IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1728 OF 2022

Shambhajirao Pandurang Khot and Others ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. M.J. Bhatt, for the Applicants
Mr. A.A. Palkar, APP, for the State.

CORAM : N. J. JAMADAR, J.
DATE : JULY 05, 2022

P.C.:

1. This is an application for pre-arrest bail in connection with C.R. No. 60 of 2021 registered with Bhosari police station, Pune for the offences punishable under sections 420 and 406 read with 34 of Indian Penal Code, 1860.

2. Ms. Siddheshar Malhari (the first informant) lodged a report with the allegations that he works as a Dy. Manager with D.D. Enterprises, Bhosari. Since the year 2013 a firm namely M/s. Narendra Industrial Resources provides contract employees to M/s. D.D. Enterprises.

3. On 11th January, 2019 the first informant verified the record to ascertain as to whether Narendra Resources has deposited the contribution of the contract employees towards Provident Fund, ESI and GST which amount was already paid by D.D. Enterprises. It transpired that the applicant No. 1 Sambhaji Khot who manages the

affairs of M/s. Narendra Industrial Resources, of which applicant No. 2 Sau Surekha Khot is the proprietress, committed default in depositing a sum of Rs. 17,78,135/- towards Provident Fund, Rs. 11,20,822/- towards ESI and Rs. 33,24,357/- towards GST. The applicants thus defalcated an amount of Rs. 62,23,314/- and thereby deceived the first informant and the government. Upon being inquired, the applicants gave evasive replies. The matter was reported to Bhosari police. Initially, the applicants agreed to make the payment. However, later on the applicants committed default. The first informant thus lodged report with the allegations that though D.D. Enterprises had paid the salary of all the contract employees, including contribution towards Provident Fund, ESI and GST, the applicants embezzled the amount towards Provident Fund, ESI and GST.

4. Apprehending arrest, the applicants approached the learned Sessions Judge, Pune. By an order dated 16th March, 2021 the learned Additional Sessions Judge was persuaded to reject the application opining that prima facie there was material to show that the applicants had received contribution from D.D. Enterprises towards Provident Fund, ESI and GST and yet did not deposit the same under the respective heads and dishonestly withheld the same. Thus, the custodial interrogation is warranted. Hence, the

applicants have preferred this application.

5. The learned counsel for the applicants submitted that the initiation of prosecution at the instance of the first informant is legally unsustainable. An endevour was made to draw home the point that the first informant had an axe to grand against the applicants over the dispute arising out of supply of contract employees.

6. It was further submitted that though the applicants might have committed default in the deposit of the amount under the respective heads, it is for the authorities concerned to initiate the action under the relevant provisions of law and thus no case for cheating and criminal breach of trust is made out.

7. Learned APP countered the submissions on behalf of the applicants. Attention of the court was invited to the notice dated 20th October, 2020 under section 79(1)(c) of the Goods and Services Tax Act, 2017 issued by the Dy. Commissioner of State Tax to M/s. D.D. Enterprises, as third person, for the default in the payment of service tax cess and penalty, payable by Narendra Industrial Resources. Vide another notice dated 26th December, 2018 addressed by the Recovery Officer, Ministry of Labour & Employment, ESI Corporation, Govt. of India under section 45-G of the E.S.I. Act, 1948 the D.D. Enterprises was directed to pay a sum

of Rs. 24,87,293/- which was due from M/s. Narendra Industrial Resources. D.D. Enterprises was directed to pay forthwith any amount due from D.D. Enterprises to, or held by D.D. Enterprises, for or on account of M/s. Narendra Industrial Resources.

8. In the backdrop of the aforesaid material, I am afraid to accede to the submission on behalf of the applicants that despite withholding of the amount towards ESI and service tax, which was duly paid by, and collected from, D.D. Enterprises, no element of criminality is involved. Undoubtedly, the authorities under the respective statutory enactments can initiate action against the applicants in accordance with the governing provisions. However, that does not preclude the entity which had parted with the said amount on the representation of the applicants that they would make statutory payment from setting the criminal law in motion where it is alleged that the said contribution was dishonestly withheld by the applicants. The situation is exacerbated by the fact that the applicants do not seriously controvert the allegations that there has been default in payment of contribution, though collected from D.D. Enterprises. Instead the applicants brazenly assert that there is no element of criminality which would warrant initiation of prosecution at the instance of the first informant.

9. In the aforesaid view of the matter, the custodial interrogation

of the applicants is indispensable to unearth the fraud and recover the amount which has allegedly been defalcated.

10. A submission was sought to be advanced that the applicant No. 1 has no concern with Narendra Industrial Resources. He has been roped in as he happens to be the husband of applicant No. 2, the proprietress of Narendra Industrial Resources. It would be suffice to note that, at this stage, there are adequate allegations against the applicant No. 1 to the effect that the applicant No. 1 managed the affairs of the Narendra Industrial Resources.

11. Having regard to the nature of the allegations coupled with incontrovertible default in payment of statutory dues despite collection, I am not inclined to entertain the prayer for pre-arrest bail.

12. Hence, the application stands rejected.

(N. J. JAMADAR, J.)