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

CRIMINAL APPLICATION (ABA) NO. 413 OF 2021

Sanjay Mohanlal Sahu
..vs..
State of Maharashtra, thr. P.S.O.

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

Shri Parvez Mirza, Advocate for Applicant.
Shri M.J. Khan, A.P.P. for Non-applicant/State.

CORAM : VINAY JOSHI, J.
DATED : 05/08/2021

Heard.

2. In anticipation of arrest in Crime No.102 of 2020 registered with Warud Police Station, District Amravati Rural for the offence punishable under Sections 120-B, 406, 417, 418, 420 read with Section 34 of the Indian Penal Code, Section 74(2) of the Maharashtra Value Added Tax Act, 2002 (for short ‘the VAT Act, 2002) and Section 468 of the Maharashtra Police Act, the applicant is seeking for pre-arrest protection.

3. Learned Counsel for the applicant by claiming innocence and false implication, submitted that the Police have wrongly invoked the provisions of the Indian Penal Code, to deny his right to get bail. According to him, the allegations as set out in the

Police Report are squarely covered under the VAT Act, 2002 and therefore, it is a case of double jeopardy on facts. It is contended that the Maharashtra Trading Company was opened in the name of co-accused Vinayak Talokar with which the applicant has no concern. The applicant is indulging into the Tea business under the name and style of 'Balaji Tea Company'. He had no financial transaction with the Maharashtra Trading Company. It is specifically submitted that the bank account of the Maharashtra Trading Company was in the name of co-accused Vinayak Talokar as well as entire transactions were in his name. There is no material on record to show the applicant's connection with the business of the Maharashtra Trading Company and consequential tax evasion. Lastly, it is submitted that, earlier the applicant was arrested in similar Crime No.484 of 2019 in which he was in custody for near-about two months. The Investigating Officer of earlier crime and existing one are same meaning thereby, he was aware that the applicant was behind the bars, still he had not endevoured to secure the custody of the applicant. In short, there is no necessity of custodial interrogation.

4. The non-applicant/State resisted bail vide it's reply affidavit dated 13.07.2021. It is contended that Proprietor of the Maharashtra Trading Company namely Vinayak Talokar (co-accused) was merely an auto driver who has nothing to do with the business of

the Company. The business account was opened in his name as Vinayak Talokar by the applicant and other co-accused by deceitful means. The applicant has obtained the documents from Vinayak Talokar and opened a fictitious business establishment in his name. They did the business to the tune of Rs. 90 crores during the period from the year 2010 to 2016. The applicant is the main preprator who dishonestly misappropriated value added tax (VAT) of Rs.5,08,04,104/- of the Government and thereby cheated the State for huge amount. The applicant himself has taken a shop of one Ramkrushna Ughade on rent and also obtained VAT certificate in the name of the Maharashtra Trading Company which was misused. During the investigation, on verification of statements named as J1 and J2, it was revealed that the applicant has evaded huge amount of tax. It is argued that the applicant with the aid of other co-accused committed similar offence in past in which he was arrested. It was his modus to open fictitious firms/companies in the name of some employees, obtain VAT number and misappropriated huge tax amount.

5. According to the State, from the statement of co-accused Vinayak Talokar and various statements recorded during the course of evidence, applicant's complicity was evident. The applicant did various bogus transactions which has caused huge loss to the

Government. In order to verify all the transactions and seize the relevant documents, the applicant's custodial interrogation is necessary.

6. At the instance of report lodged by the taxing authority, crime was registered. It is contended that the applicant along with two co-accused managed to open a trade business in the name of the Maharashtra Trading Company in the name of an auto driver Vinayak Talokar. The Trading Company was doing business of trading in cotton and cotton ball. The proprietor namely Vinayak Talokar was not aware regarding misuse of his document. The applicant has caused to open bank account in the name of Vinayak Talokar and had obtained several blank cheques from Vinayak Talokar. During the period from year 2010 to 2016, the Company did business to the tune of Rs.90 crores, however, they have evaded the huge VAT of more than Rs.5 crores. The basic case is about preparation of false documents, cheating and misappropriation of huge amount. On perusal of case diary it is revealed that there are various statements which indicates the active participation of the applicant. During the investigation, statement of co-accused Vinayak Talokar was recorded for limited purpose i.e. to get clue for investigation. It has come in his statement that the applicant took leading part and opened the Trading Company by showing him as a proprietor. The applicant himself took lead in taking

premises of one Ramkrushna Ughade on rent as business premises. It was transpired during the investigation from the statement of landlord that the applicant himself personally took his property on rent. He also alleged that the applicant prepared forged lease documents for the purpose of obtaining shop at license. The Auditor of the Trading Company has stated that, he was unaware about the proprietor namely Vinayak Talokar, since the entire dealing was done by rest of the accused.

7. While claiming pre-arrest bail, the applicant relied on the decision in the case of ***Shri Gurbaksh Singh Sibbia and ors vs. State of Punjab (1980) 2 SCC 565*** wherein the Hon'ble Supreme Court has laid down the general criteria for grant of pre-arest bail. It is argued that the allegations are well covered under the VAT Act, 2002 and therefore, there was no necessity to invoke the provisions of the Indian Penal Code. In support of said contention, reliance has been placed on the decision of this Court in case of ***Yashapal Nathuram Janwani and ors. vs. State of Maharashtra and anr. 2013 ALL MR (Cri) 3794*** . The said case relates to quashing of First Information Report under allegations of the offence under the Indian Peal Code and the Maharashtra Co-operative Societies Act 1960. In view of the complete mechanism provided under the Maharashtra Co-operative Societies Act for the then alleged charges,

this Court was pleased to quash the First Information Report. The facts of this case are quite distinct. There are specific allegations that the applicant himself has forged various documents and used the same for the purpose of cheating. Moreover, the applicant's contention about case of double jeopardy can be repealed in view of the decision of the Hon'ble Supreme Court in case of ***State of Maharashtra vs. Saiyyed Hasan AIR 2018 SC 5348***.

8. The applicant was earlier arrested in similar Crime by the Police. The State has brought to the notice that in said crime also, the applicant had applied for pre-arrest bail in Crime No.778 of 2019, however, this Court has declined to grant anticipatory bail. In response to the submission that, Investigating Officer could have taken the applicant's custody while he was in jail, it is contended that the applicant was suffering from COVID-19 while in jail, therefore, the Magistrate has not granted custody. However, it is evident that the applicant is indulging into the similar type of crime for monetary gain. *Prima facie,* it reveals that, it was a well calculated move of the applicant to open business establishment in the name of somebody without his knowledge, obtain VAT number and to evade huge amount of tax.

9. According to the State, the applicant's custodial interrogation is necessary to recover and

seize fabricated seal, stamps, documents of business establishment and audit report, etc. With the assistance of the applicant, it can be uncovered as to with which firms there was business dealing and in which manner the factitious documents were created to evade the tax. By and large, it is necessary to inquire with the applicant about the business transaction done by the Maharashtra Trading Company. The offence is of serious nature, which can be termed as white collar crime. There is *prima facie* material to show that the applicant has caused huge loss to the State exchequer. In such type of cases, the Investigating Agency shall get full hand to interrogate the accused so as to unfold all intricated issues. In the circumstance, it is not a fit case to use judicial discretion, hence the application stands rejected.

JUDGE

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