



Diksha Rane

906. REVN 291-22.doc

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

CRIMINAL REVISION APPLICATION NO.291/2022

MOHAMMED GOUSE KARIM	..APPLICANT
VS.	
CBI, ACB, MUMBAI	..RESPONDENT

**WITH
CRIMINAL REVISION APPLICATION NO.217/2022**

SANDEEP GANESH YADAV	..APPLICANT
VS.	
CBI, ACB, MUMBAI	..RESPONDENT

**WITH
CRIMINAL APPLICATION NO.510/2022
WITH
CRIMINAL APPLICATION NO.945/2023**

MUKESH P. MEENA	..APPLICANT
VS.	
CBI, ACB, MUMBAI & ANR.	..RESPONDENTS

Adv. Pankti Shah h/f. Adv. Devesh Tripathi for the applicant
in 291/2022.

Adv. Ganesh Gole i/b. Adv. Ashutosh Shukla for the applicant
in APL/510/22 and APL/945/2023.

Adv. Anish Desai a/w. Adv. Genevieve Lobo for the applicant
in Revn/217/2022.

Mr. S. H. Yadav, APP for the State.

Adv. Kuldeep S. Patil a/w. Adv. Ashish Kumar Srivastava for
the respondent - CBI in Criminal Application No.510/2022
and APL/945/2023.

Adv. Hiten Venegaonkar a/w. Adv. Priya Dubey, Adv. Yogini
Sarvankar for the respondent in Revn/291/22 & Revn/217/22

CORAM : M. S. KARNIK, J.

DATE : JANUARY 17, 2024.

ORAL JUDGMENT :

- 1.** Heard learned counsel for the applicants and learned counsel for the respondents.
- 2.** These are the applications challenging the orders passed by the trial Court rejecting the applications for discharged filed by the accused who are charge-sheeted for the offences punishable under Sections 120-B, 409 of the Indian Penal Code (hereafter 'IPC' for short) read with Sections 7, 8, 9, 10, 11, 12, 13(2) read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.
- 3.** The Criminal Revision Application No.217/2022, Criminal Application No.510/2022 and Criminal Application No.945/2023 are filed by the Deputy Commissioners of Customs, that is accused Mukesh P. Meena and Sandeep Ganesh Yadav.
- 4.** So far as the revision applicant (accused no.8) - Mohammed Gause Karim in Criminal Revision Application No.291/2022 is concerned, he is alleged to be the

middleman who facilitated the offence of payment of bribe amount to the accused Mukesh Meena and Sanjay Yadav.

5. Mr. Ganesh Gole, learned counsel for the applicant in Criminal Application No.510/2022 and Criminal Application No.945/2023, Mr. Anish Desai, learned counsel for the applicant in Criminal Revision Application No.217/2022 and Ms. Pankti Shah, learned counsel for the applicant in Criminal Revision Application No.291/2022 took me through the relevant materials on record which is in the form of the paper-book comprising of the present criminal revision applications, criminal applications as well as three volumes of the charge-sheet and the statements of the witnesses. An additional compilation was also filed on behalf of the applicant - Mohammed Gause Karim.

6. The case of the respondents in brief is that the complainants Amjad Mohmad Farooq Bakali and Irfan Popatiya were to import two containers carrying goods. There was misdeclaration on their part as regards the goods to be imported. It is the allegation that the accused Mukesh Meena and Sanjay Yadav demanded bribe amount of Rs.25 lakhs which was later settled at Rs.21 lakhs after

negotiation.

7. Mr. Gole, learned counsel appearing for the accused Mukesh Meena submitted that having regard to the specific nature of duties assigned to him, the applicant/accused Mukesh Meena had no right to withhold or release the containers in question. The role of the applicant was only to supply information which comes to his knowledge of any misdeclaration. It is submitted that the applicant was targeted only because he was actively involved in supplying information about such misdeclaration which was not to the liking of various importers and other officers who had a grudge against him. It is further submitted that on the date when the containers actually landed, the applicant was not on duty. The applicant was on leave from 7/4/2018 to 22/4/2018. The applicant joined the duty on 23/4/2018. It is submitted that the entire case against the applicant Mukesh Meena is based on hearsay evidence. It is the submission of learned counsel that initial allegation is that the part payment towards bribe amount is Rs.5 lakhs was received for two containers, whereas later without any basis it is alleged that the bribe demanded was for four containers.

Mr. Gole submitted that no details are available with the Customs Department regarding four containers and therefore, on the basis of such vague and trumped up allegations when the whereabouts of the containers could not be ascertained, in such circumstances to entertain a complaint regarding corruption charges is not only unfair to the applicant but is an instance of gross miscarriage of justice.

8. My attention is invited to page 161 of the Volume-I which provides for the duties of the applicant. It is submitted that there is no material to indicate the factum as regards the demand and acceptance of the bribe amount. Mr. Gole contended that a scrutiny of the assets of the applicant will reveal that his assets are within the known sources of his income. He further submitted that nothing was found during the house search. It is submitted that the applicant is not the recipient of the bribe amount nor is there any recovery from him.

9. Insofar as Criminal Application No.945/2023 is concerned, it is submitted by Mr. Gole that appropriate action be taken against the respondents for perjury under

Section 340 of the Code of Criminal Procedure as false statements are made in the affidavit that has been filed in this Court which narrates the facts contrary to the materials on record before the trial Court.

10. Learned counsel for the applicant Sandeep Yadav adopted the arguments of Mr. Gole and submitted that so far as the applicant Sandeep Yadav is concerned, there is absolutely no material to indicate the factum of demand and acceptance of the bribe. It is further submitted that factually the bribe amount was never found in the possession of the applicant Sanjay Yadav.

11. Learned counsel for the applicant/accused Mohammed Gouse Karim submitted that the applicant's name nowhere figured in the complaint. It is submitted that there is no material against him except some vague conversation in which it is alleged that the applicant has passed on information about the co-accused Mukesh Meena to the complainants. It is submitted that the applicant has nothing to do with the demand or acceptance and his presence is nowhere noted either at the spot where the money was actually delivered or his presence shown to be with any of

the accused at any point of time. It is submitted that as there is no demand and acceptance by the applicant of the bribe amount, none of the ingredients of the alleged offence can be said to be made out against him.

12. I have carefully perused the statements of the complainants Amjad Mohmad Farooq Bakali and Irfan Popatiya. At the stage of discharge this Court is required to evaluate the material and documents on record with a view to find out the existence of all the ingredients constituting the alleged offence. I have to undertake the exercise for the limited purpose of finding out whether or not a prima facie case against the accused is made out in the facts of this case. This Court is not excepted to conduct a mini trial.

13. The statement of complainant Amjad Mohmad Farooq Bakali clearly reveals that prima facie, there was a demand of the bribe amount by the accused Mukesh Meena and Sanjay Yadav. The said statement reveals the name of the middleman who acted on behalf of the applicants. The statement of 'Chandrashekhar Rane' who was working as dock clerk with various CHA companies at various Container Freight Station at Nhava Sheva is significant. The statement

in detail reveals about the trap panchanama and the manner in which the part of the bribe amount was handed over to the middleman. I may only refer to the relevant portion from the statement of Chandrashekhar Rane which reads thus:-

“We reached Cafe Coffee Day near the Customs Colony, Powai by auto rickshaw. Then we walked towards the entry gate of Customs Colony and stopped near its main gate and waited on the pavement besides which Grey Innova car bearing number MH 46 X 8942 was parked. I called Shri Nilesh from my mobile and informed that we have reached the Customs Colony. Shri Nilesh asked us to wait near his Innova vehicle. After about one hour, I received a call on my mobile from Shri Nilesh wherein Shri Nilesh informed that he would come within 5-10 minutes. After sometime, Shri Nilesh asked both of us to sit in his Innova car. He further pointed towards two persons standing near the main gate of Customs Colony and told that the said two DCs would do their work. He further told that the said DCs who were later identified as Mukesh Meena and Shri Sandeep Yadav would be coming to talk to us. Accordingly we sat in the vehicle and closed the doors. Shri Nilesh opened the front passenger side door of vehicle and stood outside the vehicle and asked for the money. Shri Irfaan Popatia then took out the blue bag containing tainted bribe amount of Rs. 5 lakhs with his right hand and handed it over to Shri Nilesh which he accepted with his right hand and kept the same in the front passenger seat. Shri Nilesh then went and opened the dicky and brought a laptop bag and kept it on the floor of the car below the front passenger seat. Shri Nilesh then opened and checked the said blue bag handed over by Shri Irfaan Popatia and took out the tainted GC notes and enquired as to how much is the amount. Irfan informed that total five lakhs is there. Then Shri Nilesh took out a white polythene bag from the said laptop bag and kept one bundle of Rs. 2000/- denomination amounting to Rs 2 lakhs and kept the blue bag containing the remaining bribe amount in the laptop bag. Shri Nilesh then went to Shri Mukesh Meena and Shri Sandeep Yadav, both Dy. Commissioner of Customs who were standing near the gate of Customs Colony to hand over the same. It was seen on the instructions of one of the DCs (who was later identified as Shri Mukesh Meena), Shri Nilesh then went to the Security Guard cabin and handed over the said white polythene bag containing Rs. 2 lakhs to one

security guard who was later identified as Shri Mohammad Rafi. Thereafter Shri Nilesh came back to Innova vehicle and took the front passenger seat. Shri Nilesh then took out the blue bag handed over by Shri Irfaan Popatia and put two bundles of Rs. 500/- denomination in the said blue bag from the laptop bag and again kept back the blue bag in the said laptop bag. Shri Nilesh told that 'sahab' will come to talk to us. Then Shri Nilesh instructed the driver of the vehicle to move the vehicle forward. At this juncture, Shri Irfan Popatia took out the handkerchief and wiped his face as a signal of delivery of the bribe amount to Shri Nilesh.

Immediately Shri R. S. Gosain, Pt who was stationed near the Income Tax Colony gate took his vehicle and blocked the movement of the vehicle in which Shri Nilesh Singh was sitting. Simultaneously other CBI team members also blocked the said Innova car. Immediately Shri Satish Bhogulkar, PC took out the DVR from the person of Shri Irfan and stopped the recording and switched it off and handed over the same to same to Shri Nagargoje Panch No. 2 for safe custody. Shri R. S. Gosain, PI knocked on the window of the passenger seat of the car and asked Shri Nilesh Singh to unlock the door. On doing so Shri R. S. Gosain, PI disclosed his identity to Shri Nilesh Singh. On enquiry Shri Nilesh Singh revealed that he has taken Rs. 5 lakhs on behalf of Shri Mukesh Meena, Deputy Commissioner, Customs R. & I., Speedy CFS, Nhava Sheva and out of Rs. 5 Lakhs he has handed over Rs. Two lakhs to the security guard on the say of Shri Mukesh Meena, DC while rest of the amount of Rs. 3 lakhs is kept in his Taptop bag. On the instructions of Shri R. S. Gosain, PI Shri Balwinder Singh, PSI rushed to the main gate of Customs Colony where Shri Mukesh Meena and another person were standing and conversing. On revelation of their identities they were brought in one of the vehicles. The other person was identified as Shri Sandeep Yadav, DC, Customs, JNCH."

14. Further from the statement of PW-8- Nivrati Tukaram

Shirsat, who was the security guard , it reveals thus:-

"On being asked I state that today ie. 30.04.2018 at about 1700 hrs. on fair beard man having big scar on left side of his face, who I later identified as Shri Nilesh Singh had come to me and gave me one white polythene bag said to be containing Rs. 2- lakhs and told me to give the said polythene bag to Supervisor Shri Muhammad Rafique Azad Khan. At the same time I saw Shri Muhammad Rafique @ Azad Khan returning from the wash room. Shri Mukesh Meena and Shri

Sandeep Yadav, both Custom Officers were standing near the gate and I heard them telling Shri Muhammad Rafique to keep the polythene bag containing Rs. 2 lakhs with him and they will take it after sometime.”

15. Apart from this there are materials in the form of transcripts and voice identification panchanama, verification panchanama which prima facie reveal the complicity of the applicants Mukesh Meena and Sandeep Yadav. Reference to the statement of PW-9 – Muhammad Rafique Abdul Gani will also throw some light on the matter. The statement reads thus:-

“As I was coming from wash room, Shri Mukesh Meena and Shri Sandeep Yadav, both Custom Officers who were standing near the gate told me to keep the said white polythene bag containing Rs. 2 lakhs and also told that they will take it after sometime and after that Shri Nivrati Tukaram Shirsat gave me the said polythene bag containing Rs. 2 lakhs and after taking it from Shri Nivrati Tukaram Shirsat, I kept the said white Polythene bag containing Rs. 2 lakhs in my bag which was further to be given to Shri Mukesh Meena and Shri Sandeep Yadav.”

16. In my opinion, the materials on record prima facie shows the existence of all the ingredients constituting the alleged offence. Learned counsel for the applicants nonetheless urged that the materials at the highest would be in nature of hearsay evidence. In my view, when the materials on record taken at its face value prima facie reveal the complicity of the applicants, the submissions of

learned counsel for the applicants are then in the realm of appreciating the statements and the materials on merits to hold the applicant as not guilty. Such exercise is not permissible for me to undertake at the stage of considering the application for discharge on the touchstone of the well established principles guiding this Court by the Supreme Court in the matter of discharge.

17. So far as the applicant Mohammed Gouse Karim is concerned, the voice recordings which are placed on record does show his complicity that he facilitated the commission of the alleged offence. The applicant is a vital link in the whole chain and hence having regard to his role as indicated in the recorded conversation it would not be appropriate to discharge him.

18. I have gone through the order of the trial Court. I see no reason to interfere with the order of the trial Court.

19. So far as the Criminal Application No.945/2023 for perjury is concerned, I am not inclined to entertain the application as I have decided the application based on the materials on record and not with reference to the affidavit filed by the respondents. Mr.Kuldeep Patil submitted on

instructions that in any case the respondents are withdrawing the affidavit filed without prejudice to their rights and contentions before the trial Court. Affidavit is allowed to be withdrawn without prejudice. In this view of the matter, I am not inclined to entertain the Criminal Application No.945/2023. The application consequently stands disposed of.

20. It is made clear that the observations made in this order are limited for considering the application for discharge on the principles laid down by the Hon'ble Supreme Court guiding this Court. These observations obviously will not influence the trial Court. The trial Court shall proceed with the trial on its own merits and in accordance with law without being influenced by any of the observations.

21. The applications are rejected and disposed of accordingly.

(M. S. KARNIK, J.)