

**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
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 1652 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 785 OF 2024**

Niraj Narayan Dighe ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
ANTICIPATORY BAIL APPLICATION NO. 786 OF 2024**

Subodh Kumar Rai ... Applicant
Versus
The State of Maharashtra ... Respondent

**WITH
INTERIM APPLICATION NO. 1661 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO. 786 OF 2024**

Niraj Narayan Dighe ... Applicant
Versus
The State of Maharashtra ... Respondent

Dr. Abhinav Chandrachud a/w Ashwin Hirulkar, Pranit Kulkarni
i/by Suyash Khose, Prashant Pathe and Siddharth Sutaria for the
Applicants in both Bail Applications.

Mr. Mayur S. Sonavane, APP for Respondent-State.

Mr. Yuvraj Narvankar for the Applicant in IA/1652/2024 and IA/
1661/2024.

Mr. Sachin Pawar, PSI, Parvali Police Station, Dist. Pune.

CORAM: MANISH PITALE, J.
DATE : 17th DECEMBER 2024

P.C. :

. Heard learned counsel for the applicants and learned APP for the respondent-State, as also the learned counsel appearing for the intervenor (first informant).

2. This Court (Coram: Sarang V. Kotwal, J.) by an order dated 21st March 2024 granted interim relief in favour of the applicants, taking note of the submissions made on behalf of the applicants, particularly a submission indicating that the dispute was essentially a commercial/civil dispute between the parties, sought to be given the colour of criminality.

3. The applicants were required to cooperate with the investigation and to attend the Police Station on specific dates, as per the conditions imposed in the interim order.

4. The learned APP submitted that although, the applicants did appear before the Police Station and thereafter, when they were called on different dates, but when all the three applicants were asked to attend the Police Station to report to the Investigating Officer together, they failed to do so and therefore, it can be said that the applicants have not cooperated with the investigation.

5. The learned counsel for the applicants reiterated the

submissions that were made before this Court when the interim order was granted. He further brought to the notice of this Court the exchange of correspondence in the form of emails between the applicants and the first informant, to emphasize that the nature of dispute was nothing but a commercial/civil dispute between the parties. Attention of this Court was also invited to a notice dated 27th January 2023 issued at the behest of the first informant to the applicants for mediation before the Delhi High Court Legal Services Committee, obviously as a precursor to a commercial suit being eventually filed. The notice was issued under Section 12A of the Commercial Courts Act, 2015. It was submitted that after the attempt at mediation failed, the first informant chose to approach the Police for registration of the FIR. It is submitted that the applicants have cooperated with the investigation and since the dispute is nothing but a commercial/civil dispute, this Court may consider confirming the interim order and allowing the applications.

6. On the other hand, the learned APP and the learned counsel appearing for the intervenor/first informant, vehemently opposed the present applications. The learned APP relied upon investigation papers to contend that the applicants had dishonest intention from the very inception, as they took large sum of money from the first informant, ostensibly for the purpose of providing efficient service of receiving delivery of goods imported from China. Despite the fact that the informant had deposited all

the necessary charges, including amounts towards detention charges, the applicants did not provide appropriate service and this resulted in further detention charges being levied, eventually resulting in the auction of the said goods as the informant could not pay the exorbitant detention charges levied on the said goods. It was submitted that the dishonest intention of the applicants is evident from the material on record. This was supported by the learned counsel for the first informant, who further submitted that the emails on record would show that due to the failure on the part of the applicants to pay detention charges, the informant was constrained to approach the authorities to seek waiver of further detention charges, thereby indicating that the applicants from the very inception had the intention to cheat the informant.

7. This Court has considered the rival submissions. The contents of the interim order dated 21st March 2024 passed by this Court, indicate as to what impressed this Court to grant interim relief in favour of the applicants. Although, it is claimed that the applicants have not fully cooperated with the investigation, this Court is of the opinion that since they abided by the directions issued by this Court to remain present before the Investigating Officer, it can be said that they have cooperated with the Investigation. They have also undertaken to continue to cooperate with the investigation.

8. This Court is of the opinion that the voluminous documents on record do indicate that there are claims and counter claims

made by the applicants on the one hand and the first informant on the other. It appears that according to the first informant, there was large amount of money already deposited with the applicants, which could have been utilized to pay the detention charges, but the applicants failed to do so, with the result that further detention charges were levied and eventually this led to auction of the goods, which were imported from China. This is firmly denied by the applicants.

9. It is to be noted that even according to the first informant, this was not the first occasion on which the services of the applicants were engaged. In fact, the statement of the informant, leading to registration of the FIR, records that on earlier occasions, the informant was indeed satisfied with the services provided by the applicants. It appears that according to the applicants, certain amounts were due and payable to them. Once the claim towards such amount being payable by the applicants was disputed, it would have to be resolved before the appropriate forum with the parties having opportunity to lead evidence.

10. The fact that the dispute can be said to be essentially a commercial/civil dispute, is supported by the notice issued by the informant itself under Section 12A of the Commercial Courts Act, 2015 on 27th January 2023. The said attempt at mediation failed on 20th April 2023. The FIR was registered much later on 5th December 2023, the sequence of events and the exchange of communications in the interregnum between the parties, creates a

strong *prima facie* case in favour of the applicants that the nature of dispute could be said to be a commercial/civil dispute and the FIR appears to have been filed to give the colour of criminality to the said dispute. Therefore, the applicants have made out a strong case in their favour for confirming the interim order and for allowing the applications.

11. In view of the above, the interim order dated 21st March 2024 is confirmed and both the applications are allowed, subject to the applicants continuing to cooperate with the investigation. They shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

MANISH PITALE, J.