IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAILAPPLICATION NO. 1656 OF 2014

Mr. Abdullah Husain Nadkar	...	Applicant
vs.		
The State of Maharashtra	...	Respondents

Mr. Khan Ishrat Ali Azhar,Advocate for the applicant
Ms. Vira Shinde, APP, for the respondent-State.

CORAM: SMT.SADHANA S.JADHAV,J.
DATE : 5th January, 2015.

P.C.

Heard. This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No.41 of 2014 registered at Khed Police Station, District Ratnagiri for offences punishable under Sections 406 and 420 of Indian Penal Code.

2. It is the case of the prosecution that on 3.3.2014, one Banya Bhiku Lokhande had lodged a report at the police station alleging therein that he is the owner of Survey Nos. 160/11 and 199/7 situate at Mouje Tide. The electricity connection of Dabhol Electricity Co. passes from his land from Nagothane to Dabhol. That in the year 2007, B.G.Shirke Co. was given contract. They had undertaken the measurement of the land as well as the trees. They had given

compensation for the said land. The applicant herein was given contract of cutting down the trees from the land which was acquired by B.G.Shirke Co. The complainant and others had informed that unless they receive the compensation, they would not permit felling of the trees. The applicant herein had mediated and convinced the land owners. In December, 2011, the complainant was informed that the first instalment was deposited in Central Bank of India at Khed Branch. The applicant had informed the complainant to open an account in the said Bank in order to receive the compensation. The complainant along with 8 others had been to the Bank and opened the accounts. Thereafter, the applicant herein had called upon the beneficiaries to receive the amount from the Bank. He had accompanied the beneficiaries to the Bank. It is alleged that the applicant had obtained the signatures of the beneficiaries by taking advantage of their illiteracy. He had given the beneficiaries certain amount. After a considerable period, the beneficiaries had obtained their passbooks. They noticed that the applicant had taken huge commission from the beneficiaries and part of their amount was transferred in some other account. It is also alleged that the compensation amount granted to Tarabai Pawar was obtained by the present applicant without her information. In the first information report, the complainant has given the details showing therein that the applicant had taken the commission of Rs.50,000/- from the beneficiaries and thereafter part of the amount was misappropriated. Hence, he was constrained to lodge a report on the basis of which Crime No.41 is registered at the police station.

3. The learned counsel for the applicant submits that there is no plausible explanation for the inordinate delay in filing the first information report. The learned counsel, upon instructions, admits that the applicant has received the amounts but the amount has been received by way of commission and, therefore, according to the learned counsel, it cannot be said that the applicant herein has committed an offence of cheating. The learned counsel further submits that Manohar Kashiram Nigade had opened an account on 30.1.2012 in the name of his father Kashiram Nigade, who had in fact expired on 3.8.2008. It is further submitted that the complainant happens to be the son-in-law of Kashiram Nigade. According to the learned counsel, Manohar and the complainant Banya Biku Lokhande had committed an offence of cheating by opening an account in the name of the deceased person and hence it cannot be said that the applicant has cheated Manohar Kashiram Nigade. It is pertinent to note that the applicant had accompanied Manohar Nigade to the Bank. At that time, according to the learned counsel, the applicant was not aware that Kashiram had expired. However, the applicant herein had not only allowed Manohar to open an account, but had also obtained commission which was accorded to Kashiram Nigade.

4. At this stage, the learned APP submits that this aspect is not known to the investigating agency. For the first time, it is revealed in the course of hearing of this application and that the investigating agency would take appropriate steps against Manohar Nigade as well as the complainant Banya Bhiku Lokhande in respect of forging the documents, signatures and other relevant papers for opening an account in the name of the deceased person.

5. Upon perusal of the papers of investigation, it appears that the applicant had received commission from B.G.Shirke Co. At the time of withdrawal of the amount by the beneficiaries, an endorsement has been made on the reverse indicating therein that the amount of Rs.2,93,000/- be deposited in the account of Abdullah Husain Nadkar. Hence, the allegation that the signatures were obtained on blank papers is substantiated. Prima facie, it appears that the beneficiaries had signed on the reverse of the said cheques to show that they had withdrawn the amount and the endorsement has been made thereofter. Similar is the case in respect of the other beneficiaries. The statement of account would also show that the applicant has received the amounts from the beneficiaries.

6. The learned counsel for the applicant submits that the applicant had

no intention of cheating or he would not have directed the beneficiaries to deposit the amount in his own account and create evidence to that effect. The learned APP submits that in fact, this transaction was done without knowledge of the beneficiaries and since there was no agreement to that effect after withdrawal of the amount, the beneficiaries would not have parted with huge amounts in favour of the present applicant and, therefore, the applicant has committed misappropriation in connivance with the Bank officers. The investigation is in progress. The statement of the Bank officers show that the officers were not aware as to who had made the endorsement on the reverse side of the withdrawal forms. There is variance in the handwriting and the signatures as well as the endorsement in respect of transferring the amount. In view of this, the applicant does not deserve the discretionary relief in the form of an anticipatory bail since the matter needs to be investigated.

7. The learned APP submits that the applicant was not entitled to any commission from the beneficiaries as he was receiving commission from B.G.Shirke Co.

8. The application being sans merit, stands rejected.

(SMT.SADHANA S.JADHAV, J.)