IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2068 OF 2024

1. Shahid Aziz Inamdar
2. Aziz Gulab Inamdar ... Applicants

vs.

The State of Maharashtra ... Respondent

Mr. Nitin Gaware Patil a/w. Mr. Shubham Wadne, i/b. Mr. Shantanu Kolhe for applicants.

Ms. Megha S. Bajoria, APP for respondent-State.

Mr. Kailas S. Jadhav, PSI, Panchavati Police Station, District Nashik.

CORAM : MANISH PITALE, J.
DATE : 27th NOVEMBER, 2024

P.C. :

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

2. On 07.08.2024, this Court had granted interim order in favour of the applicants, subject to certain conditions, including a direction to appear before the investigating officer on 09.08.2024 and thereafter, as and when called by the investigating officer.

3. The learned APP, on instructions, makes a statement that the applicants indeed abided by the said direction and they appeared before the investigating officer on three occasions. This does indicate that the applicants have co-operated with the investigation.

4. After the interim order was passed, on 01.10.2024, this Court recorded a particular submission made by the learned APP and it was observed that material in the form of invoices or any other such documents, would have to be perused, to understand the true nature of the grievance of the informant. This was because the learned APP submitted that the investigation had revealed sufficient material to indicate that from the inception, the applicants dishonestly induced the informant into supplying Shimla apples and thereafter, they failed to pay the amount due towards supply of such apples, thereby indicating that the ingredients of the offences registered against the applicants are clearly made out.

5. Today, when the application is called out for hearing, the learned APP has produced copies of invoices which are said to be tallying with the claim made by the informant in the statement, leading to registration of FIR. It is submitted that all such invoices, except one, are available and copies thereof are produced before the Court to indicate that the aspect of dishonest intention on the part of the applicants from the inception, is *prima facie* made out.

6. On the other hand, the learned counsel for the applicants submits that the informant has not been able to show at any place, as to what was the rate of boxes of Shimla apples. It is submitted that there is no written agreement between the parties and therefore, the claims made by the informant are seriously disputed by the applicants. It is emphasized that even according to the informant, substantial amount of about ₹ 37 lakhs was received by him. In such a situation, it was submitted that this Court may allow the application, as the genesis of the dispute is nothing but a civil/commercial dispute between the parties.

7. While granting interim relief in favour of the applicants on 07.08.2024, this Court recorded the following reasons:

> "6. Considering the aforesaid submissions, this Court is inclined to grant interim relief to the applicants for the following reasons:-
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> a. The applicants have placed on record statements of bank accounts to indicate that between 12.08.2023 and 05.10.2023 when boxes of the aforesaid fruits were made available by the applicants, specific amounts were transferred into the account of the informant. According to the applicants, after taking their 7% commission, amount of Rs.37,00,000/- was due and that the amounts paid from time to time to the informant come to a total of Rs.37,00,000/-;
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> b. The grievance of the informant as reflected from the statement, leading to registration of the FIR shows that according to the informant, a much larger amount was due from the applicants and that further amount of Rs.37,66,118/- was required to be paid. In the absence of any written agreement on which the informant can rely, prima facie, the dispute appears to have the colour of a commercial / civil dispute;
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> c. Today, the investigation papers are not available to support the contention raised by the learned APP that the applicants are habitual offenders. The nature of the other cases registered against the applicants will have to be perused to appreciate the said contention in its entirety;
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> d. The applicants are ready to co-operate with the investigation."

8. The aforesaid reasons hold good, for the reason that even if the copies of the invoices tendered by the learned APP are taken into consideration, there is nothing to indicate that the applicants had acknowledged the rates recorded in the said invoices. There is no dispute between the applicants and the informant about the number of boxes supplied on specific dates between

12.08.2023 to 05.10.2023, but the real dispute appears to be the amount payable to the informant for supply of such boxes. It is not as if the applicants did not pay any amount at all to the informant. But, the amount claimed by the informant is seriously disputed by the applicants. This *prima facie* indicates that the dispute could be said to be of civil/commercial nature, for which the informant may have to institute appropriate proceedings for recovery. *Prima facie*, the aspect of dishonest intention from the very inception, cannot be said to be made out against the applicants and therefore, this Court is inclined to allow the application.

9. In view of the above, the interim order dated 07.08.2024 is made absolute and the application is allowed.

10. The applicants shall continue to co-operate with the investigation. They shall not tamper with the evidence of the prosecution in any manner. They shall not influence the informant, witnesses and other persons concerned with the case.

(MANISH PITALE, J)

Priya Kambli