

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2947 OF 2022

Ratnakar Dandekar

.... Applicant

v/s.

The State of Maharashtra

.... Respondent

Mr. Parvez Memon a/w. Mr. Dinesh Kadam, Mr. Siddhant Dhavale, Mr. Ravi Mishra i/b. MZM Legal LLP for the Applicant.
Ms. P.N. Dabholkar, APP for the State.
Mr. Ajay Lingnarkar, PI, EOW, Unit – 6, Mumbai.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th MARCH, 2023.

P. C. :-

1. The Applicant, who is the Managing Director of 'Aquarius Shipyard Private Limited (ASPL)', has filed this Application under section 438 of Cr.P.C. for pre-arrest bail in C.R.No.90/2022 registered with EOW, Unit-6, Mumbai for offences punishable under sections 177, 197, 406, 409, 420 r/w. Section 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the complaint

lodged by Deputy Commissioner of Police, Motor Transport Department, Maharashtra State. The FIR reveals that the State of Maharashtra had awarded contract to M/s. Goa Shipyard Ltd. (GSL) for Comprehensive Annual Maintenance Contract (including routine services), preventive maintenance and breakdown maintenance services of the boats positioned at various coastal police stations, across the Maharashtra Coast.

4. GSL entered into sub-contract with M/s. ASPL and M/s. Brilliant Seagull Pvt. Ltd. and accordingly work order came to be issued on 19/11/2014 subsequent to the commercial terms and conditions of contract drawn on the said date. It is the case of the prosecution that sub-contractors who were assigned the task of maintenance/resurrection of the engines, were required to purchase the engines, spare parts from the Original Equipped Manufacturer (OEM) or which were to be arranged from its Chief Authorized Agency. It is alleged that instead of purchasing the engines or spare parts from the OEM or the authorized agency, the sub-contractors procured pre-used spare parts, foreign imported spare parts and engines owned by different companies and fitted the same on the boats. It is also alleged that the machines/parts which were replaced, were not deposited in the

warehouse/godown. It is further alleged that sub-contractors raised demand in respect of engines and spare parts alleging that the same were original engines and received the payment for original engines despite fitting pre-used engines and spare parts.

5. The records reveal that the work was completed between the period from 2014 to 2019. The Police Inspector had issued 'work completion' certificate and had recorded that the nature of work completed on the boats was found to be satisfactory. There was distinct certificates of fitment of spares which were issued by the Police Inspector, Motor Transport Section, Mumbai. The Boat Maintenance Certificate issued under the signature of Police Inspector (Motor Transport Section, Mumbai) also certified that M/s. Goa Shipyard Limited had carried out maintenance of the boats satisfactorily. Though it is alleged that the Applicant had not deposited the replaced engines or spare parts, no report in this regard was made till the time M/s. Ocean Blue Boating Pvt. Ltd. lodged a complaint on 03/08/2020. Considering all these aspects, this Court by a detailed order dated 20/10/2022 had granted interim protection to the Applicant. This Court has observed that the Applicant had entered into Performance Bond on 02/07/2021 with the Government of Maharashtra and

Mumbai Police to secure the performance of M/s. ASPL pursuant to the undertaking given on 02/07/2021. It is recorded that the learned APP was not able to give any explanation as to why the performance bond was not encashed and was directed to take necessary instructions from the Additional Chief Secretary (Home), Maharashtra State to that effect. The only explanation which is given in the affidavit is that the case is purely of criminal nature and that the criminal misappropriation and cheating cannot be compensated in terms of money. This Court had also posed a question as to why a subsequent contract was allotted to the same entity when it was the case of the prosecution that the sub contractors had been resorting to such modus operandi since the year 2014. There is no satisfactory reply to the second query raised by the Court.

6. Learned APP states that the offence committed by the Applicant came to the notice of the Department only on 03/08/2020 i.e., on receipt of the complaint filed by M/s. Ocean Blue Boating Pvt. Ltd. It is strange that the Department had to wait for the complaint of M/s. Ocean Blue Boating Pvt. Ltd. to realize that the Applicant had not deposited the replaced spare parts/engines. As noted above, during the contract period, the work of the Applicant was certified to be

satisfactory even by the officers of the concerned department. There was no complaint from any quarters till the year 2019 that the work was of sub-standard quality or that the boats which were serviced by the Applicant had malfunctioned during this period.

7. Another relevant aspect which needs to be considered that though crime was registered in the month of May, 2022, no attempts have been made by the Investigating Authority to interrogate him till date though he was available for interrogation.

8. Considering the aforesaid facts and circumstances particularly the reasons stated in the order dated 20/10/2022, in my considered view, this is not a case which would justify custodial interrogation. Under the circumstances, the Application is allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicant in C.R.No.90/2022 registered registered with EOW, Unit-6, Mumbai, he shall be released on bail on furnishing bail bonds in the sum of Rs.50,000/- with one or two sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer for a period of one week from 13/03/2023 between 11:00 a.m. to 02:00 p.m. and further as and when required by the Investigating Officer ;

(c) The Applicant shall not interfere with the complainant and the other witnesses and shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case in any manner ;

(d) The Applicant shall keep the Investigating Officer informed of his current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

9. Application stands disposed of.

**PREETI
H JAYANI**

(SMT. ANUJA PRABHUDESSAI, J.)

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