

Bail Application no. 1300/2022
State v. Anuj Nath
FIR No. 35/2022
P.S Connaught Place
U/s 406 IPC

29.07.2022

Present: Sh. Irfan Ahmed, Ld. Addl. PP for State with IO.

Sh. Manish Makhija, Ld. Counsel for applicant/accused

Sh. Puneet Mittal, Ld. Senior Advocate with Sh. Alishan Naqvee, Ms. Suman Naqvi and Ms. Rupal Bhatia, Ld. Counsel for complainant. (Vakalatnama filed)

Present is an application moved on behalf of applicant Anuj Nath for grant of anticipatory bail. It is submitted that the allegations, as alleged in the FIR, do not make out any criminal case against the applicant and the pending dispute between the parties is purely civil in nature. It is submitted that applicant/accused and the complainant were doing business together since 2001 and present FIR has been lodged by the complainant in order to pressurise the applicant to bow down to the illegal dictates of the complainant. It is submitted that applicant/accused is apprehending his arrest as he is getting warnings from the complainant that he shall be arrested as and when he will join the investigation. It is submitted that applicant/accused has already joined the investigation and he is fully cooperating in the on going investigations. It is thus prayed that applicant/accused may be released on anticipatory bail on any term or condition imposed by this court.

Ld. Addl. PP for State duly assisted by Ld. Senior Advocate for the complainant has vehemently opposed the bail application arguing that the complainant company SSIPL Life Style Private Ltd and accused company The Ivory Palace entered into a Retail Agreement dated 06.0.2014 with respect to the store at Connaught Place for the period w.e.f 01.10.2014 to 31.05.2017 and as per the agreement, the accused persons are in possession of the said store

and were entrusted with huge sums of money, furniture/fixtures, shoes and apparels under the brand name of Levis Strauss. It is submitted that the accused persons were expected to sell the products and deposit the sale amount in the bank account of the complainant company after deducting the minimum guarantee/commission. It is submitted that after the expiry of Retail Agreement on 31.05.2017, new terms and conditions could not be drawn up and the accused persons continued to do the retail business on adhoc basis at reduced rate of minimum guarantee and made the payment for May, 2017. It is submitted that vide email dated 20.05.2020, the complainant company discontinued the said adhoc arrangement. It is submitted that as per the terms and conditions, after the termination of the said agreement, the complainant is entitled to remove the furniture and fixtures but the accused persons illegally and wrongfully manipulated the furniture and fixtures of the complainant in their new retail store with another brand. It is submitted that accused persons refused to return the furniture and fixture worth Rs.3,66,499/- and during audit and physical inspection, it was revealed that stock/inventory worth Rs.34 lacs is missing. It is further submitted that as per Clause 2 of the Retail Agreement, the refundable sum of Rs.70 lacs is to be returned by the accused persons in case of expiry of early termination of the agreement. It is further submitted that accused persons while working on adhoc basis deducted the minimum guarantee at reduced rate of minimum guarantee as stated and paid Rs.24.15 lacs for the last month i.e. May 2017 and for June, 2017 to November, 2018, they deducted Rs.24.15 lacs under the Retail Agreement. It is further pointed out that all of a sudden, the accused persons unilaterally deducted minimum guarantee for past periods from December 2018 to February, 2019 and thereafter suo moto increased the minimum guarantee by around Rs.3 lacs per month and in this way, they enriched themselves with approximately Rs. 1,21,87,960/- for the the period of three years. It is submitted that investigation in the present case is still under progress and custodial

interrogation of applicant/accused is very much required to recover the inventory of the complainant, security amount of Rs.70 lacs and furniture/fixture of the complainant company.

I have heard the rival submissions and also gone through the material available on record.

The prosecution is alleging the commission of offence of breach of trust on account of failure of the applicant to return back the following articles /sum to the complainant :-

1. The accused persons have failed to return the fixtures and furniture.
2. The accused persons have failed to return the security amount of Rs.70 lacs.
3. The accused persons have failed to return around 1825 articles worth about Rs.34 lacs.

Ld. Counsel for the applicant has brought to my notice certain communications between the litigating parties wherein the accused persons have time and again requested the complainant to remove the impugned fixtures and furnitures. Similarly, there is SMS message between the counsel for the applicant/accused and the counsel for the complainant whereby Ld. Counsel for the complainant has requested the Ld. Counsel for the accused to advise his client to remove the stock from the premises of the applicant/accused. Ld. Counsel for the complainant has also drawn my attention to the invoices summary whereby around 17,215 articles worth about Rs.4,80,96,563/- were returned back by the applicant/accused to the complainant.

Further, Ld. Counsel for the applicant/accused has also drawn my attention towards certain E-way bill to contend that as per the Collaboration Agreement, a sum of Rs.1,25,71,750/- is outstanding against the complainant company after adjustment of the above stated security amount of Rs.70 lacs. In all fairness, Ld. Counsel for the applicant/accused submits that

upon settlement of accounts, if there is any outstanding amount required to be paid to the complainant, the accused persons shall make good the liability.

In my considered opinion, dishonest misappropriation or conversion of entrusted property to one's own use or dishonest use/disposal constitutes the gravamen of the charge for commission of the offence u/s 405 IPC. *Actus non facit reum nisi mens sit rea* i.e. an act in itself is no offence unless accompanied with a guilty intent. In the case at hand, the dispute primarily appears to be civil in nature. No guilty intention ought to be imputed against a person who under a bonafide claim is ready and willing to make good his obligations upon settlement of accounts. The respective liabilities in such a scenario ought to be decided before a competent forum in an appropriate litigation and not before a criminal court. Hon'ble Apex Court in the matter of **Satish Chandra Rattanlal Shah v. State of Gujarat & anr (2019) 9 SCC 148** has cautioned against criminalising civil disputes, such as breach of contractual obligations. In my considered opinion, the applicant/accused has set out a case for anticipatory bail. In view of the same, applicant/accused is hereby ordered to be released on bail, in the event of his arrest, on his furnishing bail bond in the sum of Rs.50,000/- with two sureties each in the like amount subject to the satisfaction of Ld. MM/IO/SHO.

Application is disposed off accordingly.

Needless to say that nothing observed herein shall have a bearing upon the merits of the case.

Dasti.

(Dharmender Rana)
Roster Judge
ASJ-02, NDD/PHC/New Delhi
29.07.2022