IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 866 OF 2014

Chirag Khushalchand Dedhia. ... Applicant.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Ashok Mundargi a/w. Mrs. Neelam Gupta i/b. Mr. S.R. Gupta, advocate for Applicant.

Mr. Shakil Ahmed, advocate for intervenor.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : FEBRUARY 2, 2015

P.C.:

1 Heard the learned Senior Counsel for the applicant, learned Counsel for the intervenor and the Learned APP for State.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in Crime No. 192 of 2013 registered at Dongri Police Station for offence punishable under Section 420, 406, 506, 509 of the Indian Penal

Code. Taking into consideration the gravity of the offence, the matter was referred to Economic Offences Wing for investigation and was renumbered as C.R. No. 100 of 2013 and is being investigated by the Economic Offences Wing.

3 It is the case of the prosecution that the complainant herein i.e. Shri Bharat Thakker lodged a report at the police station alleging therein that he happens to be a broker and is engaged in sale and purchase of cattle feed. According to the complainant, he procured cattle feed from various suppliers and arranges to supply the same to various cattle farms situated in Maharashtra on commission basis. It is alleged that while accepting the orders from the small traders, he obtains 50 % of the bill value in advance from the owners of the cattle farm and pays the same to the supplier at the time of placing the purchase order. That during the year 2007-2008, the complainant was introduced to the present applicant through his relatives. He had learnt that the present applicant is into the business of supply of cattle feed and he runs a firm in the name and style of M/s. Chirag

Feed Private Limited and M/s. Bhoomi Foods Private Limited from his office, which is situated at Chinchbunder, Mumbai. The applicant is also a director in the sister concern, which is run in the name and style of Khushal Impex Private Limited.

4 The complainant had placed orders with the applicant in the year 2011. At the initial stage, the applicant is alleged to have complied with the supply orders. During the period 15/4/2011 to 31/12/2011, the complainant had paid Rs. 5,62,50,000/- to the present applicant. Some payments were made by cheque and the other payments were made in cash. It is alleged that the present applicant had assured the complainant that he would supply the cattle feed within a particular period. However, he had not complied with the said assurance. It was natural that small purchasers had started insisting upon the first informant either to supply the cattle feed or to return the amount. The complainant had no alternative but to assure the purchasers since he was also being given assurance by the present applicant.

5 After a lapse of considerable time, the complainant had realised that the applicant has cheated him and that he has given false assurance. Upon further enquiry, the complainant had learnt that the amount which he had given to the applicant as an advance was paid in Jankalyan Bank, Dadar Branch, Mumbai and that the applicant had diverted the said funds to his own benefit either in the account of his relative or he had invested in real estate. The complainant has also reliably learnt that the same amount was invested in commodity market. The applicant had allegedly refused to refund the amount and had not even supplied the said cattle feed. According to the complainant, he was constrained to approach the police and lodge the report. On the basis of his statement, offence was registered and investigation was set in motion.

6 The applicant herein has filed Criminal Application No. 1191 of 2013 seeking relief of quashing of FIR. The matter was placed for admission on 18/12/2013. The Division Bench of this Court (Coram :

P.V. Hardas & Smt. Sadhana S. Jadhav, JJ) had passed an order that the Investigating Officer may continue with the investigation but shall not submit final report without the leave of the Court. Learned Counsel for the applicant makes a statement that the said application filed under Section 482 of the Code of Criminal Procedure, 1973 is pending before the Division Bench. Learned APP submits that he would file an appropriate application to seek appropriate directions from the Division Bench.

7 The applicant had approached the Court of Sessions seeking pre-arrest bail. The applicant was granted interim protection. The learned Counsel for the applicant submits that he has abided by the conditions imposed upon him and has cooperated with the investigating agency to the best of his capacity. However, by an order dated 2/7/2014 the application seeking pre-arrest bail was rejected by the Court of Sessions.

8 Being aggrieved by the said order, the applicant has filed the present application. By order dated 11/7/2014, this Court (Coram : Mrs. Mridula Bhatkar, J) had granted interim protection to the present applicant and had directed the applicant to attend concerned police station on every Monday between 11 a.m. to 2 p.m. until further orders. By an order dated 25/7/2014, this Court (Coram : Mrs. Mridula Bhatkar, J) had directed the applicant to attend police station on 28/7/2014 and 4/8/2014.

9 The matter was heard from time to time. Today learned Senior Counsel appearing for the applicant has drawn the attention of this Court to the legal notice issued to the applicant dated 20/7/2014. It is vehemently urged that the complainant had averred in paragraph-3 of the said legal notice that the complainant had made advance payment of Rs. 50 Lakhs on 15/4/2011, partly in cash and partly by cheque. That the applicant had given assurance. Learned Senior Counsel submits that this would clearly indicate that the amount of

Rs. 50 Lakhs was given as an advance. However, in the first information report, the amount is different.

10 The learned Counsel appearing for the original complainant submits that the said legal notice was issued under Section 138 of the Code of Criminal Procedure, 1973 as the cheque of Rs. 5 Lakhs issued by the applicant was dishonoured. It is further submitted by the learned Counsel for the complainant that the said amount does not disclose the entire amount paid as advance and therefore, the said contention has no substance.

11 The learned APP has submitted that in the course of investigation, the applicant has not cooperated with the investigating agency. The Investigating Officer is present in the court and has filed a report that on 21/12/2013 the investigating officer had requested the present applicant to furnish document for the period between 2008 to 2012 in the form of the transporter receipts, delivery challans etc. However, on several occasions, the applicant would

inform the investigating officer that his grand-mother is ill and he has to look after her and would not cooperate with the investigation. On 6/1/2014 the applicant attended the police station and furnished 3 files without giving any explanation or without even waiting for the Investigating Officer to make queries in respect of the said file. The Investigating Officer further reported that he called upon the first informant and verified the documents. It was noticed that the applicant had filed irrelevant documents and had mad an attempt to mislead investigating agency.

12 It is further reported that upon every enquiry made by the Investigating Officer, the applicant had reported that he has suffered huge losses in business. However, he had not given any details of the losses. It was noticed that the father of the applicant was sleeping partner. Upon enquiry from the father of the applicant Shri Khushalchand Dhanji Dedhia, he has disclosed to the police that he is not concerned with the day to day affairs of the firm and has no knowledge.

13 The complainant had given a copy of a note on the letter head of the applicant wherein he had accepted that he had received the amount. However, upon enquiry, he disclosed to the police that the said letter/receipt was given and signed under coercion. It is noticed that during this period, the applicant had invested huge amount elsewhere without supplying goods to the traders.

14 It is revealed in the course of investigation that during this period i.e. when he was to supply the goods as per the assurance and the advance accepted by him, he had given Rs. 13 Lakhs to his father in law Talakshi Haria, Rs. 69,25,000/- to his brother in law Bhavesh Haria, Rs. 12 Lakhs to his sister in law Dimple Haria. From the account of Khushal Impex Private Limited, he had transferred Rs. 1,50,00,000/- in favour of Meredian Building on interest. He had received an amount of Rs. 1, 71,41,330/- from Meredian Building. That he had given Rs. 1,82,50,000/- to Blue Circle Infratech on interest and had receive an interest of Rs. 19,12,283/- from Blue

Circle Infratech. From the account of Chirag Feeds Private Limited and Bhoomi Feeds Private Limited, he had transferred an amount of Rs. 7,71,59,236/- by way of RTGS in the account of Girish Kumar Choksy who happens to be a bullion merchant. The investigating Officer has recorded statement of Girish Kumar Choksy and he has accepted that he has received the same amount via RTGS. There are several other transactions to show the manner in which the applicant had diverted the funds by using amount given as an advance by the complainant.

15 Learned Senior Counsel submits that Kotak Mahindra Bank has filed a Petition seeking winding up of firm owned by the applicant. It is also submitted that Swapnil Sawant has filed a Company Petition No. 491 of 2012 seeking winding up of Chirag Feed Private Limited run by the present applicant. The Single Bench of this Court (Coram : N.M. Jamdar, J) had arrived at the conclusion that there is complete absence of any kind of dispute much less any bonafide dispute. The said company petition is admitted and is pending before this Court.

16 It prima facie appears that an incorrect statement was made in the Company Petition that the company is unable to deposit even a single paisa pursuant to the statement made before the Court and therefore, this Court had arrived at a conclusion that the said company is not solvent and commercially viable to be continued further. The papers of investigation clearly indicates that the financial position of the applicant was sound enough. That the applicant had given money on interest and had received interest. The statements of accounts clearly indicate that huge funds were invested in different firms belonging to the relatives. In the company petition, it was made to appear (falsely though) on oath that the company is suffering from losses. It was not demonstrated that the present first informant had paid huge advance and that the applicant is unable to supply the goods. Even at this stage, the prosecution has established that the applicant has siphoned huge amounts to his own benefit. A clear case of cheating is made out. Hence, the applicant does not deserve discretionary relief in the form of pre-arrest bail.

17 The learned Counsel appearing for the complainant submits that the persons from whom the complainant was taking supply orders were to further sell the said cattle feeds to the agriculturists and other allied units. That there are losses suffered by the complainant also since the complainant had to sell his property to make good the advances made by the small traders.

18 The case of custodial interrogation is clearly made out. Hence, the application being sans merit, deserves to be rejected. The application is rejected and disposed of accordingly.

19 The learned Counsel for the applicant submits that the applicant was granted interim protection by the Sessions Court as well as the High Court and the said interim protection was in force since 2013 and therefore, prays that he may be given liberty to approach the Hon'ble Apex Court. Taking into consideration the fact that the applicant was on interim protection, this Court is inclined to stay this order for a period of 3 weeks only.

20 The application is disposed of accordingly. The interim protection to the applicant vide order dated 11/7/2014 shall remain in force for a further period of 3 weeks from today.

(SMT. SADHANA S. JADHAV,J)