IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1384 OF 2024

Bijal Prakash Uchat	…	Applicant
vs.		
The State of Maharashtra	…	Respondent

Mr. Prakash Thombre, i/b. Ms. Gayatri Shahane for applicant.

Ms. Rutuja Anil Ambekar, APP for respondent-State.

CORAM : MANISH PITALE, J.
DATE : 30th JULY, 2024

P.C. :

. Heard learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant is apprehending arrest in connection with FIR No.0309 of 2022 dated 25.11.2022 at Police Station Niphad, District Nashik Rural for offences under Sections 406, 409, 420, 465, 468 and 471 read with Section 34 of the Indian Penal Code, 1860 (IPC). The applicant is one of the seven named accused persons in the FIR. This Court is informed that only one accused person Balaji Nityanand Pillai was arrested, who was granted regular bail and that all the other accused persons, including the applicant, are absconding.

PRIYA KAMBLI Digitally signed by PRIYA KAMBLI Date: 2024.07.30 18:26:33 +0530

3. The informant is a proprietor of Vridavan 21 Exports, engaged in export and import of vegetables and fruits. The informant has stated that in the years 2017 and 2018, when he was interested in exporting grapes, the

accused persons, including the applicant, were in touch with him and they conspired to convince the informant to export grapes to a German company called Ms. ABC Fresh GMBH. It is alleged that lucrative return was promised and in that regard, advance amount was also credited to the informant, due to which he engaged the services of the accused persons, including the applicant for exporting grapes to the said German company. It is the case of the informant that the balance amount was never paid to him and he suffered loss of about ₹ 76,13,624, equivalent to 95170.3 Euros. The informant further alleged that the balance amount, which itself was less than the expected balance amount, was credited to one M/s. Shrinathji Sevenseas Container Lines Pvt. Ltd. (Shrinathji Sevenseas), which is a sister concern of Shrinathji Agro Foods Industry Pvt. Ltd. (Shrinathji Agro) with which the other accused persons are concerned. It is alleged that the aforesaid amount stood credited in the said account as a fabricated communication was sent to the German company purportedly on behalf of the informant, requesting such balance amount to be deposited in the aforesaid bank account. On this basis, it is alleged that all the accused persons, including the applicant, caused heavy financial loss to the informant, leading to registration of the aforesaid offences against the accused persons.

4. The learned counsel appearing for the applicant made the following submissions:

(a) The dispute is really between the informant concerned with Vrindavan-21 Exports and the co-accused persons, some of whom are the directors of Shrinathji Agro. It is submitted that the two entities have been doing business with each other from the year 2014 and that the applicant is merely a facilitator, who is engaged in facilitation of such transactions of export and import of agricultural products. The applicant is paid commission for providing such service.

(b) The FIR is registered belatedly because the grievance of the informant pertains to the year 2018, while the FIR is registered on 25.11.2022.

(c) An earlier FIR was registered in the year 2018 bearing FIR No.134 of 2018 at Police Station Pimplagaon, District Nashik at the behest of the very same informant against the directors of Shrinathji Agro, who are also arraigned as accused in the subject FIR. In the said FIR, there is no allegation made against the applicant although the grievance in the said FIR also pertains to the year 2018.

(d) The learned counsel for the applicant handed over a compilation of documents, which is taken on record. By referring to the documents therein, it was submitted that the grievance of the informant was actually against the directors of Shrinathji Agro as according to the informant, there was a huge amount due from them. The informant has also a grievance about certain cheques that have been dishonoured and the notice as well as reply exchanged between the said parties indicated a long-standing relationship which appeared to have soured somewhere in the year 2018. None of the said documents point towards involvement of the applicant.

(e) The serious allegation pertaining to forgery and fabrication of the letterheads and the communications sent to the German company in April 2018, cannot be linked with the applicant at all. There is nothing to show the involvement of the applicant insofar as the said act is concerned, apart from a general allegation made in the statement of the informant.

(f) The balance amount due and payable to the informant was reduced due to the German company giving border line credit score for the grapes exported by the informant and therefore, reduced balance amount sent by the German company also stands justified and the grievance of the informant about the loss suffered to the extent of ₹ 76,13,624 is based on imaginary considerations.

(g) The applicant is ready to co-operate with the investigation and therefore, his custody is not justified.

5. On the other hand, the learned APP made the following submissions:

(a) At the outset, it was submitted that there is no delay in registration of FIR, simply for the reason that the informant had raised the grievance within reasonable time and when the FIR was not registered, he was constrained to move the jurisdictional magistrate in April 2022. Thereupon, the FIR came to be registered and therefore, there is no delay in registration of FIR.

(b) A perusal of the statement of the informant would show that allegations are indeed made against the applicant also about the inducement given to the informant and the fabrication of the letterheads of the informant to ensure that the balance amount was deposited in the account of Shrinathji Sevenseas, instead of being deposited in the account of the informant.

(c) The documents on record show that the German company addressed communications to the informant and also marked the same to the applicant, thereby indicating that insofar as the German company was concerned, the point of contact was the applicant. This shows the involvement of the applicant in the entire transaction and hence, his custody his necessary.

(d) Even if the amount transferred by the German company on paper presently is shown as credited only in the account of Shrinathji Sevenseas with whom the co-accused persons are concerned, complicity and involvement of the applicant is evident from the incriminating circumstances and the documents on record.

(e) One of the offences registered against the accused persons, including the applicant, involves punishment upto life imprisonment and since the applicant has not responded to the notice sent by the investigating officer, no indulgence deserves to be shown to the applicant.

(f) Reference is made to the supplementary statement dated 07.03.2024 of the informant where it is specifically alleged that the applicant, as an intermediary, had ensured that the informant is duped and the balance amount never made its way to the informant.

6. This Court has considered the rival submissions. If the documents tendered during the course of arguments are taken into consideration, it is found that the grievance pertaining to the present FIR appears to have been first raised by the informant on 27.10.2020 when he addressed a complaint to the Police Station at Pimpalgaon, District Nashik against the co-accused persons and the applicant. A perusal of the said complaint shows that the grievance pertains to the transaction that took place in the years 2017 and 2018. Eventually, the subject FIR came to be registered on 25.11.2022 at Police Station Niphad, District Nashik although the initial grievance was raised at Police Station Pimpalgaon. The aforesaid complaint submitted by the informant shows that on 27.10.2020, such a grievance pertaining to the transaction of the years 2017 and 2018 was raised. Hence, *prima facie*, there appears to be delay on the part of the informant in raising his grievance. The time period consumed after the year 2020 is another matter. But, there is nothing to indicate that the informant raised the aforesaid grievance any time prior to 27.10.2020.

7. A perusal of the the statement of the informant, leading to registration of FIR and his supplementary statement would show that according to him, the applicant alongwith the co-accused persons, induced him into entering into the said transaction in which, eventually the informant suffered heavy financial loss. The role of the applicant is stated to be that of an intermediary. In fact, the applicant himself has claimed in the application that he is a facilitator of such transactions pertaining to import and export of agricultural products. The allegation pertaining to forged and fabricated letterheads of the informant used for the balance amount to be credited into the account of Shrinathji Sevenseas, as discernible from the statement of the informant, shows that such an allegation is not specifically made against the applicant. The allegation is generally made against all the accused persons.

8. The other material on which much emphasis is placed by the learned APP is the number of documents on record indicating that the German company, while addressing communications to the informant in the context of the export of grapes, also marked the same to the applicant. This Court is of the opinion that the aforesaid factor in itself cannot lead to the conclusion that a *prima facie* case is made out against the applicant, considering the fact that the applicant is a facilitator of such transactions of import and export.

9. What is crucial is as to whether there is any material to indicate that the balance amount which the German company was supposed to credit, in any manner, found its way to the account of the applicant and whether there is any material to show that the applicant could be said to be the beneficiary of such amount.

10. There is not even an allegation to that effect in the statement of the informant and his supplementary statement recorded during the course of investigation. Investigation papers do not show any such material to indicate that the applicant could be said to be a beneficiary of the amount that was allegedly wrongly credited to Shrinathji Sevenseas, when the informant was entitled to such an amount.

11. The thrust of the allegations appears to be against the directors of Shrinathji Agro. There is sufficient material brought to the notice of this Court on behalf of the applicant to indicate that the informant and Shrinathji Agro have been doing business at least from the year 2014. It appears that in the year 2018, the relations deteriorated in the light of the grievance of the informant about the financial loss caused to him and his proprietary concern, due to the acts of the directors of Shrinathji Agro. This is evident from the fact that in the FIR No.134 registered in the year 2018, the directors of Shrinathji Agro have been arraigned as accused persons. There is no allegation against the applicant with regard to the said FIR.

12. It appears that a cheque issued in favour of the informant by Shrinathji Agro was dishonoured and in that context, notice was issued on behalf of the informant. The reply to the said notice brings out the fact that there were continuous business transactions between the two entities i.e. Vrindavan-21 Exports and Shrinathji Agro and at one point, the informant even claimed that certain amount was given as financial aid to Shrinathji Agro, which was to be repaid. In none of these transactions, is role of the applicant highlighted.

13. Therefore, it appears that as a facilitator, the applicant did play his role, as regards the supply and export of grapes to the aforesaid German company in the year 2018. To that extent, the involvement of the applicant is evident. But the material on record falls short of making out a *prima facie* case against the applicant with regard to the offences registered against the accused persons, including the serious offence of forgery pertaining to Section 467 of the IPC.

14. The investigating officer can certainly call upon the applicant to co-operate with the investigation, as his association with the said transaction appears to be evident from the material on record. So long as the applicant is ready to co-operate with the investigation, he has made out a case for granting relief in the present application.

15. In view of the above, the application is allowed in the following terms:

(i) In the event the applicant is arrested in connection with FIR No.0309 of 2022 dated 25.11.2022 at Police Station Niphad, District Nashik Rural, he shall be released on bail on furnishing PR Bond of ₹ 50,000/- with one or two sureties in the like amount to the satisfaction of the trial Court;

(ii) the applicant shall remain present before the Investigating Officer on 01.08.2024 and 02.08.2024 between 10:00 a.m. and 12:00 noon and thereafter, as and when the Investigating Officer calls upon him to remain present;

(iii) the applicant shall not tamper with the evidence of the prosecution in any manner. He shall not influence the informant, witnesses and other persons concerned with the case;

(iv) the applicant shall co-operate with the investigation and also in the proceedings before the trial court. He shall produce all documents in his custody pertaining to the transaction in question.

16. In the event, the applicant violates any of the conditions specified in this order, it shall be liable to be cancelled.

17. It is also clarified that the observations made in this order are limited to the disposal of the present anticipatory bail application and the trial court shall proceed further in the matter without being influenced by the observations made hereinabove.

18. The application stands disposed of.

(MANISH PITALE, J)

Priya Kambli