. BHARATI DANGRE, J

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