IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3106 OF 2022

Mohan Narayan Nair … Applicant
v/s.
The State of Maharashtra …. Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 3145 OF 2022

Narayan Ayyanna Vishwakarma … Applicant
v/s.
The State of Maharashtra …. Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 3143 OF 2022

Kelvin Ramesh Patel … Applicant
v/s.
The State of Maharashtra …. Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 3144 OF 2022

Romit Pavan Sharma … Applicant
v/s.
The State of Maharashtra …. Respondent

Mr. Niranjan Mundargi a/w. Mr. Prasanna Bhangale, Mr. Abhishek Kale, Mr. Vidhur Malhotra i/b. Naik Naik and Co. for the Applicant in ABA/3145/2022.
Mr. Subodh Desai a/w. Mr. Abhishek Kale, Mr. Vidhur Malhotra i/b. Naik Naik and Co. for the Applicant in ABA/3144/2022.
Mr. Abhishek Kale a/w. Mr. Vidhur Malhotra i/b. Naik Naik and Co. for the Applicant in ABA/3143/2022.
Ms. Asha Kanzariya i/b. Mr. Vijay Upadhyay for the Applicant in ABA/3106/2022.
Mr. S.V. Gavand, APP for the State.
Ms. Deepa Panicker for Respondent No.2.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th JULY, 2023.

P. C. :-

. The Applicants apprehend their arrest in C.R.No.1297/2022 registered with Borivali Police Station, Mumbai for offences punishable under Sections 409, 420, 465, 468, 471 r/w. 34 of the Indian Penal Code. Hence, these applications under Section 438 of the Cr.P.C.

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

3. The Applicant- Mohan Nair is the sole proprietor of Saii International, engaged in export and import business. The First Informant-Ajay Kartik Rajlaxmi Aniruddhan is the proprietor of Arjavasai International Ltd., engaged in business of exporting medicines at wholesale rate. The First Informant had received order from Kensav Medical Supply, USA for supply of Wimax Nitrile Gloves. The Applicant-Mohan Nair is the authorised dealer of Wimax brand

Nitrile Gloves in India. The First Informant approached the Applicant - Mohan Nair for supply of the Gloves and issued a letter of intent and thereafter entered into sale purchase agreement with the Applicant - Mohan Nair for supply of Wimax Nitrile Gloves. Subsequently in view of the ban for export of Nitrile Gloves, the parties with consent changed the swift code for surgical gloves. It is not in dispute that the First Informant paid to the Applicant an amount of Rs.56,00,000/- as an advance. The Applicant-Mohan Nair subsequently informed the First Informant that he was unable to supply the Gloves and requested to cancel the order and further agreed to refund the money within three to four days. Accordingly, the First Informant cancelled the order. On 05/12/2020 the Applicant -Mohan Nair refunded to the First Informant an amount of Rs.23,40,000/- and sought time to refund the balance amount.

4. The First Informant alleges that the Applicant-Mohan Nair avoided to pay the balance amount. The First Informant further claims that he has been informed by Wimax Company that it has not given distributorship to any Company in India. The First Informant therefore lodged the First Information Report alleging that the Applicant-Mohan Nair forged the document of distributorship of Thailand based

Company and obtained an advance of Rs.56,00,000/- and thereby committed an offence of forgery and cheating.

5. The records prima facie reveal that the Applicant-Mohan Nair had claimed to be a distributor of Nitrile Medical Gloves and had agreed to supply the Nitrile Medical Gloves to the First Informant. The Applicant has placed on record letter dated 24/06/2020 issued by Wimax Group Company Ltd, Thailand. The said letter reveals that Wimax Group Company Ltd. Reg. 0105553135299, Thailand, is the manufacturer of Latex Gloves and Nitrile Medical Gloves and is jointly operating with other Glove manufacturers in Thailand, Malasia and China. The letter certifies that the said Company has authorised M/s. Saii International in collaboration with BKZ Distributions SDN BHD to promote, to market, to distribute Nitrile Medical Gloves and all products in the global market. BKZ Distribution has also issued a letter confirming authorization of distributorship of Latex Gloves, Nitrile Gloves and Surgical Gloves to M/s. Saii International, in collaboration with Wimax Group. The First Informant had disputed the genuineness of these letters. The records reveal that the Assistant Commissioner of Police had raised certain queries with M/s. BKZ Distributors. One of the queries was whether M/s. Saii International, Mumbai was its business

partner or authorized distributor. In response the the Director of M/s. BKZ distribution SDN BHD, Quallumpur had sent an email stating that M/s. Saii International is its Authorized Agent. He has also confirmed that M/s. BKZ Distribution had issued a letter of authorization for distributorship of Latex Gloves, Nitrile Gloves and Surgical Gloves to M/s. Saii International India in collaboration with Wimax Group Company Ltd., Thailand. The email further states that Wimax Group had signed an agreement with M/s. BKZ for marketing the said products.

6. A perusal of letter dated 02/11/2020 addressed by the First Informant to the Applicant-Mohan Nair prima facie reveals that the First Informant had confirmed cancellation of Standard Purchase Agreement. In fact, the First Informant conceded that despite best efforts, the Applicant was unable to meet the deadline due to the prevailing situation in the market and had agreed to cancel the agreement since their customers were unable to wait for supply of Nitrile Gloves. The First Informant has requested the Applicant to transfer 35% advance into the account of the Company. It is not in dispute that the Applicant transferred an amount of Rs.23,40,000/-. It appears that failure on part of the Applicant to transfer the balance

amount has resulted in filing of the FIR.

7. Learned counsel for the Applicant states that the Applicant-Mohan Nair is ready to deposit before the Court the balance amount of Rs.34,00,000/- subject to the condition that the First Informant gives no objection for quashing of the FIR. Learned counsel for the First Informant while rejecting the proposal stated that the First Informant has suffered loss due to cancellation of transaction. He states that the Applicant-Mohan Nair had intention to deceive the Complainant right from the inception and that the First Informant is not agreeable to give no objection for the FIR.

8. The facts and circumstances of the case reveal that the dispute between the parties arises from commercial transaction. The records indicate that the Applicant-Mohan Nair was unable to supply the Gloves despite his best efforts, which fact has been admitted by the First Informant. This prima facie negates the contention that the Applicant-Mohan Nair had intention to deceive right from the inception. There being no prima facie material indicating fraudulent or dishonest intention since inception, a mere breach of contract, which may give rise to civil liability of damages, would not per se constitute

an offence of cheating.

9. The Applicants-Kelvin Patel, Romit Sharma and Narayan Vishwakarma are the employees of Indusind Bank, which had only acted as service provider. These Applicants are in no way concerned with the transaction between the First Informant and Applicant No.1-Mohan Nair and have been unnecessarily dragged in to the controversy.

10. Considering the above facts and circumstances, no case is made out for custodial interrogation. The Applicants are the permanent residents of the State. There are no chances of the Applicants absconding or thwarting the course of justice. Hence, this is a fit case to exercise discretion under section 438 of Cr.P.C. In view of the above, the Applications are allowed on the following terms and conditions :-

(a) In the event of arrest of the Applicants - Mohan Narayan Nair, Narayan Ayyanna Vishwakarma, Kelvin Ramesh Patel and Romit Pavan Sharma in C.R.No.1297/2022 registered with Borivali Police Station, Mumbai, they shall be released on bail on furnishing bail bonds in the sum of Rs.40,000/-

each with one or two sureties in the like amount ;

(b) The Applicants shall report to the Investigating Officer as and when required ;

(c) The Applicants shall not interfere with the prosecution 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 Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time.

11. The Applications stand disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)