IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2058 OF 2021

Deepak Suresh Sutar ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.2059 OF 2021

Mr. Pradeep Ramesh Tangade ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Sanjiv P. Kadam i/by Ajinkya Udane, for the Applicant in ABA/2058/2021.
Mr. Aniket Nikam i/by Ajinkya Udane, for the Applicant in ABA/2059/2021.
Mr. A. A. Palkar, APP for Respondent No.1
Mr. Jatin Shah a/w Bhavin Gada & Najafiya i/by Harakchand & Company, for the Intervenor both Applications.

CORAM : NITIN W. SAMBRE, J.

DATE : 22st SEPTEMBER, 2022

P.C.

1. Packspace a registered partnership firm of which both the applicants are partners received supply order from the firm based in United States of which complainant is power of attorney holder. Against the successful supply effected, the firm of the applicants Packspace received an amount of 5,94,12,060/- of Indian Rupees i.e. around 8,26,000 American Dollars.

2. It appears that both the applicants through their firm had honoured two such commitments and won confidence of the complainant

firm. In this background, firm of the applicants was awarded three supply orders for Rs.5,94,12,060/-.

3. It is the case of the prosecution that in spite of receipt of the amount, both the applicants have failed to honour the supply. As such, offence in question punishable under Sections 420, 468, 471 r/w 34 of IPC vide Crime No.332 of 2021 came to be registered.

4. Counsel for the applicants, Mr. Sanjiv Kadam appearing for Mr. Deepak Sutar and advocate Mr. Aniket Nikam, appearing for Mr. Pradeep Tangade would urge that of the total consideration received, 50% i.e. 3,05,00,000/- is already returned to the American firm. His further contentions are, the business of partnership firm of the applicants was running in losses which has put them in financial difficulty, as the orders placed with the foreign firms for supply of the requirement against the order received from complainant firm were not honoured and fraud was practiced on the applicants' firm. Mr. Sanjiv Kadam counsel for the applicant would urge that the applicant has every bonafides to honour the commitment and as such has already returned an amount of Rs.3,05,00,000/- i.e. 4,04,000/- American Dollars. It is also urged that applicants have taken up the issue with Indian Embassy to the foreign countries viz. Germany, Thailand and UK, so as to bring the culprits to book who have received the amount from the applicants towards supply to be made available to be further supplied the USA firm to whom the complainant represents.

5. In the aforesaid background, contention of the applicant is, there is absence of motive and as such custodial interrogation is not required. It is further claimed that applicants are very much available for

investigation as they have deep roots in the society.

6. Learned APP assisted by the counsel for complainant would oppose the prayer. According to them, failure of the applicants business transaction with foreign firms as alleged will have hardly any positive impact on the case of prosecution. According to APP, the fact that applicants have accepted amount of Rs.5,94,12,060/-, failed to honour the commitment for supplies to the extent of balance of Rs.3,00,00,000/- sufficiently establish their complicity in the offence in question. It is further urged that the conduct of the applicants amounts to bringing in disrepute and maligning the image of the country in international market.

7. I have appreciated the aforesaid submissions.

8. The fact that the firm of the applicants has received an amount of Rs.5,94,12,060/- towards supply of gloves is not in dispute. It is also not in dispute that the applicants have returned an amount of Rs.3,00,00,000/- out of the total consideration of Rs.5,94,12,060/- received by them from American Companies to whom complainant represents. As far as the claim of the applicants that the foreign suppliers who were engaged by them have defrauded the applicants will be of hardly any consequences, particularly when the fact remains that there was no tripartite agreement *inter-se* between the complainant the applicants and the foreign based supplier firm. *Inter-se* contract between the applicants and their supplier will hardly have bearing over the issue of honouring the commitment/promise made by the applicants to the complainant firm particularly when they have already accepted he consideration.

9. In the aforesaid background, the fact remains that the applicants have received the amount and have failed to honour the commitment of delivery of goods. That being so, the necessary ingredients of the offence alleged against applicants can very much be inferred.

10. Apart from above, in my opinion, the learned APP is justified in canvassing the claim that the manner and mode in which the applicants have conducted themselves in the matter of international trading/business, has brought disrepute and also has maligned the image of the country in the market of international business.

11. During the course of argument, applicant - Mr. Pradip Tangade has said that other person who is responsible for the conduct of business, as he is custodian of the emails and the business transaction. What can be inferred from the aforesaid submission is, each of the applicants are trying to pass on the plate for failure to honour their commitment for miss-management of their own firm and business.

12. As such there is enough material available on record which depicts *prima-facie* involvement of the applicants in the offence in question. That being so, no case for bail is made out.

13. The application as such stands rejected.

14. Ad interim protection which is in operation for almost one year is extended by four weeks from today.

[NITIN W. SAMBRE, J.]