

18.01.2024
Serial no. **24-25**
Anticipatory bail
[Rejected]
Dd

In re : An Application for **Anticipatory Bail** under Section **438** of the Code of Criminal Procedure in connection with **Sankrail** Police Station Case No. **500** of **2023** dated **30.06.2023** under Sections **468/469/471/420/120B** of the Indian Penal Code, 1860.

CRM (A) 3038 of 2023

In the matter of : ***Khatunaresh Impex Private Limited & Ors.***

... ..**Petitioners**

with

CRM (A) 3646 of 2023

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IA NO: CRAN 1 of 2023

In the matter of : ***Ayush Dhanania & Anr.***

... ..**Petitioners**

Mr. Kalyan Bandyopadhyay, Id. Sr. Adv.
Mr. Ayan Bhattacharya,
Mr. VVV Sastry,
Mr. Anand Keshari,
Mr. Sourav Roy, Advocates
... .. For the Petitioners

Mr. Ranabir Roy Chowdhury,
Mr. Mainak Gupta, Advocates
... ..For the State

Mr. Sourav Chatterjee,
Mr. Arindam Guha,
Mr. Sanjay Banerjee,
Mr. Joydeep Bhattacharya,
Ms. Arpita Dey, Advocates
... ..*For the de facto complainant*

Affidavits filed in Court be taken on record.

Two petitions for anticipatory bail are taken up for analogous hearing as they emanate out of the same police case.

Learned senior advocate appearing for the petitioners submits that there was a prior police complaint against the petitioners. The petitioners are enjoying a protection with regard thereto. He submits that, during the pendency of the earlier police complaint, allegedly, the de facto complainant discovered documents on the basis of which the present police complaint was lodged. He submits that, the petitioners in CRM (A) 3646 of 2023 are agents of Jindal India Limited. They acted as such agents. He refers to statement of accounts where, there are several entries of receipts of payment of commission. He submits that, essentially, the disputes between the de facto complainant and the petitioners are civil in nature. The petitioners are cooperating with the investigation. He refers to a chart containing the dates on which, the petitioners were called before the Investigating Officer and the petitioners appeared before the Investigating Officer. He submits that, no case of cheating stands made out in the police complaint. He points out that no steps were taken against the other legal entity namely, BAC Infratech Pvt. Ltd. by the police. He also refers to a statements recorded under Section 164 of the Criminal Procedure Code in the earlier police complaint, in support of the contention that, there are civil disputes between the private parties.

Relying upon **(2023) 8 SCC 632 [Md. Asfak Alam vs. State of Jharkhand & Anr.]**, learned senior advocate appearing for the petitioners submits that, the present police complaint is in relation to a crime which cannot be classified as heinous. There is no possibility of the petitioners absconding. There is no necessity of custodial interrogation of the petitioners as, the police complaint relates to transaction based on documents. Therefore, the petitioners should be granted anticipatory bail.

Learned advocate appearing for the State refers to the materials in the case diary. He submits that, the petitioners

assailed the present police complaint by way of criminal revision which was dismissed. He submits that there are sufficient materials in the case diary implicating all the petitioners in the offences alleged. The petitioners set up a legal entity by the name of Khatunaresh Impex Private Limited which is managed and controlled by the father of the two petitioners in CRM (A) 3646 of 2023. By setting up of Khatunaresh Impex Private Limited, the petitioners defrauded Jindal India Limited of a sum in excess of Rs.3.25 crores. Such sum is yet to be recovered. Therefore, custodial interrogation of the petitioners is required.

Learned advocate appearing for the de facto complainant submits that, Ayush Dhanania and Umang Dhanania were appointed as commission agents of Jindal India Limited to look after the business Jindal India Limited. Jindal India Limited is a manufacturer of pipes. Jindal India Limited sold and delivered such goods to the Meghalaya Government PHE department with Ayush and Umang assisting therein. Payments receivable by Jindal India Limited were facilitated by Ayush and Umang Dhanania. There is a previous police complaint against Ayush and Umang Dhanania. Such police complaint was assailed by way of criminal revision. Such proceeding went up to the Hon'ble Supreme Court. Before the Supreme Court certain documents were disclosed. From such disclosures made by Ayush and Umang Dhanania, de facto complainant came to learn of a letter being issued by BAC Infratech Pvt. Ltd. In further scrutiny, Jindal found adjustments of goods supplied by Jindal India Limited to Khatunaresh Impex Pvt. Ltd., on the basis and strength of payment allegedly made by BAC Infratech Pvt. Ltd. to Jindal India Ltd. He refers to the interim order dated September 8, 2023 passed in CRM (A) 3646 of 2023. He submits that, Ayush and Umang Dhanania were enjoying the interim order on the basis of the submissions made on that date that, Ayush

and Umang Dhanania would place documents to show dues with regard to supplies to Khatunaresh Impex Pvt. Ltd. He submits that, till today, despite affidavits being filed, such documents are not forthcoming. Moreover, out of the documents submitted, five more documents were discovered to be incidents of forgery. His client will be taking steps with regard thereto.

We considered the rival contentions of the parties and the materials in the case diary.

The police complaint revolves around non-payment of dues with regard to supplies made by Jindal India Ltd. to Khatunaresh Impex Pvt. Ltd.

Consequently, Khatunaresh Impex Pvt. Ltd. is required to pay Jindal India Limited of a sum in excess of Rs.3.25 crores. Khatunaresh Impex Pvt. Ltd. did not pay the sum of Rs.3.25 crores to Jindal India Ltd. Non payment is sought to be adjusted by BAC Infratech Pvt. Ltd. to Jindal India Ltd. claiming that BAC Infratech Pvt. Ltd. made the payment to Jindal India Limited. Apparently, such payment was from the Meghalaya Government to Jindal India Ltd. It was the entitlement of Jindal India Limited from the Government of Meghalaya for the supplies effected by the Jindal India Limited to it and cannot be treated as payment for supplies by Jindal India Limited to Khatunaresh Impex Pvt. Ltd.

Khatunaresh Impex Pvt. Ltd. is a legal entity which is controlled and managed by the father of Ayush and Umang Dhanania.

The net result is that Jindal remains unpaid due to such adjustments of accounts between the Ayush and Umang Dhanania and the legal entity of Khatunaresh Impex Pvt. Ltd. which belongs to their father.

Case for investigation stands made out.

The issue is whether custodial interrogation is required or not. **Md. Asfak Alam** (supra) considers various authorities

with regard to requirement of arrest in light of criminal proceedings emanating out of matrimonial disputes. In the facts of that case, the Court found that there was no startling features or elements that stands out or an exceptional fact existed, disentitling the petitioners to anticipatory bail.

As noted above, a sum in excess of Rs.3.25 crores remains unpaid. Complicity of all the petitioners is appearing from the materials in the case diary. Ayush and Umang Dhanania used the legal entity of their father to ensure that Jindal India Ltd. remains unpaid for the supplies effected. The transactions are not limited to commercial transactions but involve criminal liability with the natural persons conspiring to defraud a legal entity under cover of a commercial transaction.

Allowing the petitioners plea of the police complaint is in relation to commercial transaction would be over simplification of the nature of liabilities involved. Attraction of criminal liabilities should not be overlooked. Their role in the incident requires investigation.

Despite the order dated September 8, 2023 where the submissions of Ayush and Umang Dhanania was recorded that, they would be placing documents to show dues with regard to supplies to Khatunaresh Impex Pvt. Ltd. they did not discharge such an obligation. In fact, it is claimed that, some of the documents in support of their claim are also work of forgery.

In such circumstances, we are unable to continue the interim protection or grant anticipatory bail to the petitioners in both the applications.

Prayer for anticipatory bail of the petitioners in both the applications is **rejected**.

CRM (A) 3038 of 2023 along with **CRM (A) 3646 of 2023** are **dismissed**.

Subsisting interim orders in both the applications stand vacated.

IA NO: CRAN 1 of 2023 in CRM (A) 3646 of 2023 is
disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)