Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2354 OF 2019

Mohammed Nawaz	]	Applicant
Vs.		
The State of Maharashtra	]	
Through Economic Offences Wings,	]	
Unit-IX, Office of the Commissioner of	]	
Police, Near Crawford Market, Mumbai.	]	Respondent

a/w

INTERIM APPLICATION NO.1531 OF 2019

Jugalkishore S/o. Bajanlal Didwania	]	Intervener/Applicant

IN THE MATTER BETWEEN:

Mohammed Nawaz	]	Applicant
Vs.		
The State of Maharashtra	]	
Through Economic Offences Wings	]	
Unit-IX, Office of the Commissioner of	]	
Police, Near Crawford Market, Mumbai.	]	Respondent

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Mr. I.S Thakur a/w Mr. Ravi Kotian i/b Global Juris Consults, for the Applicant.

Mr. H.J. Dedhia, A.P.P, for Respondent-State.

Mr. Ashok Saraogi, for Applicant in I.A. No.1531 of 2019.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
RESERVED ON : 4th DECEMBER, 2021.
PRONOUNCED ON : 14th DECEMBER, 2021.

P.C:

1. Heard Mr. Thakur, learned Counsel for the applicant, Mr. Dedhia, learned A.P.P, for respondent-State and Mr. Saraogi, learned Counsel for the intervenor.

2. Crime No.47 of 2016 is being investigated by Economic Offences Wing, Crime Branch, Mumbai *qua* the applicant. An F.I.R was registered under sections 406, 417, 418, 420, 465, 467, 468, 471, 474, 120 (B) of the Indian Penal Code on 27th May, 2016. It appears from the record that ever since the offence was registered, the applicant has never been arrested since he is at abroad.

3. This Court, while granting interim protection to the applicant, by an order dated 23rd February, 2021, made following pertinent observations;

> *"2. Learned Counsel for the applicant submitted that the applicant intends to come to India. Both parties have settled the*

dispute. The undertaking signed by the applicant and complainant who is present in the Court is tendered. It is taken on record. It is submitted that the applicant may be granted protection under Section 438 of Cr. P.C so that the applicant can come to India and resolve the dispute in entirety with the complainant as per the undertaking. He had undertaken to pay sum of Rs.75,00,000/- to the complainant by way of RTGS, NEFT or pay order on or before 03rd March 2021 before his arrival in India. It is also stated that after coming to India the applicant would file a petition in this Court for quashing the criminal proceeding against him vide C.C No.107/PW/2020 arising out of C.R 47/2016 which is subject matter of this application within four weeks of his arrival.

3. The undertaking further mention that the total amount agreeable to be paid by the applicant to the complainant is Rs.1,30,00,000/-. As stated above, amount of Rs.75,00,000/- would be remitted to the complainant and the balance amount of Rs.55,00,000/- would be paid to the *complainant at the time of quashing proceeding. The applicant undertaken to abide by this affidavit-cum-undertaking.*

4. Learned Counsel for the intervenor submitted that the complainant is present in the Court and he has agreed to the terms and conditions of the undertaking. However, it is submitted that the application for anticipatory bail may not be disposed of till the entire dispute is resolved by both the parties by initiating the proceeding for quashing. In view of the above the protection as prayed for by the applicant can be granted;

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

(i) In the event of arrest of the applicant in connection with C.R. No.47 of 2016 investigated by EOW Unit-9 Crime Branch Mumbai, the applicant be released on bail on furnishing P.R Bond in the sum of Rs.30,000/- with one or more sureties in the like amount;

(ii) The applicant is permitted to come to India on or before 10th March, 2021;

(iii) The applicant shall abide by the undertaking within stipulated time as stated in the affidavit/undertaking;

(iv) Stand over till 06th April 2021;

(v) The investigating officer shall intimate this order to the concerned authority for keeping in abeyance the look-out notice issued against the applicant".

4. Even after one year and nine months, it seems that neither the applicant had remitted the amount of Rs.75,00,000/- in complainant's account nor any effective steps were taken to get the proceeding quashed before the appropriate Court.

5. It is a matter of record that earlier application seeking anticipatory bail before the Sessions Court at Greater Mumbai bearing Anticipatory Bail Application No.1988 of 2016 was rejected on 29th November, 2016 by a reasoned order. Undisputedly, the applicant owes Rs.75,00,000/- to the complainant on account of supply of scrap metal/steel. It is also an admitted fact that an amount of Rs.75,00,000/- was deposited by the complainant in the account of the applicant. An amount of Rs.3.75 Crores was transferred by the applicant in the account of the complainant, however, cheques given by the applicant to the complainant were earlier dishonoured. It was found that the applicant was not residing on the given address.

6. Thereafter, on 27th June, 2017, this Court (Coram: P.D. Naik, J.) dismissed Anticipatory Bail Application bearing No.2106 of 2016 seeking anticipatory bail, for want of prosecution, as none was present for the applicant.

7. It is difficult to accept the arguments of the learned Counsel for the applicant that the applicant has been co-operating with the Investigating Officer and nothing remained to be investigated as all the documents have been annexed to the charge-sheet.

8. My attention is drawn by the learned Counsel for the intervenor to the charge-sheet filed under section 299 of the Code of Criminal Procedure as applicant-accused has absconded and is in some foreign country. A charge-sheet under section 299 of the Code of Criminal Procedure is to be filed when there is no immediate prospect of arresting the accused. Nothing more is required to be stated in that regard. Had the applicant been really diligent and honest, he would have deposited the entire amount in the account of the complainant long back.

9. The applicant had undertaken to pay a sum of Rs.75,00,000/- to the complainant by way of RTGS, NEFT or pay order on or before 3rd March, 2021 before his arrival in India. It seems that neither he had arrived before the said date nor deposited the amount. The applicant had breached the undertaking given before this Court on 23rd February, 2021.

10. It cannot be heard to say from the learned Counsel for the applicant that the balance amount Rs.55,00,000/- would be paid to the complainant at the time of quashing the proceedings of which there is no time limit prescribed. By delaying the payment of balance amount on the pretext of not getting circulation for seeking quashing of the proceedings, would tantamount to giving leverage to the applicant to gain undue advantage in paying the balance amount.

11. For all these reasons, I do not find any honest and *bona fide* efforts on the part of the applicant either to co-operate with the investigation or to remit the balance amount in the account of the complainant. Consequently, he is not entitled to seek the relief of anticipatory bail. The application, therefore, stands rejected.

12. Interim order granted by this Court on 23rd February, 2021 stands vacated.

13. In view of disposal of the Anticipatory Bail Application, Interim Application No.1531 of 2019 stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]