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

CRIMINAL APPLICATION (ABA) NO. 873 OF 2021

Rajendrakumar Brijkishor Jaiswal
...Versus...
State of Maharashtra, Through the P.S.O., P.S. City Kotwali, Akola, Tq. And Distt. Akola

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Shri A.R. Deshpande, Advocate for applicant
Shri V.A. Thakre, A.P.P. for non-applicant/State
shri S.P. Bhandarkar, Advocate for Assist to Prosecution

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 28/01/2022
PRONOUNCED ON : 02/02/2022

Hearing was conducted through Video Conferencing and the learned Counsel agreed that the audio and visual quality was proper.

2. This is an application for pre arrest bail in Crime No. 537/2021, registered with City Kotwali Police Station, Akola for the offences punishable under Sections 420, 461, 468 and 471 of the Indian Penal Code. One Amit Purushottan Gawande lodged the First Information Report against the applicant. It is the case of the applicant that in the year 1973 his father Late Brijkisor Jaiswal and father of informant Purushottam Gawande formed an unregistered firm to run the foreign liquor shop at Akola in the name and style as 'Vidarbh Wine Shop'. The competent authority granted license bearing No. FL-II 15/1976-77 on 30/09/1976. In fact, the said business was being looked after by father of applicant. Shri P.T.

Gawande was resident of different place, therefore he is not looking after the business of liquor shop.

3. In the year 1980-81, father of applicant and informant decided to shift the shop to Gandhi Square, Akola. Accordingly, the competent authority has granted permission for the same. On 19/08/1987 father of applicant Brijkishor Jaiswal passed away. Thereafter on 15/09/1987, the father of informant and present applicant executed an unregistered partnership deed and continued the liquor business. The father of informant was not looking after the business. The applicant was solely looking after the business. In the year 2011, the applicant came to know that father of the informant Purushottam Gawande passed away at Daryapur, Amravati. However, the applicant was not aware of the legal heirs of Purushottam Gawande. Thus he applied to competent authority to delete the name of Purushottam Gawande. However, the concerned authority apprised the applicant that in that eventuality notices are required to issue to legal heirs of Purushottam Gawande. Since applicant was not aware of the name and addresses of legal heirs of Purushottam Gawande he expressed his inability. Therefore he withdrew the application. It is contended that in the year 2018 a circular was issued by State Government to the effect that in the event of renewal of license all the partners shall personally remain present before the renewing authority.

4. The applicant could gather the names and addresses of the legal heirs of Purushottam Gawande. Accordingly the

applicant had filed an application for deletion of name of the Purushottam Gawande. Accordingly, the notices were issued to the legal heirs of Purushottam Gawande. Accordingly, informant approached the applicant and made inquiry about the business of wine shop. The applicant disclosed about the same and showed all necessary documents available with him. Thereupon the informant demanded exorbitant amount. The applicant politely refused the request made by the informant. It is contended that the informant filed an application in the office of Collector, Akola on 26/04/2019. The Collector, Akola passed an order of suspension of liquor license and sealed the shop till further orders. The said order was challenged by the applicant before the appellate authority namely Commissioner, State Excise, Mumbai bearing appeal FLR No. 192021/167. The appellate authority passed an order and revoked the order of suspension of license. The appellate authority also directed applicant to keep aside a share of 50% of legal heirs of Purushottam Gawande in profit of the shop. The appellate authority also directed both the parties to settle the dispute as early as possible. But in the third week of November 2021, the informant met the applicant at Akola and reminded him about the operative part of the order of Commissioner of Excise, Mumbai. He again demanded share to the extent of 60% which the applicant has denied. Therefore the informant threatened the applicant that he would rope him in the offence. Accordingly, he filed First Information Report, wherein he alleged that the applicant has forged the documents and continued with the liquor license without giving any information to the family of Purushottam

Gawande. It is also alleged in the First Information Report that the applicant gave a false information to competent authority and renewed the license after death of Purushottam Gawande and earned huge amounts and caused loss to the State as well as the family of the informant.

5. On the basis of the allegations made in the First Information Report, it is contended that the applicant was not aware of the death of Purushottam Gawande. Similarly, he was not knowing the details of the legal heirs of Purushottam Gawande, therefore, he continued the license as per the rules. It is contended that he made an application for deletion of name of Purushottam Gawande, but the authority has issued notices to the heirs of Purushottam Gawande. Therefore, informant came to know about the existence of liquor license. The applicant was solely conducting the business of liquor license, therefore, he has not cheated the family members of Purushottam Gawande. It is contended that the offence is based on the documents. Similarly, it is civil in nature. Therefore, the applicant is required to be released on pre arrest bail.

6. On the other hand notice was issued to non applicant. The non applicant has filed reply, wherein, the contentions raised in the First Information Report are reproduced. It is contended that after death of the father of informant the applicant continued the business for about 20 years. He gave false declarations before the competent authority and renewed the liquor license. It is also alleged that

the applicant prepared false documents and tried to delete the name of father of informant from the liquor license. It is alleged that the applicant has impersonated himself as Purushottam Gawande and committed offence of cheating and forgery. The custodial interrogation of applicant is required. Therefore, it is prayed that application be rejected.

7. Heard the learned Counsel for the applicant and the learned A.P.P. on behalf of State.

8. Perused the First Information Report.

9. On going through the submissions of the rival parties the following facts are admitted by both the parties namely the father of applicant and father of the informant were having unregistered firm to run a foreign liquor shop at Akola. The said shop was run in the name and style as Vidarbh Wine Shop with the consent of father of the informant. The place of business was shifted to Gandhi Square, Akola in the year 1980-81. It is also an admitted fact that father of applicant Brijkisor Jaiswal died on 19/08/1987. Thereafter, the father of informant, Purushottam Gawande, inducted applicant as a partner in the business in the place of his father. Unregistered partnership deed was executed between father of informant and the applicant on 15/09/1987. It is admitted fact that in the year 2011, the applicant came to know that Purushottam Gawande passed away at Daryapur, Distt. Amravati. It is also admitted fact that after death of Gawande, applicant renewed the country liquor license till 2021. It is also admitted fact that

in the year 2018 applicant filed an application for deletion of name of Purushottam Gawande for the liquor license, but subsequently he withdrew the said application. It is also admitted fact that on 31/10/2018 applicant again submitted application for deletion of name of Purushottam Gawande. But the competent authority has issued notices to the legal heirs of deceased Purushottam Gawande. Accordingly, the informant appeared before the authority and also met the applicant and demanded the profit earned by him, after death of his father till 2019.

10. In view of the above facts, it is crystal clear that the applicant came to know about the death of Purushottam Gawande in the year 2011, still he continued the liquor license by submitting an application. It is pertinent to note that till 2018 the applicant submitted an application for renewal of license, he did not give information to competent authority regarding death of Purushottam Gawande. It is contended that as per the circular, the applicant applied for renewal of license. It is also contended that as per the said circular dated 19/03/1985, one of the partners could renew the license. The said circular is produced on record. On going through the said circular, it appears that if there is dispute between the partners, one of the partners can apply for renewal of license. But in present case the partner was dead. The said information was concealed by the applicant. Therefore, prima facie the said circular is of no use to applicant to contend that his action of renewal of license after death of Purushottam Gawande was legal and valid.

11. It is also noted that the applicant filed an application on 31/10/2018 for deletion of name of Purushottam Gawande from the license. In fact, on death of partner the partnership firm came into an end, still the applicant continued it for about 18 years. The Investigating Officer is required to verify which documents the applicant had submitted for renewal of license after death of Purushottam Gawande. No doubt, it is the case of applicant that he never filed any false and bogus document before the authority, but it appears that even after the death of the partner the applicant renewed the license for one reason or the other. Therefore, the detailed investigation is required. It is also required to be considered that the applicant continued the business after the death of partner and earned the profit. He has not shared the same with the legal heirs of partner Purushottam Gawande. The applicant concealed the material fact of the death of partner from authority and renewed the license and continued the business for his own profit. In spite of the knowledge of death of partner, the applicant run the business for about 10 years with the lame excuse that he was not knowing the legal heirs of his partner. It appears from the First Information Report that the applicant has concealed many facts from the authority and continued his business. Therefore, the custodial interrogation of applicant is required for acts and omissions of applicant in renewing the license issued in the name of partnership firm for more than a decade by allegedly furnishing fake and bogus documents. Therefore, the custodial interrogation of applicant is just required.

12. The learned Counsel for the applicant has submitted that the dispute between the applicant and the informant appears to be civil of nature. Therefore, the applicant is entitled for pre arrest bail. At first blush the offence appears to be civil in nature but if the First Information Report is read minutely, it appears that the applicant continued his business after death of his partner. He continued to submit false document before authority for renewal of his license. He did not give any account of his business to the legal heirs of his partner. Therefore, it cannot be said that the allegations made in the First Information Report are solely of civil in nature. Therefore, I am not inclined to accept the submission of the applicant that the allegations made are civil in nature and/or the dispute between the informant and the applicant is civil in nature. In view of the above discussion, I am not inclined to grant pre arrest bail to applicant. Hence, I pass the following order :

13. The application is rejected.

(SURENDRA P. TAVADE, J.)

Jayashree..