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

CRIMINAL APPLICATION (BA) NO.228 OF 2022

(Rajendrakumar s/o Brijkisor Jaiswal

Vs.

State of Maharashtra)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr. Subodh P Dharmadhikari, Senior Counsel assisted by Mr. A.R. Deshpande,
Advocate for the Applicant
Mr. Amit R. Chutke, APP for Respondent/State.
Mr. S.P. Bhandarkar, Advocate Assist to Prosecution.

CORAM : AVINASH G. GHAROTE, J.

DATE : 11/04/2022

Heard Mr. Dharmadhikari, learned Senior Counsel for the applicant, Mr. Chutke, learned APP for the non-applicant/State assisted by the learned Counsel Mr. Bhandarkar.

2. At the outset, a plea has been raised by Mr. Bhandarkar, learned Counsel assisting the prosecution, that he has right of audience before this Court, in support of which, he places reliance upon ***J.K. International Vs. State, (2001) 3 SCC 462*** and ***Vinay Poddar Vs. State of Maharashtra, 2008 SCC Online Bombay 1389***.

3. The said plea is vehemently opposed by the learned Senior Counsel Mr. Dharmadhikari, by contending that the entitlement of the complainant, is merely to assist the prosecution and nothing else.

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4. The relevant provisions in this regard, are encompassed in Section 301 of the Code of Criminal Procedure (for short Cr.P.C.). Whereas Section 301(1) requires the public prosecutor or assistant public prosecutor in charge of a case may appear and plead without any written authority before any Court, in which that case is under enquiry, trial or appeal, Section 301(2) permits, any private person, to instruct a pleader to prosecute the proceedings. Holistic view of Section 301(1) and (2) of the Cr.P.C. would indicate that they at no point of time of the proceedings, permit any private person or for that matter, any person assisting the public prosecutor, to take over the conduct of the prosecution in any manner whatsoever. The language used in the Section indicates that the pleader as instructed by a private person, shall act under the directions of the public prosecutor or Assistant Public Prosecutor and may, with the permission of the Court, submits written arguments after the evidence is closed in the case. The language therefore used categorically demonstrates that the pleader instructed in the manner as contemplated in Section 301(2), has a limited role to play, which role is always subservient to that of the public prosecutor. The liberty which is granted to such pleader, is only to the extent of submitting written notes of argument with the permission of the Court after the evidence is closed in the case. In *J.K. International* (supra), the Court was considering a case, in which the order of issuance of process by the Magistrate was challenged in Writ Petition before the High Court seeking its quashment, in

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which the complainant was not made a party and an application being made for impleadment and for hearing, came to be rejected by the High Court. It is in that context that the Hon'ble Apex Court held that since the criminal proceedings were initiated at the behest of the complainant, it would be appropriate, if he was heard before the quashment was permitted. This is what the Court has held therein in paras 9, 10, 11 and 12 as under : (J.K. International Vs. State)

“9. The scheme envisaged in the Code of Criminal procedure (for short “the Code”) indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:

301. (2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public prosecutor in charge of

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the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the public Prosecutor or Assistant Public prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.

10. The said provision falls within the Chapter titled "General Provisions as to Inquiries and Trials". When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

11. In view of such a scheme as delineated above how can it be said that the aggrieved private person must keep himself outside the corridors of the Court when the case involving his grievance regarding the offence alleged to have been committed by the persons arrayed as accused is tried or considered by the Court. In this context it is appropriate to mention that when the trial is before a Magistrate's Court the

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scope of any other private person intending to participate in the conduct of the prosecution is still wider. This can be noticed from Section 302 of the Code which reads thus:

302. (1) Any Magistrate inquiring into or trying a case may permit the prosecution to be conducted by any person other than a police officer below the rank of Inspector; but no person, other than the Advocate-General or Government Advocate or a public prosecutor or Assistant Public prosecutor, shall be entitled to do so without such permission:

Provided that no police officer shall be permitted to conduct the prosecution if he has taken part in the investigation into the offence with respect to which the accused is being prosecuted.

(2) Any person conducting the prosecution may do so personally or by a pleader.

12. The private person who is permitted to conduct prosecution in the Magistrate's Court can engage a counsel to do the needful in the Court in his behalf. It further amplifies the position that if a private person is aggrieved by the offence committed against him or against any one in whom he is interested he can approach the Magistrate and seek permission to conduct the prosecution by himself. It is open to the Court to consider his request. If the court thinks that the cause of justice would be served

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better by granting such permission the courts would generally grant such permission. Of course, this wider amplitude is limited to Magistrates' Courts, as the right of such private individual to participate in the conduct of prosecution in the sessions court is very much restricted and is made subject to the control of the Public Prosecutor. The limited role which a private person can be permitted to play for prosecution in the Sessions Court has been adverted to above. All these would show that an aggrieved private person is not altogether to be eclipsed from the scenario when the criminal court takes cognizance of the offences based on the report submitted by the police. The reality cannot be overlooked that the genesis in almost all such cases is the grievance of one or more individual that they were wronged by the accused by committing offences against them."

5. ***J.K. International*** (supra), therefore merely holds that the role of the complainant in the course of trial, either before the Magistrate or the Sessions Court is not totally wiped out. It however also holds that such a role cannot surpass what is laid down in Section 301(2) of Cr.P.C.

6. Further regard can be had to the provisions of Section 439(1-A) of the Cr.P.C., which requires only the presence of the informant or any person authorized by him as obligatory at the time of hearing of the application for bail, however this is restricted only in

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respect of offences under Sections 376(3), 376-AB, 376-BA or 376-DB of the Indian Penal Code. Such presence of the informant or any person authorized by him obviously is also for the purpose of assisting the prosecution and not for affording an independent right of audience, as no such right, appears to have been conferred from the language of Section 439(1-A) of the Cr.P.C.

7. In ***Vinay Poddar*** (supra), on which reliance has been placed by Mr. Bhandarkar, learned Counsel seeking audience, while considering the question, whether in an application for anticipatory bail, whether the complainant and/or the Counsel for the complainant have any right of audience, the learned Single Judge of this Court, as he then was, after considering ***J.K. International*** (supra), it has been held as under:

“15. When an application for anticipatory bail is considered, the police may not place all factual details before the Court as the investigation in most of such cases is at a preliminary stage. Therefore, some role can be played by the complainant by pointing out factual aspects. In the circumstances, it is not possible to hold that the first informant or the complainant cannot be heard in an application for anticipatory bail. When the complainant appears before the Court in the course of hearing of an application for grant of anticipatory bail, the Court is bound to hear him. But the said right cannot be allowed to be exercised in a manner which will delay the

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disposal of an application for anticipatory bail. The delay in disposal of such application may adversely affect the investigation. Therefore, the right which can be spelt out in favour of the first informant or the complainant is of making oral submissions for pointing out the factual aspects of the case during the course of hearing of an application for anticipatory bail before the Court of Session. The said right is to be exercised by the complainant either by himself or through his Counsel. This is not to say that the Sessions Court hearing the application for anticipatory bail is under an obligation to issue notice to the first informant or the complainant. There is no such requirement of issuing notice to the first informant or the complainant at the hearing of the application for anticipatory bail. However, if the complainant or the first informant appears before the Court, he cannot be denied a right of making oral submissions either in person or through his Counsel. It must be noted here that the legal position on this aspect in the case of an application for regular bail may not be the same."

8. It is however to be noted, that in **Vinay Poddar** (supra), itself the learned Single Judge has observed that the position on this aspect, in the case of an application for regular bail may not be the same. To my mind, one of the reasons for the same, would be the position that in regular bail, in number of cases, the charge-sheet is already placed on record, whereas while

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considering an application for anticipatory bail, the investigation is still in progress and there may be something available, which the informant or his Counsel has to point out to the Court.

9. The rigor of law as flowing from the language of Section 301(2) of the Cr.P.C., has to be given effect to and doing so would naturally mean that right of the informant or his pleader would be restricted to the assistance to be provided to the public prosecutor and not otherwise. To hold that the informant or his counsel would have right of audience, in an application for bail, would do violence to the language of Section 301(2) of the Cr.P.C., which does not confer any such right upon either the informant or his counsel. Even in *J.K. International* (supra), such a right of audience, in a case of bail, is not spelt out. In fact, the Hon'ble Apex Court in that case has considered the provision of Section 302 of the Cr.P.C., to dilate the extent to which the intervention by the informant or his counsel could be permitted. In fact, the proviso of Section 24(8) of the Cr.P.C., empowers the Court to permit the victim to engage an Advocate of his choice to assist the prosecution. The word "assist", in its common parlance would mean rendering help, to assist someone else, and therefore, would be in contra distinction to playing a role equal to that of a public prosecutor, which is also what is spelt out by the language of Section 301(2) of the Cr.P.C.

10. The term assist has been considered by the Hon'ble Apex Court in ***Rekha Murarka Vs. State of West Bangal and another, 2020 (2) SCC 474***, in the following terms.

“11.1. The use of the term “assist” in the proviso to Section 24(8) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the CrPC had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under Section 301(2). In our considered opinion, a mandate that allows the victim’s counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor in conducting a trial, as evident from Sections 225 and 301(2), permitting such a free hand would go against the scheme envisaged under CrPC.

11.2. In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim’s counsel insists upon examining any of the left-out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim’s counsel and the accused, which may further impact the

safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the court. Thus, it is important to appreciate why the role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

11.3. At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over two-three courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victim-centric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the appellant that the introduction of the proviso to Section 24(8) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to Section 372 CrPC is not rendered meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of CrPC should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

11.4. In this regard, given that the modalities of each case are different, we find that the extent of

assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in Section 301(2), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to Section 24(8), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

11.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 CrPC or Section 165 of the Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Uma Saha v. State of Tripura that the victim's counsel has a limited right of assisting the prosecution, which may extend to

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suggesting questions to the court or the prosecution, but not putting them by himself.”

11. ***Rekha Murarka*** (supra), succinctly spells out the limited role which the pleader for the informant/complainant has to play in the scheme of Cr.P.C., in the matter of conduct of the trial, and in my considered opinion, the same would also govern the hearing of a bail application, given the language of Section 301(2) of Cr.P.C, considering which, the contention that the counsel for the informant has a right of audience does not appeal to me and the same is therefore negated.

12. Coming to the facts of the present matter, the applicant is arraigned for the offence punishable under Section 420, 461, 468, 471 and 409 of the Indian Penal Code in Crime No.537 of 2021.

13. The FIR is dated 26.11.2021. The applicant has been arrested on 22.02.2022 on his surrender as per the directions of the Hon'ble Apex Court in SLP (Cri.) No. 990 of 2022 dated 16.02.2022, on account of the challenge to the rejection of the anticipatory bail application dated 02.02.2022 which was rejected by this Court, being turned down by the Hon'ble Apex Court with a direction that the application for bail shall be decided in accordance with law without being swayed by any observations made in the judgment and order of the High Court rejecting the application for anticipatory bail. The matter is still under investigation, as the

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charge-sheet is yet to be filed.

14. Mr. Dharmadhikari, learned Senior counsel for the applicant contends, that the entire offence, as alleged is to be proved by documents which are in the custody of the Excise Department, and therefore, there is no need for any judicial custody of the applicant, for which reliance is placed upon *P Chidambaram vs. Central Bureau of Investigation, 2020 (13) SCC 337*, (paras 21 and 31). It is further submitted that considering the nature of the allegations, the offence under Section 409 of IPC – Criminal breach of trust - which requires an entrustment as contemplated by Section 405 of IPC, which is not made out; so also the requirement of Section 471 of IPC – Using as genuine a forged document is also not made out. He further submits that there is no false representation made within the meaning of Section 415 of IPC, so as to attract the provisions of Section 420 of IPC. In so far as Section 468 of IPC is concerned, he submits that there is no allegation of forging of document and its use and therefore, the same is also not attracted. It is further contended that the applicant has himself surrendered on 22.02.2022, the investigation does not require the judicial custody of the applicant, and therefore, the applicant is entitled to bail. It is further submitted that all that the applicant had done, is to apply for renewal of licence in the name of the partnership firm which even otherwise applicant being a partner was entitled to do. It is further contended that the applicant was not

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aware of the demise of Mr. P. T. Gawande, and therefore, there was no question of the applicant having been under the obligation to intimate the same to the Excise Department. Even otherwise, there is no loss of revenue to the Excise Department and all that the son of Mr. P. T. Gawande namely Mr. Amit Gawande can claim is the share of Mr. P. T. Gawande, in the partnership business and nothing else. In the year 1973-74, the FL-II licence was granted to Mr. P. T. Gawande consequent to which, partnership was entered into between Mr. P. T. Gawande and one Mr. Brijkishor B. Jaiswal (father of the applicant). Since Mr. Brijkishor B. Jaiswal, passed away on 19.08.1987, the applicant entered into a fresh partnership with PT. Gawande on 15.09.1987. It is further contended, that there was another partnership deed dated 21.09.1987, between the applicant and Mr. P.T. Gawande which however had not been submitted to the Excise Department and has never been used by the applicant, except during hearing of the matter before Collector Excise. It is therefore submitted there is no criminality in the matter and the applicant needs to be enlarged to bail.

15. Mr. Chutke, learned APP for non-applicant/ State vehemently opposes the application and submits, that the applicability of the aforesaid offences is writ large, on the face of the averments made in the complaint itself, in as much as it is contended that the applicant was all throughout aware of the demise of Mr. P. T. Gawande, who was the original licensee, having

been granted FL-II licence by the Excise Department, with whom the applicant had entered into a partnership in the year 1972-1974, under the terms of which, the late Mr. P. T. Gawande, was entitled to a share in the profits of the business which were to be determined in each financial year and paid over to Mr. Gawande which would indicate the knowledge of the applicant regarding demise of Mr. P. T. Gawande, in spite of which this fact was intentionally suppressed, on account of fear of losing the licence from the Excise Department and the department was throughout misled in believing that the original licensee was alive and therefore, entitled for renewal of the licence. He further invites my attention, to the case diary and specifically to four affidavits of the applicants dated 26.03.1997, 03.04.2002, 16.03.2015, 28.03.2017 which indicate that the applicant had applied for the renewal of the FL-II licence as a partner of the firm. He further relies upon two applications, one dated 18.04.2011 by which, the applicant had applied to the Excise Department for the deletion of the name of Mr. P.T. Gawande from the licence on account of his demise, which was accompanied by the death certificate of Mr. P.T. Gawande as issued by the Grampanchayat, Kalashi, Tahsil Daryapur, which death certificate was issued on 10.03.2000, which application was withdrawn / taken back by the applicant by his application dated 03.06.2011 and the other application dated 31.10.2018, by which the applicant had applied to the Excise Department for deletion of the Name of Mr. P.T. Gawande from the FL-II licence, which

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application was accompanied by the death certificate of Mr. P.T. Gawande as issued by Akola Municipal Corporation. It is therefore, submitted that the plea of ignorance, claimed by the applicant regarding the death of Mr. P. T. Gawande was intentional and a deliberately calculated plea to suppress the demise of Mr. P.T. Gawande on account of an apprehension that the FL-II licence would not be renewed. He further contends, that in the partnership deeds Mr. P.T. Gawande was shown to be the resident of Drayapur whereas the FL-II licence was in respect of shop Gandhi Chowk, Akola, which was being run by the applicant. There were criminal antecedents of the applicant inasmuch as there were two offences registered against him, one for illicit importing of a liquor tanker and another for attempt to accept bribe on behalf of a public servant. He also submits that a complaint was filed by the informant of receiving offers from certain persons to unduly influence him too which an NC was registered.

16. In rebuttal, Mr. Dharmadhikari, learned Senior Counsel, submits that, mere criminal antecedents cannot be a factor to deny bail to the applicant, if a case of bail was otherwise made out, which he contends is the case. Reliance is placed on *Maulana Mohammed Amir Rashadi Vs. State of Uttar Pradesh and another*, (2012) 2 SCC 382 (para 10) and *Prabhakar Tewari Vs. State of Uttar Pradesh*, (2020) 11 SCC 648 (paras 5 & 7). Insofar as, the NC is concerned, it is submitted, that it is merely a reflex action considering the order of the

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Hon'ble Apex Court dated 16.02.2022, with an intention to create a ground for opposing the bail application which was surely to be filed.

17. The parameters for grant of bail have been laid down by the Hon'ble Apex Court in a catena of decisions, which are summarized by ***P. Chidambaram*** (supra) as under:

“21. The jurisdiction to grant bail has to be exercised on the basis of the well-settled principles having regard to the facts and circumstances of each case. The following factors are to be taken into consideration while considering an application for bail:

(i) the nature of accusation and the severity of the punishment in the case of conviction and the nature of the materials relied upon by the prosecution;

(ii) reasonable apprehension of tampering with the witnesses or apprehension of threat to the complainant or the witnesses;

(iii) reasonable possibility of securing the presence of the accused at the time of trial or the likelihood of his abscondence;

(iv) character, behaviour and standing of the accused and the circumstances which are peculiar to the accused;

(v) larger interest of the public or the State and similar other considerations ”

18. It is not disputed, that Mr. P.T. Gawande has passed away on 12.02.2000. The original agreement of partnership between Mr. P.T. Gawande and Mr. Brijkishor

B. Jaiswal (father of the applicant) is dated 15.06.1976 (page 22 of the application under section 301(2) Cr.P.C.), under the terms of which, the firm M/s. Vidarbha Wine Mart was created for the business of dealing in foreign liquor, beer and country liquor on retail basis. Even before this partnership deed dated 15.06.1976 came into existence, an application for a vendors licence for sale of foreign liquor in the name of M/s. Vidarbha Wine shop came to be filed before the Collector Akola, on 22.11.1973, which is signed by Mr. P.T. Gawande, in which it was stated that there were two partners of M/s. Vidarbha Wine shop namely Mr. P.T. Gawande and Mr. Brijkishor B. Jaiswal, in which it was also stated that Mr. Brijkishor B. Jaiswal was a partner of M/s. Jaiswal and company having FL-II license in Akola from 01.06.1966. Mr. Chutke, learned APP for the non-applicant/State, on a pertinent question being put as to whether the FL-II licence, was in the name of Mr. P.T. Gawande alone or in the name of M/s. Vidarbha Wine shop, a partnership firm of which Mr. P.T. Gawande and Mr. Brijkishor B. Jaiswal were the partners, upon instructions, makes a statement that there is no such licence in the record which would indicate, that the FL-II licence was ever in the name of Mr. P.T. Gawande alone. He submits, that the application for the licence was made by the firm M/s. Vidarbha Wine shop, of which Mr. P.T. Gawande and Mr. Brijkishor B. Jaiswal were the partners which is so indicated from the application dated 22.11.1973 [page 24 of the application under section 301(2) Cr.P.C.]. On demise of Mr. Brijkishor

Jaiswal on 19.08.1987, the partnership firm M/s. Vidarbha Wine shop was reconstituted by adding the present applicant in place of his deceased father [page 30 of the application under section 301(2) Cr.P.C.], which position is also not disputed. Thereafter the FL-II licence has been renewed from time to time, in the name of M/s. Vidarbha Wine shop of which Mr. P.T. Gawande as well as the present applicant were shown as partners, which is reflected from Annexure-F [page 37 of the application under section 301(2) Cr.P.C.], which is the renewal of the licence of 1989-90, which position has continued thereafter till the last renewal for the period 16.01.2018 to 15.01.2021. It is thus apparent from a perusal of the case diary as well as material placed on record by the applicant as well as the learned counsel assisting the prosecution, that the FL-II licence was not in the name of P.T. Gawande individually but was in the name of M/s. Vidarbha Wine shop a partnership firm of which the applicant since 1987 onwards was a partner. The only question which *prima-facie* has to be considered is the obligation of the applicant to disclose the demise of Mr. P.T. Gawande in the year 2000 and the failure of such disclosure. This obviously has to be considered in the light of the language the partnership deed dated 15.09.1987, which indicates, that the partnership was at Will and did not contain any provisions as to the inclusions of the legal heirs of the deceased partner. The partnership being at Will, by the demise of Mr. P.T. Gawande, stood dissolved by virtue of provisions of Section 42(c) of the Indian

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Partnership Act, and therefore, in case of such a dissolution, the legal heirs of Mr. P.T. Gawande, would have a right of settlement of accounts and not to the business of the firm. This being the position, though it was obligatory, upon the applicant, to have disclosed to the Excise Department, the factum of the demise of Mr. P.T. Gawande, however insofar as the FL-II licence was concerned that was capable of being renewed, even otherwise, presuming that the firm was dissolved, due to the demise of Mr. P.T. Gawande at the behest of the applicant. Insofar as, the Excise Department is concerned, no complaint has been filed it; and even otherwise nothing turns upon the non intimation of the demise of Mr. P.T. Gawande, as the basic requirement for the renewal of the licence, is the payment of the licence fee which can be paid by either of the partners of the firm and which has been paid for a number of years by the applicant. True it is, as indicated by the learned APP, that the documents on record, specifically the four affidavits of the applicant dated 26.03.1997, 03.04.2002, 16.03.2015 and 28.03.2017 indicate, that the applicant had applied for renewal of FL-II licence as a partner of the firm and his applications dated 18.04.2011 and 31.10.2018, indicate the knowledge of the applicant regarding the demise of Mr. P.T. Gawande, however, merely because the same was suppressed, the department has not been put to any loss on that count as the licence fee chargeable according to Mr. Chutke, learned APP for the non-applicant/State, for a renewal of licence by a partnership firm, as well as by an

individual, is the same, which has been paid up to date by the applicant. Since, the partnership is of the year 1987, was at Will, what all the legal heirs of Mr. P.T. Gawande would be entitled in law would be an account of partnership. It is also necessary, to consider the order of the Commissioner State Excise dated 11.11.2021, (page 40) in which, after considering the fact, that the demise of Mr. P.T. Gawande, was not brought to the notice of the Excise department, it has been held, that since there was no exigency of suspending the licence, the order of the Collector, dated 17.09.2021, by which he had closed the business of the applicant, has been set-aside and the applicant has been directed to set-aside 50% share of the profit of the shop in a separate account and to run the business as he was doing so. It is stated at the bar by Mr. Chutke, learned APP for the non-applicant/State, that order of Commissioner State Excise has been challenged in revision before the Principal Secretary State Excise Department, by the complainant, which challenge is still pending, however it is stated, that there is no stay granted to the order of the Commissioner of State Excise dated 11.11.2021.

19. Prima-facie, since the FL-II licence was granted to the partnership firm of which the applicant was one of the partners, the other being Mr. P.T. Gawande, there may not, strictly speaking, be any entrustment of property as contemplated by Section 405 of the Indian Penal Code, as the licence was renewed in the name of the firm for all these years, in which late

Mr. P.T. Gawande was also shown as one of the partners. So also there does not appear to be any deceiving of Mr. P.T. Gawande during his life time, so as to fraudulently or dishonestly, cause delivery of any property to the applicant, as it is not disputed that since 1987 when the partnership firm was reconstituted till his demise in 2000, no complaint of whatsoever nature, was made by late Mr. P.T. Gawande, either to the Excise Department or to the Police authorities, regarding the FL-II licence or the partnership firm, its working or any share of his therein. It is also not the case of the complainant that the signatures of Mr. P.T. Gawande, were forged by the applicant on any document and the same was presented to the Excise Department for renewal of the FL-II licence. All that is alleged is that inspite of the knowledge of demise of late Mr. P.T. Gawande in 2000, the applicant, suppressed this information from the Excise Department and filed applications for renewal of licence as a partner.

20. In light of the above conspectus of facts, though *prima-facie* there is a suppression on part of the applicant in disclosing the demise of Mr. P.T. Gawande, however, considering what has been held in ***P Chidambaram*** (supra), regarding the parameters for grant of bail, though the offences have been alleged against the applicant under the aforesaid sections, however, considering what has been discussed above, the *prima-facie* allegation merely boils down to suppression of the demise of Mr. P.T. Gawande and not

to any loss being caused to the Excise department. It is a statement made by Mr. Dharmadhikari, learned Senior Counsel for the applicant, that since 2000 onwards the applicant has maintained a separate account, regarding the partnership business and so also the details of the amount payable to the share of Mr. P.T. Gawande. That apart, it appears even the legal heirs of Mr. P.T. Gawande were oblivious of the business being carried out by their father as the first complaint in this regard has been made on 25.11.2021, which is made upon receipt of a communication by the Excise Department to the complainant Mr. Amit P. Gawande.

21. Though, it is contended, by Mr. Chutke, learned APP for the non-applicant/State, that there has been an attempt at influencing the complainant by the applicant through third party, however the complaint made in this regard dated 22.02.2022 by the complainant, in respect of which an N.C. Report has been given, merely makes a general allegation, without specifying the date on which the said Gautam Bhatkar and other person had been to his residence at Daryapur. So also no connection between the said Gautam Bhatkar and the applicant has been indicated, which creates a doubt about its credibility.

22. Though, the learned APP submits, that there are criminal antecedents of the applicant, inasmuch as, offences have been registered against him, regarding

illicit import of liquor and by the Central Bureau of Investigation, for an attempt to accept bribe on behalf of a public servant, in view of what has been held by the Hon'ble Apex Court in ***Maulana Mohammed Amir Rashadi*** and ***Prabhakar Tewari*** (supra), that the mere existence of criminal antecedents alone cannot be a ground, to refuse bail, if *prima-facie*, the nature of accusations justify the same, which considering what has been discussed above, does, that cannot come in the way of the applicant from claiming bail. Any apprehension which the prosecution may have, can be met with stringent conditions. In view of the above discussion, in my considered opinion a case for bail is made out. Hence, following order.

ORDER

- i. The Criminal Application is **allowed**.
- ii. Applicant Rajendrakumar S/o Brijkisor Jaiswal, be released on bail in Crime No. 537/2021 registered at Police Station City Kotwali, District Akola, for the offence punishable under Sections 420, 461, 468, 471 & 409 of the Indian Penal Code, on his furnishing PR. Bond in the sum of Rs. 2,00,000/- (Rs. Two Lakhs Only) with two respected solvent sureties of the like amount, in case he is not required in any other crime.
- iii. The Applicant shall not tamper with the evidence and shall not directly or indirectly make any inducement,

threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

iv. The Applicant shall surrender his passport, if any, to the Investigating Officer and shall not leave the Country.

v. ~~The Applicant shall appear before the Investigating Officer on every Monday and Thursday between 12.00 noon to 05.00 p.m., and shall assist the prosecution in all manner, till charge-sheet is filed.~~

Clauses (v) &
(vii) are deleted
vide order
dtd. 14/9/2022
passed in
Crim.APPP
No. 813/2022

vi. The Applicant shall not commit an offence similar to the offence of which he is accused of or for that matter any offence whatsoever of any nature while on bail.

vii. ~~The Applicant, till charge-sheet is filed, shall reside outside the District of Akola and shall intimate his place of residence as well as his mobile number, to the Investigating Officer, except on the dates, the Applicant is directed to appear before the Investigating Officer. In case of any change of residence or mobile number, the same shall be intimated to the Investigating Officer in advance.~~

viii. After the charge-sheet is filed, the Applicant shall attend each and every date before the learned Sessions Court and shall ensure that the trial is not protracted on his count.

(27)

ix. Violation of any of the above conditions shall result in cancellation of bail.

23. Pending application/s, if any, shall stand disposed of accordingly.

JUDGE

SD. Bhimte