IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3507 OF 2023

Nitin Jayprakash Bakal ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Ashok Mundargi, Senior Counsel i/b Mr. Jaydeep D. Mane, for Applicant.
Ms. Anamika Malhotra, APP for State.

CORAM:- N. J. JAMADAR, J.
DATED:- 18th DECEMBER, 2023

ORDER:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No. 945 of 2023, registered with Barshi Police Station, Solapur, for the offences punishable under Sections 420 and 409 of Indian Penal Code, 1860 ("the Penal Code").

3) The applicant is a Tax Consultant and Tax Practitioner. The first informant deals in the business of electrical goods and cables under the name and style of “Tara Electricals”. Since 10 years prior to the occurrence, the first informant had been availing the professional services of the applicant and thereby the first informant reposed trust in the applicant.

4) During the period 13th November, 2018 to 15th November, 2018, a search was conducted by VAT investigation team at the premises of the first informant. The team had seized the account books and record maintained by the first informant.

5) The first informant alleges towards payment of the tax due and penalty thereon, the applicant had initially obtained cheques drawn on various banks aggregating to a sum of Rs.1 Crore. Later on, the applicant returned those cheques on the pretext that the tax was required to be paid in cash. Thereupon, the first informant delivered cash amount of Rs.30,00,000/- on 17th November, 2018.

6) The first informant further alleged that the applicant claimed that towards due tax and penalty, the first informant was required to pay a sum of Rs.10/-Crores. However, the applicant got the said amount reduced to Rs.2,25,00,000/- and also paid the said amount. The applicant thus demanded the balance amount. Eventually, the first informant was coerced to pay a sum of Rs.1,96,77,000/- in cash aggregating to Rs.2,21,99,789/- purportedly towards payment of tax and penalty. The applicant, however, handed over Challans and receipts evidencing deposit of Rs.25,22,789/- only, towards tax and penalty.

7) As the applicant avoided to hand over the documents evidencing the payment of the balance amount towards tax and penalty, the first informant entertained suspicion. The latter allegedly made enquiry with the concerned officers. It transpired that the applicant had also collected the record of the first informant, which was seized by the concerned officers. Upon being confronted, the applicant denied having collected the record. Hence, the report.

8) Mr. Mundargi, the learned Senior Counsel for the applicant submitted that the matter was closed by the GST Department in the year 2000. There is an inordinate delay in lodging the report. An endeavour was made by Mr. Mundargi to draw home the point that the allegations that the applicant deliberately withheld the record are patently false as on 31st December, 2020, ,the first informant had addressed a letter to the GST Commissioner, seeking return of the account books and the

record. In the said letter, no allegations were made against the applicant. As regards the allegations of payment of the amount in cash, especially in the context of the specific allegations that the applicant had acknowledged the receipt of the amount by making an endorsement in the diary maintained by the first informant, Mr. Mundargi attempted to salvage the position by canvassing a submission that even if the said allegation is taken at par, at this stage, custodial interrogation of the applicant is not warranted as the applicant is ready to co-operate with the investigation.An endeavour was made to urge that the applicant cannot be said to be the ultimate beneficiary of the said amount.

9) The learned APP, on the other hand, submitted that the allegations of inducing the first informant to part with a huge amount in cash, are specific. There is material to indicate that the applicant had received the said amount in cash. The applicant could furnish receipt in respect of the amount, which was paid in cheques. Since the applicant has received a huge amount of Rs.1,96,00,000/- in cash, the dishonest intention of the applicant becomes evident. Therefore, custodial interrogation of the applicant is warranted.

10) First and foremost, it is pertinent to note that the allegations of payment of cash amount cannot be said to be bald

and vague. The first informant has furnished the necessary particulars with reference to the date of payment. The first informant also claims to have obtained acknowledgment in the diary maintained by the first informant. At this stage, these allegations cannot be jettisoned away.

11) Once there is prima facie material to show that a huge amount was paid to the applicant and for which the applicant could not lawfully account for the aspect of delay in lodging the FIR pales in significance as a person, who avails the professional services of a Tax Consultant or Advocate for that matter, is not expected to immediately suspect foul pay and rush to lodge the complaint as there is always an element of trust and confidence. Moreover, in the case at hand, the learned Additional Sessions Judge has noted that the first informant had been pursuing the matter since long and only after the intervention of the superior of the police officers, the FIR could be registered.

12) Prima facie, there is material to show that the applicant has accepted huge amount in cash. Conversely, at this stage, there does not seem any lawful explanation for the same. It is not the claim of the applicant that the said amount was deposited with the GST Department and receipts were obtained.

13) In the circumstances, without custodial interrogation of the applicant, the Investigating Officer would not be in a position to carry out a fair and effective investigation. The money trail has to be ascertained. The identity of the persons, who were privy to the alleged offences is also required to be unmasked. Prima facie, the applicant seems to have abused the trust and confidence reposed in him, by the first informant. Apart from the professional misconduct, there is a strong element of criminality in the conduct attributed to the applicant. Thus, the applicant does not deserve the exercise of discretion.

14) Hence, the following order:-

ORDER

I) The application stands rejected.

II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]