

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

ANTICIPATORY BAIL APPLICATION NO.785 OF 2024

1. Sunil Mishra, &
2. Pramod Pandey.Applicants
Versus
State of Maharashtra Respondent

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WITH

ANTICIPATORY BAIL APPLICATION NO.786 OF 2024

Subodh Kumar RaiApplicant
Versus
State of Maharashtra Respondent

Dr. Abhinav Chandrachud, Advocate a/w. Suyash Nitin Khose, Unnati Ghia, Abhishek Nandimath, Ashwin Hirulkar & Prashant Pathe, for the Applicants.

Mr. Avinash A. Naik, APP for the Respondent-State in ABA/785/2024.

Ms. Pallavi N. Dabholkar, APP for the Respondent-State in ABA/786/2024.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st MARCH, 2024

PRADIPKUMAR
PRAKASHRAO
DESHMANE

P.C. :

1. In both these applications, today a common order is passed.

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2. The Applicants are seeking anticipatory bail in connection with C.R.No.367/2023 registered with Dattawadi Police Station, Pune on 5.12.2023 under Sections 406, 409, 420, 120-B read with 34 of IPC.

3. Heard Dr. Abhinav Chandrachud, learned counsel for the Applicants, Mr. Avinash Naik, learned APP for the Respondent in ABA/785/2024 and Ms. Pallavi Dabholkar, learned APP for the Respondent-State in ABA/786/2024.

4. The FIR is lodged by one Neeraj Dighe, who was working with M/s. Tunwal E Motors India Private Limited. He was working as the H.R. Manager with that company. Their company was in the business of assembling various parts in manufacturing the electric two-wheelers. They used to order spare parts, chargers, motors, frames etc. from a company in China. The present Applicants were concerned with M/s. R.K. Container Line Private Limited. Said company was in the shipping business. Their job was to receive the goods imported from the Chinese Company

at Nhava Sheva port. Thereafter the containers were to be taken to the Container Freight Station. Thereafter they had to pay the charges and give documents to the Custom House Agent Lalit Bhabhada. The Applicants' company was supposed to give NOC for all this process; then only the goods, after processing all the documents, could be taken out from the port. The allegations are that there were past completed transactions between the complainant's company and the Applicants' company. The subject matter of the FIR is the order placed by the complainant's company on 26.8.2021. The goods were received on 3.12.2021 through eight containers and on 17.1.2022 through four containers at Nhava Sheva port. However, the goods were not taken out of the Port as the requisite charges were not parted with by the Applicants' company. It is case of the informant that they had transferred the requisite amount in the Applicants' company's account and yet the Applicants' company did not make payment of the charges. Therefore, the goods remained in the port and

ultimately the detention charges escalated to a very high amount. The goods were never received by the complainant's company and, therefore, this FIR is lodged. According to the informant, the complainant company had suffered heavy losses to the tune of more than Rs.2,33,00,000/- in respect of the customs duty charges etc. and also suffered because they did not receive the goods in those twelve containers. On this basis, the FIR is lodged.

5. Learned counsel for the Applicants submitted that the learned Additional Sessions Judge has not decided their Application on merits, but, it was rejected only on the ground that the factum of preferring the transit anticipatory bail application in the Court at Delhi was not mentioned in their Anticipatory Bail Application. He submitted that the Applicants Sunil Mishra and Pramod Pandey had preferred transit anticipatory bail application in a Sessions Court at Delhi, but, it was withdrawn immediately after filing of the anticipatory bail application

before the Court of Sessions at Pune. The Applicant Subodh Rai had never preferred any transit anticipatory bail application and even his anticipatory bail application was rejected on the same ground. He submitted that non-mentioning of the transit anticipatory bail application before the Delhi Sessions Court made no difference to the filing of the anticipatory bail application before the Pune Court because the competent court was the Court at Pune.

6. Apart from that, on merits, learned counsel for the Applicants submitted that the complainant company had approached the High Court of Delhi for filing Commercial Suit and for that purpose the required process of pre-litigation mediation was initiated, though ultimately it failed. Which shows that the complainant company had accepted that it was a commercial dispute and not a criminal offence. He submitted that the amounts which the Applicants' company had received in their account was pertaining to the services provided by the Applicants' company and it was a different amount than the amount

required for payment of charges in respect of the goods received in December, 2021 and January, 2022. He submitted that admittedly the Bill of Lading was received on both the occasions for both these shipments belatedly. The first Bill of Lading was received on 17.2.2022 and the second one was received on 17.3.2022. Without the Bill of Lading, no documents could be processed further. For escalation of detention charges the Applicants' company or the Applicants could not be held responsible.

7. Considering these submissions, the investigating agency will have to respond to those submissions. Moreover I am inclined to grant a chance to the Applicants to explain this position to the investigating agency. For that purpose, the Applicants can be protected by way of ad-interim relief with directions to attend the investigating agency's office to explain their stand. At this stage, learned counsel for the Applicants has made out a case for grant of ad-interim relief. Hence, the following order:

ORDER

- (i) In the event of their arrest in connection with C.R.No.367/2023 registered with Dattawadi Police Station, Pune, till the next date, the Applicants be released on bail on their executing P.R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.
- (ii) This order shall operate till 24.4.2024.
- (iii) The Applicants shall attend the concerned Police Station from 1.4.2024 to 4.4.2024 between 1:00 p.m. to 5:00 p.m. and thereafter as and when called. The Applicants shall cooperate with the investigation.
- (iv) Stand over to 24.4.2024.

(SARANG V. KOTWAL, J.)