

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**BAIL APPLICATION NO.1398 OF 2023
WITH
CRIMINAL APPLICATION NO.3150 OF 2023**

**NITIN S/O HARIDAS PATIL
VERSUS
THE STATE OF MAHARASHTRA**

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Mr. Nilesh S. Ghanekar, Advocate for the Applicant.
Mr. D. R. Kale, Incharge GP for Respondents-State.
Mr. A. M. Karad, Advocate for Applicant in APPLN/3150/2023.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 11th SEPTEMBER, 2023.

PER COURT:-

1. By this application, the applicant seeks regular bail in Crime No.297/2023 registered with MIDC Police Station, CIDCO Aurangabad for offence punishable under Sections 406, 409, 420, 467, 468, 471, 500, 504, 506, 120-B of the Indian Penal Code.

2. The investigation was set in motion on the basis of the information given by one Sanjay Goyal (Agrawal). In nutshell it is stated that the informant is a Director of a company namely Rushi Fibers Pvt. Ltd. which deals in the business of ginning and pressing of cotton bells. It is alleged that in the month of January-2021, an agent namely Anil Thanvi met him and informed that J.J. Fine Spun Pvt. Ltd. Akola is available for sale and he can arrange for a meeting of the informant with Directors of the said company. Accordingly, in the month of May-2021, the informant had a meeting with the Directors of the J.J. Fine Spun

Pvt. Ltd. The Managing Director of said Company Mr. Nitin Haridas Patil (present applicant) agreed to sale the company for total consideration of Rs.41,25,00,000/-. He was authorized to sign on the company 'Take Over' agreement and other relevant documents. The process of the transfer was to take some time. The applicant requested for advance of the amount of Rs.7,14,51,000/- in account J.J. Fine Spun Pvt. Ltd for settlement of dues of creditors. It was assured that such amount would be adjusted in the sale price. Accordingly, during the period from 31.05.2021 to 23.07.2021, the amount of Rs.5,36,00,000/- has been transferred by purchasers in the account of J.J. Fine Spun Pvt. Ltd. and the amount of Rs.1,30,00,000/- has been transferred in personal account of the applicant.

3. On 19.07.2021, the company 'Take Over' agreement has been executed. It was agreed that 100% shares of the seller company shall be transferred to purchaser company against total consideration of Rs.41,25,00,000/-. Out of the said amount, the amount of Rs.26,41,80,880/- was to be disbursed towards clearing cash credit loans, term loans and the dues of other creditors, towards J.J. Fine Spun Pvt. Ltd. The purchasers were at liberty to pay sum of Rs.14,83,19,120/- by transferring the amount to the shareholders of J.J. Fine Spun Pvt. Ltd. at the rate of Rs.40/- per share. It was specifically agreed that any debts/payments of J.J. Fine Spun Pvt. Ltd. due upto 31.05.2021 shall be cleared by old Directors.

4. It is further alleged that in pursuance of the aforesaid agreement, various dues of J.J. Fine Spun Pvt. Ltd. have been cleared by purchaser company. During this process, it was

revealed that, although actual dues of various financial institutions were Rs. 27,59,04,857/-, the Directors of the seller company have falsely represented the it to the tune of Rs.26,41,80,880/- only. As such, the purchaser company is defrauded purchasers for an amount of Rs.1,17,23,967/-. It is alleged that, although the Managing Director of the seller company i.e. the applicant was called upon to explain the aforesaid difference, he failed to respond. It is further alleged that the Directors of the seller company were under obligation to clear all dues upto 31.05.2021, which accounts for almost Rs. 12,77,73,089/-, however, they failed to do so. It is alleged that accused Sanjay Jadhav has deposited his share of Rs.2,49,92,082/-, whereas the applicant cleared total Rs.99,00,000/- towards payment of old dues. It is further alleged that applicant had agreed to refund Rs.1,50,00,000/- and also transfer the shares worth Rs.1,30,00,000/- in favour of the purchaser company however, he transferred only amount of Rs.1,50,00,000/- in the account of J.J. Fine Spun Pvt. Ltd leaving balance of Rs.75,65,698/- towards payment of the creditors, which has been cleared by the seller company.

5. It is further alleged that the Directors of the seller company have failed to disclose the liability towards various taxes amounting to Rs.5,59,38,877/-, which is for the period upto 31.05.2021, which needs to be cleared off by old Directors of J.J. Fine Spun Pvt. Ltd.. It is further alleged that the applicant has created various hurdles in finalizing transfer of the company and filed various criminal complaints against the Directors of the seller company. As such, it is alleged that the accused persons have committed offence as indicated above. On the basis of the

aforesaid information, Crime No.297/2023 came to be registered against in all three accused person, which includes the applicant, Managing Director of J.J. Fine Spun Pvt. Ltd., another Director Sanjay Jadhav and the alleged Agent Sandeep Pundkar. In pursuance of the registration of the aforesaid offence, the applicant has been arrested on 24.06.2023. The plea for grant of regular bail of the applicant has been rejected by the Sessions Court at Aurangabad vide order dated 03.08.2023. Hence, the present application.

6. Mr. Ghanekar, learned Advocate appearing for the applicant would submit that this is a case where criminal law has been misused to settle civil dispute. He would submit that as per allegations in FIR at the most case of breach of contract can be gathered for which remedies under civil law can be exhausted. He would submit that in pursuance of agreement for transfer of business, both the parties took necessary steps, however, some dispute arose during process. He would submit that on 19.01.2022, the applicant had issued legal notice seeking compliance of terms of the agreement and payment of the consideration against purchasers i.e. Rushi Fibers Pvt. Ltd. and its Directors. He would further submit that the applicant has also made certain complaints to the Registrar of Companies regarding use of digital signature of the applicant without his consent. He would further submit that the applicant filed an application under Section 156 (3) of the CrP C against the informant and Directors of his company before the Chief Judicial Magistrate at Akola in which vide order dated 01.11.2022 the direction for registration of offence has been issued. He would submit that, although no transaction occurred within jurisdiction of Police Station at

Aurangabad, the present complaint is filed in the month of June-2023 by way of counter blast to the action initiated by the applicant. He would invite attention of this Court to the clause in Takeover Agreement points out that from the amount of Rs.7,14,00,000/-received in advance, various dues are cleared towards MSEB, salaries of employees, GST and wages and other expenses. He would further submit that the applicant has transferred his shares worth Rs.6,02,20,400/- to the purchaser company vide share purchase agreement dated 19.07.2021. Mr. Ghanekar, would, therefore, submit that no offence under Sections 409 or 467 of the Indian Penal Code would attract in the present case. Investigation is practically over. No purpose would be served by continuing detention of the applicant, as such, he urges to release the applicant on bail.

7. Per contra, learned APP, so also Mr. Karad, learned Advocate appearing for the informant would submit that the applicant accused being Managing Director of the seller company has systematically conspired to defraud the purchaser company. All the accused persons have made farce that seller company has sustained losses because of Covid pandemic and lured the purchaser to enter into Company Takeover agreement dated 19.07.2021. They would submit that the applicant represented that the debts of the company are to the tune of Rs.26,41,80,880/-. Although subsequently it is revealed that such debts were Rs.27,59,04,857/-. They would further urge that under the pretext of making payment to the creditors, the amount of Rs.7,14,51,000/- was received by the seller company. However, sum of Rs.4,34,51,000/- has been utilized for different purposes. It is further alleged that there was huge liability towards

Government taxes, which includes liability towards Income Tax, GST worth Rs.6,59,38,877/-, which was to be cleared of before 31.05.2021. However, the applicant and old Directors of the company failed to clear off, as such, the systematic fraud is exercised. Therefore, they urge to reject the prayer for grant of bail.

8. Having considered the submissions advanced, apparently there is Company Takeover agreement dated 19/07/2021 between the Rushi Fibers Pvt. Ltd. and J.J. Fine Spun Pvt. Ltd. for transfer of the company. It was agreed that the seller company would transfer entire share capital with all the assets to the buyer on lump-sum consideration of Rs.41,25,00,000/-, out of which sum of Rs.26,41,80,880/- was outstanding debt as on 31.05.2021 and balance of Rs.14,83,19,120/- was to be distributed amongst all the shareholders of J.J. Fine Spun Pvt. Ltd. as on date of execution of the agreement in proportion to equity shares held by them at the rate of Rs.40/- per share. The payment schedule to the shareholders of the seller company is fixed. Clause 1.2 of the agreement clearly depicts that the buyer advanced payment of Rs.7,14,51,000/- to the J.J. Fine Spun Pvt. Ltd. till the date of agreement and same is utilized for specified purpose which is acknowledged by the Seller in clause 1.2 of Takeover agreement. It is also apparent from the record that the applicant has transferred his shares worth Rs.6,02,20,400/- in pursuance of the aforesaid agreement in favor of the Rushi Fibers Pvt. Ltd. The share purchase agreement is executed on 19.07.2021.

9. Mr. Ghanekar, learned advocate for the applicant has rightly pointed out from the account statement that the amount received from purchaser in advance was utilized towards electricity expenses and realization of the previous dues. The aforesaid factual aspects *prima facie* depicts intention of the applicant to transfer the company and he took steps in this regard.

10. It is alleged in the FIR that the applicant has misrepresented about actual debts of the creditors, so also the various tax liabilities. *Prima facie*, it is difficult to accede with such contentions. Apparently, as per the terms of the agreement, 100% share capital of the J.J. Fine Spun Pvt. Ltd. was transferred to the Rushi Fibers Pvt. Ltd. at lump-sum price of Rs.41,25,00,000/-. After realizing the liability towards creditors, the balance of the amount was to be distributed to the shareholders. The terms of the agreement clearly stipulate that the debts as on 31.05.2021 were to be borne by the old Directors. If that is so, then it was open for the purchaser company to adjust additional dues of creditors against share capital to be distributed amongst shareholders. So far as the dues of the taxes are concerned, it would be a matter of record and it is difficult to believe that buyer was not aware about such dues. Even as per terms of the agreement liability of dues as on 31.05.2021 would be on directors of seller company. The civil remedy is available to the purchaser company to seek adjustment of such dues against them.

11. *Prima facie*, the submissions advanced on behalf of the applicant that after his initiating criminal proceeding against the directors of purchaser company under Section 156(3) of the

CrPC followed by complaint to the Registrar of Company, the dispute has been arose between the parties. Ptesent FIR has been lodged on 23.06.2023. However, the facts that constitutes offences alleged in complaint must have been known to the informant, immediately duration of 4-5 months after execution of the agreement dated 19.07.2021. However, present FIR is lodged after two years. Further it is not clear as to how the complaint has been lodged at at Aurangabad when agreement has been executed in respect of the company at Akola. Even, after accepting the contention of the informant as it is, it appears from the contents of the Remand Yadi dated 04.07.2023 that the dispute amongst the parties is only for Rs.81,25,225/-. Prima facie it is difficult to gather commission of offences U/S 409, 406, 420,467,468,471 of IPC on the basis of material placed before this court. In that view of the matter. it is not necessary to continue detention of the applicant. The applicant in behind bar for two and half month. Relevant documents are already seized during investigation. The co-accused is already enlarged on bail. Hence case is made out for grant of bail however, release of applicant shall be subject to stringent conditions. Hence, the following order:

ORDER

- (i) Bail Application is allowed.
- (ii) The applicant, Nitin Haridas Patil be released on bail in Crime No.297/2023 registered with MIDC Police Station, CIDCO Aurangabad for offence punishable under Sections 406, 409, 420, 467, 468, 471, 500, 504, 506, 120-B of the Indian Penal Code on furnishing P.B. and S.B. of Rs.1,00,000/- (Rs.One Lakh only) each on following condition:

a. The applicant shall not tamper with the prosecution evidence in any manner.

b. The applicant shall attend the concerned Police Station once in a week i.e. on every Sunday between 10.00 am to 12.00 noon till filing of the charge-sheet and shall co-operate with the investigation.

c. The applicant shall not leave State of Maharashtra without prior intimation to the Court.

(iii) Criminal Application No.3150 of 2023 is disposed of.

(iv) Bail Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE