IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1108 OF 2021
WITH
INTERIM APPLICATION NO.282 of 2021
WITH
INTERIM APPLICATION ST NO. 5116 OF 2020

(modified as per order dt.29/9/2022)

Rushabh Dhanesh Mehta .. Appellant

Versus

The State of Maharashtra .. Respondent

…

Mr.Rizwan Merchant with Karan Mehta and Sneha Mishra and Ayushi Khatri for the applicant.
Mr.Aabad Ponda, Sr. Advocate with Ashraf Khan i/b Mohammad Khan for the intervenor.
Ms.A.A. Takalkar, APP for the State.

CORAM: BHARATI DANGRE, J.
DATED : 20th SEPTEMBER, 2022

P.C:-

1 The applicant came to be arrested on 9/3/2020 in C.R.No. 97/2019, which invoke Section 406 r/w Section 34 IPC to which, subsequently, the offence under Section 409 and 420 IPC came to be added.

On completion of investigation, charge-sheet has been filed and the applicant along with his younger brother Vaibhav Dhanesh Mehta are charge-sheeted.

2 The subject C.R came to be registered on a complaint filed on 27/11/2019 by one Rahul Loknath Lohia, proprietor of M/s.Lok Chemical, having its office at Andheri. The complainant alleged that he is conducting the business for last 20 years and his Company purchase pharmaceutical chemical and general chemical from foreign countries and sell the same in the market. Similarly, he is member of one "The Chemical and Alkali Merchants Associations" (CAMA), which was established in the year 1956 and presently having about 1800 members in Mumbai.

The case of the complainant is that the purchaser of chemical contact the seller either through phone or email about his requirement and thereafter, seller informs the purchaser about rate of said chemical through phone or email. Similarly, sometimes broker contacts the seller of chemical on behalf of purchaser and accordingly rate of chemicals are made known to broker/traders, who pass on the same to purchaser. Thereafter, if the purchaser and/or broker agree to the rates, they place order through email and/or phone. On receipt of order, through broker, the complainant prepares invoice order followed by delivery order to concerned purchasers and purchasers take the delivery of the goods directly from godown of the complainant as per delivery order, by arranging for transportation and the payment/credit period varies from 60 days to 75 days, depending upon case to case basis. Sometimes, purchaser give post-dates cheques and if payment is not received than the complainant used to call for the same either from the purchaser or concerned broker.

3 The complainant allege that he was introduced with owner of “Rushabh Rasayan” by name Rushabh Mehta (present applicant) having his office and house at B/B, 202, Saurabh Apartment, Jain Mandir Road, Sarvodaya Nagar, Mulund (W), 400080, and owner of “Harmony Fine Chem” by name Vaibhav Mehta (Co-accused) having his office and house at Mulund (West). It is alleged by the complainant that these persons offered to take goods from the complainant and to sell the same to retail purchasers in the market. Hence, on 09/06/2016, the complainant started selling goods to Rushabh Rasayan and as per the complainant, for the same, he use to receive payment within period of 60 days. Thereafter, the complainant and applicant continued doing business regularly from time to time and payment was duly received by complainant for the goods sold to Rushabh Rasayan till 12/04/2019.

4 As per the complaint, the goods were sold, since 29/03/2017 and payment was duly received within period of 60 days. Thereafter, the complainant also continued doing regular business with Harmony Fine Chem and payment was duly received by him till 15/04/2019.

5 It is alleged by the complainant that from th emonth of April to June 2019, he sold chemical goods worth Rs.42,71,600/- to Rushabh Rasayan. Similarly, he has also allegedly sold chemical goods of Rs.32,21,400/- to Harmony Fine Chem in between period of April to June 2019. It is further alleged by complainant that he has not received said amount and hence, he has requested the applicant and said Vaibhav Mehta to make the payments, but that on one or other pretext, the applicant and said Vaibhav Mehta avoided making payment.

It is alleged by the complainant that when he and other suppliers enquired about goods sold by them to the applicant and said Vaibhav Mehta in the market, they came to know they had sold the said goods to Pristine Chemical, Ahmedabad, Resite Chemical, Ahmedabad and to one broker, Pratik Jasani. It is alleged by the complainant that subsequently the applicant and said Vaibhav Mehta were unable to give reply about payment and on further inquiry, it was realized that they had sold the goods purchased from complainant and others in the market on lower rates in cash and used the said amount for repayment of their loan.

6 It is alleged by complainant that from April 2019 to July 2019 applicant and said Vaibhav Mehta have taken chemical goods worth Rs.74,93,000/- from complainant. Similarly, it is also alleged that from 109 members of said "The Chemical and Alkali Merchant Association" (CAMA) the applicant has obtained

chemical goods worth Rs.13,52,65,357/- and said Vaibhav Mehta has obtained chemical goods worth Rs.6,14,48,889/-, without paying the price of the same, sold to other parties in lower rates. Thus, they are accused of committing breach of trust and misappropriating amount of Rs.19,67,14,246/-, due to the complainant and other 109 chemical goods suppliers.

7 Heard learned Senior counsel Mr.Rizwan Merchant and Mr.Aabad Ponda, Sr. Counsel for the intervenor who has filed the application for intervention.

Mr.Merchant would submit that the transactions involved are purely business transactions and civil in nature and since the FIR itself indicate that the applicant had regularly paid the price of chemical/goods till the month of July 2019, he had no intention to cheat. He would further submit there is no entrustment of the goods to the applicant, as after purchase of the goods from the complainant, the applicant became owner of the goods and the credit bill thereof was issued by the complainant in his favour and the essential ingredients of Section 406 and 409 IPC are missing. Apart from this, since there was no dishonest intention from the inception, offence u/s.420 is also not made out, is his submission.

The learned counsel would also submit that till month of December 2019, he has settled the accounts with majority of chemical goods suppliers. He would further submit that as per the prevailing practice in business market, the purchaser of the goods either directly place an order with the supplier of the goods or the purchase is affected through the broker and the credit period for payment of the goods varies from 60 days to 90 days and it also depend upon the relationship between the seller and purchaser. He submits that it can be safely said, that if purchaser place an order of chemical goods in the month of July 2019 than considering the grace period of 60 and 90 days, he has to make the payment in the month of September or October. Therefore, on his count alone, it is indicated that the complaint, which has been allegedly lodged somewhere in the month of August, 2019 is not only premature but also bad in law and against the prevailing business practice.

8 An application for intervention is filed, opposing the release of the applicant on bail and it is sought to be argued by the learned senior counsel Mr.Ponda, that the members of the Chemical and Alkali Association have been duped as both the accused had obtained chemical goods as per delivery order from the complainant and other 109 suppliers and on the same day, sold the chemicals at a lower rate to other party.

9 The Assistant Police Inspector attached to EOW Wing has filed a specific affidavit and relied upon the Forensic Audit Report given to the complainant, which reveal the following facts :-

(i) That the accused after obtaining the chemical goods from complainant and others, sold the same without preparing the bills;

(ii) That the accused sold the chemical goods to the tune of Rs.10.50 crores in cash without making Invoice bills thereof to others;

(iii) That the chemical goods are not physically in existence whereas it is shown in the books of Accounts of firms namely (I) Rushabh Ramayan and (2) Harmon Fine Chem that the said chemical goods are in existence;

(iv) That both the Accused deposited Rs.19.41 crores in their bank accounts"

The affidavit contain the following statements :-

> "10. I say that during the course of investigation, it is revealed that the Pristline Chemical, Gujrat deposited sum of Rs.2.14 crore and Risite Chemical, Gujrat deposited sum of Rs.2,25,50,000/- in the account of present applicant/accused i.e. Saraswat Bank, Mulund. Instead of United Bank of India, State Bank of India, IDFC Bank transaction had done and huge amount credited in the account of aforesaid bank account of applicant/accused"

10 As regards the persons who have been settled, the Investigating Officer has stated on oath that statement of 35 chemical vendors are recorded and a copy of the chart showing the persons and the amount cheated, is placed on record. Apart from this, statement of 24 chemical vendors who were alleged to

have been cheated by the brother of the applicant to the tune of Rs.3,90,42,831/- is also placed on record. A specific statement is made in the affidavit to the following effect

> "(j) Though the applicant/accused exhibited the list of settled parties as Exh."E" in his Bail Application but some names of Chemical Vendors are not known in FIR".

11 The matter was heard by me on several occasions and a serious attempt was made to settle the dispute. Ultimately, the applicant filed an affidavit on 5/8/2022 where he make the following statement :-

> "6. That on 03/08/2022 during the hearing of aforesaid bail application, list of 35 persons was submitted by the prosecution before this Hon'ble Court stating that these 35 names are not included in the aforesaid Exhibit "A" and their claims were not settled. Pursuant to which, I say that out of said 35 persons, I had already settled monetary claims of 3 persons and I am filing present affidavit before this Hon'ble Court stating that I will make every possible best efforts to settle monetary claims of remaining 32 persons on 10% of principal amount within a span of 3 years after being released on bail.
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> 7. I say that in the month of August 2019, the office bearers of CAMA forcefully made me to transfer an amount of Rs.24,41,000/- in the account of "The Chemical and Alkali Merchants Associations (CAMA). Apart from this, an amount of Rs.10,29,078/- was transferred from the account of my debtors by name Orax Pharma Pvt.Ltd directly into the bank account of CAMA. Thus, it is an admitted fact on record that an amount of Rs.34,70,078/- was directly deposited in the account of said CAMA. Apart

from this, on 12/1/2021 my other debtor by name Chem Colloids has deposited a cheque for an amount of Rs.12,91,075/- drawn in the name of Senior Inspector of Police. Thus, a total amount of Rs.47,61,153/- is already deposited with CAMA and I have no objection if the said amount is also distributed amongst the 32 names disclosed by the prosecution according to 10% of principal amount each of the said person on pro-rata basis.

8. I further say that in order to show bonafides to make the payment to the aforesaid 32 claimants, I am making present affidavit, only after the Ld. Counsel for first informant on 3/8/2022 during the hearing made a suggestion that all 32 persons remaining are ready and willing to receive an offer for settling their accounts with the applicant.

Along with the affidavit, he has also given the list of settled claimants/persons with the total amount of 44,822,801.00.

12 Considering the offer made by the applicant that he shall make efforts to settle the monetary claim of 32 perons on 10% of the principal amount, which though is a meager amount, I think is a better proposal than to keep the applicant incarcerated. Apart from this, an amount of Rs.34,70,078/- which was deposited in the account of CAMA, can also be distributed amongst its members. A cheque of Rs.12,91,075/- was encashed by the Sr. Inspector of Police, and amount shall also be made over to CAMA and adjusted towards settlement of accounts of its members by the association.

Since the investigation is complete and the applicant cannot be incarcerated indefinitely, in absence of any antecedents to his credit, though he may take consequences of the charges levelled against him in the charge-sheet, he deserve his release on bail.

Observations made above are prima facie in nature and limited for the purpose of adjudication of the present applicant, and shall in no way, bind the Sessions Judge while he is trying the applicant for the offence with which he is charged.

Hence, the following order :-

ORDER

(a) The Applicant – Rushabh Dhanesh Mehta in connection with C.R.No.97/2019 registered with GBCB CID, EOW, Unit-III Station shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- with one or more sureties of the like amount.

The Applicant shall be released on cash bail of Rs.50,000/0 for a period of four weeks in lieu of sureties. During the said period, the applicant shall arrange for the sureties.

(b) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer. The Applicant should not tamper with evidence.

(c) The Applicant shall attend the trial on regular basis.

(d) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, if there is any change.

(e) The applicant shall ensure compliance of the undertaking given in the affidavit.

The Application is allowed in the aforestated terms.

13 In view of the disposal of Bail Application, IA Nos.282/2021 and IA St No.5116/2020 do not survive and are disposed off.

(SMT.BHARTI DANGRE,J)

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