

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 90/2021

Azad Singh Arya
VERSUS
State of Maharashtra

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri S. Patrikar, Advocate for applicant.
Shri A. Damle, APP for non-applicant/State.

CORAM : VINAY JOSHI, J.
DATE : 30.07.2021.

Hearing was conducted through Video
Conferencing.

2. The applicant is apprehending to be arrested in Crime No. 336/2019 registered at Police Station MIDC Butibori, Nagpur for the offence punishable under Sections 406, 409 read with Section 34 of the Indian Penal Code, Section 13 and 14A of the Employees' Provident Funds and Miscellaneous Act, 1952 (for short 'Act of 1952'). This Court has granted ad-interim protection vide order dated 26.02.2021 which is prevailing till date. There is no complaint of non-cooperation or misuse of liberty.

2

3. It is the principal allegation that the applicant was part of management of M/s Spentex Industries Ltd. which has not deposited provident fund contribution of the employees for the period from 2016 to 12.01.2019. The State resisted bail by filing reply-affidavit and pointed towards the orders passed by the Division Bench of this Court in Writ Petition No. 1830/2019 and Criminal Application (APL) No. 433/2020. Moreover, my attention has been invited to the order of rejection of pre-arrest bail of co-accused in Criminal Application (ABA) No. 628/2020.

4. Learned counsel for the applicant primly argued that though applicant was Director of M/s Spentex Industries Ltd, he however got retired by superannuation on 13.06.2015 and therefore, has no concerned with the allegations made in the First Information Report (FIR). Certain documents are produced to show that the applicant retired from the said Industry on 13.06.2015, as well as the same is not denied. It is

3

inquired, whether the applicant was re-employed or extension was given to him by the said Industry. Learned APP submitted that it is not the case of extension or re-employment. Therefore obviously on retirement by superannuation, the applicant has no concern nor any control on the affairs of said Industry post retirement i.e. after 13.06.2015. The allegations as contended in FIR are specific that the said Industry had not deposited amount of Rs. 3.28 crores for the period from 2016 to 12.01.2019. For recovery of the amount notice under Section 8-B of the Act of 1952 has been issued. The State is unable to show any nexus of the applicant with the affairs of the said Industry after his retirement.

5. It reveals that prior to the retirement, applicant along with other Directors had filed Writ Petition No. 1830/2019 challenging the show cause notice dated 08.02.2019 issued under Sections 8-B of the Act of 1952. The show cause notice was to the effect that, in failure to deposit

4

provident fund amount why the then petitioner should not be committed to the Civil Prison in execution of the certificate. In the said petition, this Court has prevented the arrest relating to show cause notice with rider that if the then petitioner would deposit periodical amount, then there would be no arrest. Latter on, vide order dated 17.01.2020, this Court while disposing of the petition, has recorded that the then petitioners (including applicant) have not complied condition of payment. Ultimately, it was ordered that the petitioners shall respond to the show cause notice and till decision is taken by the authority, action of arrest shall not be taken. Those directions regarding periodical payment of provident fund was in context with show cause notice issued under Section 8-B of the Act of 1952 which has nothing to do with existing FIR which was filed latter i.e. on 04.10.2019. Obviously, the order which is being passed in this crime has no nexus with the consequences of show cause notice.

5

6. The next order which is brought to the notice, is dated 27.08.2020 passed by the Division Bench of this Court in Criminal Application (APL) No. 433/2020. It appears that the Directors of the said Industries (including applicant) had approached this Court for quashing FIR in terms of Section 482 of the Code of Criminal Procedure. This Court has refused to exercise extraordinary jurisdiction by noting the fact that the petitioners had not complied with the directions passed by this Court in Writ Petition No. 1830/2019. The reasons assigned by this Court in the said petition were in context to the question whether the case has been made out to quash FIR. The considerations for grant of pre-arrest bail are distinct than the consideration for quashing of FIR. In most of the cases, FIR cannot be quashed but accused can secure bail depending on facts.

7. As regards to rejection of bail to the co-accused in Criminal Application No. 628/2020 is

6

concerned, the case of those accused stands on different footing. The order itself demonstrates that the then applicant No. 1 was Chairman of the said Industry whilst applicant Nos. 2 and 3 were General Manager and Assistant General Manager respectfully. It was not the case that they were retired or having no concern with the Industry during crucial period i.e. in between 2016 to 12.01.2019. Since they were very much connected with the Industry during said period, this Court has declined to exercise discretion in their favour.

8. The case of applicant is very much distinct as undisputedly he retired on 13.06.2015 from the said Industry, till that time, there was no allegation of non-deposit of provident fund amount. Learned APP has pointed out that the applicant's name is still shown as a Director in Form No. FA and F32 of the Company Act. Since admittedly the applicant was retired from service, mere remaining his name to the record would not make any difference. The above observations are

restricted to the aspect of deciding bail which has no impact on trial. Having regard to these facts, the applicant has made out a case to grant of pre-arrest bail.

9. In view of above, ad-interim order dated 26.02.2021 is hereby made absolute on the same terms and conditions.

10. Application stands allowed and disposed of.

JUDGE

Gohane.