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

CRIMINAL APPLICATION [ABA] NO. 332/2021.

Ajay Nathuram Sharma and two others.

-**Versus**-

The State of Maharashtra, through P.S.O., P.S. Bajaj Nagar, Nagpur.

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri N.B. Rathod, Advocate for Applicants.
Shri A.M. Deshpande, A.P.P. for the Non-applicant.
Shri A.A. Naik, Advocate for Informant.

CORAM : VINAY JOSHI, J.
DATE : NOVEMBER 18, 2021

Heard.

2. In anticipation of arrest in Crime No.63/2021 registered with Bajaj Nagar Police Station, Nagpur for the offence punishable under Sections 406, 468, 471 read with Section 34 of the Indian Penal Code, applicants are seeking pre-arrest bail by claiming innocence, false implication and inadequacy of evidence. In addition to that it is contended that there was a partnership business in between applicant no.1 and informant about purchase and disposal of scrap material. The dispute is purely of civil nature in between the partners regarding

settlement of accounts. It is submitted that in order to pressurize applicants to settle the accounts, false report has been lodged.

3. The State has resisted bail by filing detailed reply. It is contended that applicants have intentionally misappropriated huge amount in violation with the terms of the Memorandum of Understanding (MOU) executed in between them. The total amount of Rs.71 lakhs was misappropriated by applicants and converted it for their own use. The matter requires thorough investigation, hence, bail is prayed to be rejected.

4. At the instance of report lodged by Shyam Borele aforesaid crime came to be registered. It is informants case that he was running a private limited company dealing in scrap material. The nature of business was to lift scrap material from Government undertaking and to sale the same. Applicants have approached informant with a proposal to assist him in the business of purchase and sale of scrap material. Accordingly a MOU was entered in between the informant and applicant no.1 Ajay Sharma. It was made clear that rest of the two applicants would assist

applicant no.1 Ajay Sharma in the scrap business. As per the MOU, both informant and applicant no.1 Ajay were supposed to invest an amount of Rs. 50 lakhs in the business, however, applicant no.1 Ajay has invested only an amount of Rs.20 lakhs. It was further agreed that the informant would share profit to the extent of 55%, whilst applicant no.1 Ajay would receive 45% of the profit. Particularly the informant stated that as per the agreement, the sale proceeds of scrap material was to be deposited in the account of Ramdhani Agency with IDBI Bank.

5. It is informants case that he had obtained a contract of purchase of 400 tonnes of scrap material from Jabalpur Vehicle Factory through e-tendering process. Applicants have lifted the said scrap material and sold the same in the market, however, they have only deposited the amount received by sale of scrap material in relation to 189 tonnes only, and misappropriated remaining sale proceeds of 211 tonnes of scrap material. It is stated that applicants have falsely informed that 211 tonnes of scrap was lying in the godown, infact it was already sold.

6. Likewise, it is stated that the informant

had received contract of purchase of 690 tonnes of scrap material from M.P. Power Transmission Company. Applicants have lifted the scrap material, sold the same in market, but, only deposited sale proceeds of 645.64 tonnes and misappropriated the amount of sale of remaining 44.36 tonnes of scrap material. Thus, applicants have misappropriated an amount of Rs.71 lakhs by sale of scrap material against the terms of contract, and therefore, the report.

7. Undisputedly, the informant was owner of Ramdhani Agency Private Limited Company (Ramdhani Agency), situated at Nagpur. The Company was engaged in the business of purchase, sale and trading of scrap from government and other semi government undertakings. It is not in dispute that a MOU was executed in between the informant and applicant no.1 Ajay to execute the scrap business run in the name of Ramdhani Agency. The learned Counsel for applicants primely submitted that the applicant no.1 being expertise in the said business had entered into joint venture with an understanding that he would execute the entire work. According to

applicants, there was a dispute on the point of settlement of accounts, which is of civil nature. Applicant has initially filed two complaints against the informant to which as a counter blast, existing first information report has been lodged. Moreover, it is contended that though applicants sold partial goods in the market, however, the sale proceeds does not exceed 45% of the agreed percentage of profit.

8. Learned A.P.P. would submit that applicants have totally acted in violation of the terms of MOU. There was a condition incorporated in the MOU under Clause 5, that the entire monetary business transaction shall be made from the accounts of informant with IBDI Bank. Despite such agreed terms, applicants sold large quantity of scrap material weighing 256 tonnes in open market and had appropriated the amounts. Moreover, it is submitted that applicants were not authorized to sell scrap material in the market, still with deceitful intention they have misappropriated the sale proceeds. Learned A.P.P. from case diary pointed out that prior to earlier reports and notices issued by applicant, already informant has made a complaint to the police on

20.02.2021. It is argued that the agreed ratio of 55:45 was of profit and not out of entire sale proceeds.

9. Perusal of papers reveals that the existing first information report came to be filed on 15.04.2021. No doubt prior to filing of the report, applicant has issued a notice dated 10.03.2021 to informant and had also filed a complaint to police on 08.04.2021. However, it is worthwhile to note that prior to that on 20.02.2021 itself, the informant had made a report to the police with a specific allegation of illegal sale of 211 tonnes of scrap material and about misappropriation of Rs.71 lakhs. Therefore, prima facie it cannot be said that as a counter blast to applicants earlier notice, existing first information report has been lodged. Pertinent to note that applicants have not denied that out of 1090 tonnes of scrap material purchased from two different concern, they have sold 256 tonnes of scrap material in market, of which sale proceeds has not been credited in the account of Ramdhani Agency. Applicants are unable to show any authorization to specifically sale the scrap material at their own and to credit the amount in

some different accounts, against the terms of MOU.

10. It is submitted that applicant no.1 was running another concern namely – Vision Metal Corporation, which is not denied. Case diary consisting of record discloses that concerns like Surya Biotech Products, Mandwar Steel Trading etc., had deposited the amount of purchase of scrap material in the account of Vision Metals. Pertinent to note that the MOU does not authorizes applicant no.1 to enter into scrap business with any other concern. Prima facie, it is evident that applicants have no right to sale the scrap to third party and credit the amount in any other account. The learned A.P.P. has submitted that the rate by which the scrap was sold was within the exclusive knowledge of applicants for which their custodial interrogation is necessary. Moreover, it is contended that applicant no.1 who has entered into MOU has not produced the accounts to show his bonafides.

11. The learned Counsel for applicants by placing reliance on the decision of Hon'ble Supreme Court in the case of **Velji Raghavji Patel .vrs. State of Maharashtra - AIR 1965 (SC) 1433**, would submit

that in case of business partners unless dominion is the result of entrustment, offence under Section 406 cannot be made out. However, it is to be noted that the MOU specifically incorporates a term that the business money shall be deposited in IDBI Bank account and therefore, being distinct facts, the said proposition would not assist applicants.

12. It reveals that applicant no.1 alone has entered into the MOU with the informant and undertook certain liabilities and responsibilities. Rest two applicants were assisting him, meaning thereby they were acting under the control of applicant no.1 Ajay. The entire transaction was primely done by applicant no.1, under his directions and control. Moreover, applicant no.1 was in control of Vision Metal Corporation. In order to investigate the entire affair in proper perspective, custodial interrogation of applicant no.1 is necessary. So far as rest of the applicants are concerned, they were not party to the contract namely MOU, as well as appears to be working under the directions and control of applicant no.1, therefore, their liberty can be protected by directing them to join the course of investigation. In

view of above, the application deserves to be partly allowed, hence, the following order.

(i) Criminal Application is partly allowed and disposed of.

(ii) Criminal Application as regards applicant no.1 – Ajay Nathuram Sharma stands rejected.

(iii) In the event of arrest of accused/ applicant nos. (2) – Ravi Nathuram Sharma and (3)- Girish Narayanbhai Rathod in connection with Crime No.63/2021 registered with Bajaj Nagar Police Station, Nagpur for the offence punishable under Sections 406, 468, 471 read with Section 34 of the Indian Penal Code, they be released on bail on their executing P.R. Bond in the sum of Rs.25,000/- each, with one surety in the like amount.

(iv) Applicant nos.2 and 3/accused to attend the concern police station on every Sunday in between 11 a.m. to 2 p.m. till the filing of charge sheet.

(v) Applicant nos. 2 and 3/accused shall not tamper with the prosecution evidence in any manner.

13. At this stage, learned Counsel for applicants seeks extension of interim protection in respect of applicant no.1 Ajay Nathuram Sharma for a period of four weeks so as to enable him to approach the Hon'ble Supreme Court.

14. It reveals from the record that interim protection was operating from 28.05.2021. In view of this position, interim protection granted in favour of applicant no.1 on 28.05.2021 to continue for a period of three weeks from today, on same terms and condition. The said protection shall cease to operate on expiry of the period of three weeks.

JUDGE

Rgd.

RAKESH GANESHLAL DHURIYA

Digitally signed by RAKESH GANESHLAL DHURIYA
Date: 2021.11.18 15:06:08 +0530