IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1305 OF 2019

Mr.Atul Hastimal Mehta & Anr. .... Applicants
Versus
The State of Maharashtra & Anr. .... Respondents

Mr. Amol P. Patankar for the Applicants.
Mr. Rajendra Sorankar for Respondent No.2/Org. Complainant.
Smt. P.P. Shinde, APP for State.
Mr. Vijay Mataye, Borivali Police Station present in Court.

CORAM : A.S. GADKARI, J.
DATE : 31st MARCH, 2022

P.C. :

This is an application under Section 438 of the Criminal Procedure Code for pre-arrest bail in C.R.489 of 2018 dated 10.10.2018 registered with Borivali Police Station, Mumbai for the alleged offence under Sections 420, 120-B r/w.34 of the Indian Penal Code.

2. Heard Mr.Patankar, learned Advocate for the Applicant, Mr.Sorankar, learned Advocate for Respondent No.2 and learned APP for the Respondent-State. Perused record of investigation.

3. Record indicates that, by an Order dated 20.06.2019 the Applicant was granted interim relief and was directed to report to the Investigating Officer on stipulated dates.

4. It is well within the realm of public at large that, due to Covid-19

Pandemic, the hearing of various Applications/Petitions could not be conducted and the period of about 1½ years has lapsed in it and therefore it caused delay in hearing present Application.

5. Record reveals that, the First Information Report dated 10.10.2018 is lodged by Respondent No.2 in furtherance of an Order dated 25.09.2018 passed u/s.156(3) by the learned Metropolitan Magistrate, Mumbai on the complaint filed by Respondent No.2 before it.

6. It is the case of prosecution that, co-accused Hemal Chitaliya, Nimesh Chitaliya and Jay Chitaliya are Partners of Jai Enterprise and H.M.M. Steel Syndicate, whereas the Applicants are Directors of Abhishek Ispat Pvt.Ltd. That, the informant was well acquainted with co-accused Hemal Chitaliya and Nimesh Chitaliya for last about 20-25 years, as all of them were in the business of trading in the steel market. That, co-accused Hemal Chitaliya, Nimesh Chitaliya and Jay Chitaliya informed the informant that Abhishek Ispat Pvt.Ltd. (of which the Applicants are Directors) had imported 1500 tones of HR Plates, out of which 700 tones of HR Plates have been offered by Abhishek Ispat Pvt.Ltd. to Chitaliya family for purchase. The said three co-accused induced informant to purchase the said 700 tones HR Plates. The said co-accused also lured the informant by informing him that, if he purchases the said goods and sales it subsequently in market, he would get huge profit out of it. The said co-

accused told informant that, the said goods would be available for a sum of Rs.3,75,00,000/- (Rupees Three Crores Seventy Five Lakh Only) and the informant was told to deposit 30% of the said amount in advance. As the informant expressed his inability to deposit the said amount, the said three co-accused induced informant to deposit at least Rs.60,00,000/- (Rupees Sixty Lakh Only). On the persuasion by the said three co-accsued, the informant expressed his willingness to pay Rs.60,00,000/- (Rupees Sixty Lakhs Only) as an advance for purchase of the said goods. The informant accordingly transferred Rs.60,00,000/- (Rupees Sixty Lakhs Only) by way of RTGS from his account in Central Bank of India, Santacruz (W) Branch to the account of Abhishek Ispat Pvt.Ltd., HDFC Bank, Surat. Despite receipt of the said amount, Abhishek Ispat Pvt.Ltd. did not supply the said goods. Upon enquiry made by the informant with said three co-accused persons, they told that the said goods viz.700 tons of HR Plates are not available in stock and told the informant that in lieu of the said goods, they would provide approximately 110 tones of Cold Coil Steel Sheets to him.

7. Despite assurance given by the said co-accused, the informant neither received the said 110 tones of Cold Coil Steel Steel nor 700 tones of HR Plates from Abhishek Ispat Pvt.Ltd. It is the specific case of prosecution that, the goods which were alleged to have been sent from Surat were downloaded at a Navi Mumbai godown and were subsequently

diverted to somewhere else and not delivered to the informant. The informant suffered wrongful loss due to the said transactions and the Applicants had wrongful gain due to the said criminal act committed by the accused.

8. Mr.Patankar, learned Advocate for the Applicants submitted that, as a matter of fact, the company of Applicants viz.Abhishek Ispat Pvt.Ltd. had forwarded the goods to the informant through Chitaliya Brothers and it is the said three co-accused who are responsible for looses to the Informant and not the Applicants. He submitted that the Applicants have performed their part of obligations under the contract and cannot be held liable by any act committed by Hemal Chitaliya, Nimesh Chitaliya and Jay Chitaliya. He further submitted that, even otherwise Applicant No.2 is a house wife and has not participated in any of the transactions of the company. That, she has been implicated in the present crime only because she is wife of Applicant No.1 and Director of the said Company and none else. He therefore prayed that the Applicants may be protected by pre-arrest bail.

9. Perusal of record of investigation indicates that, the goods alleged to have been sent at the behest of Abhishek Ispat Pvt. Ltd. from Surat through Hemal Chitaliya, Nimesh Chitaliya and Jay Chitaliya were downloaded in a godown at Navi Mumbai and the said goods were subsequently misappropriated and never received by the informant. The investigation

carried out as of today clearly indicates that the Informant did not receive any goods i.e. neither the said 700 HR Plates nor the said 110 tones of Cold Coil Steel Sheet. It is an admitted fact on record that, the Applicants' Company viz.Abhishek Ispat Pvt.Ltd. has received Rs.60,00,000/- (Rupees Sixty Lakhs Only) by way of RTGS transfer from the informant. The Applicants till date have neither refunded the said amount to the informant, nor have provided him with the said goods which were to be supplied and as agreed by them. Perusal of FIR and the record of investigation clearly indicates that, the Applicants have defalcated the said amount accepted by them from the informant in the aforestated manner by causing wrongful loss to him.

10. It further appears to this Court that, it is the Applicant No.1 who is actively involved in the said transaction and Applicant No.2 has no direct role to play in the present crime and she being wife of Applicant No.1 has been implicated thereof.

In view thereof, this Court is of the considered opinion that, Applicant No.1 cannot be protected by pre-arrest bail. However, the protection of pre-arrest bail can be extended to Applicant No.2 being a woman and has no role to play in the present crime.

11. Hence, the following Order :-

(i) Application for pre-arrest bail of Applicant No.1 Atul Mehta is rejected.

(ii) Application for pre-arrest bail of Applicant No.2 Mrs.Ritaben Atul Mehta is allowed and interim relief granted by an Order dated 20.06.2019 in her favour is hereby confirmed. However, her presence before the Investigating Officer is hereinafter waived.

12. At this stage, Mr.Patankar, learned Advocate for the Applicants submitted that, his client intends to challenge the present Order before the Hon'ble Supreme Court. He therefore submitted that, the interim relief granted by Order dated 20.06.2019 be continued for the period of three weeks from today.

In view thereof and at his request, interim relief granted by an Order dated 20.06.2019 to continue for a period of three weeks from today.

(A.S. GADKARI, J.)