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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1285 OF 2015

Mr.Mukesh S/o. Jwalaprasad Gupta ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO.747 OF 2015
IN
ANTICIPATORY BAIL APPLICATION NO.1285 OF 2015

Mr.Kalpesh Jethalal Palan ...Intervener

IN THE MATTER BETWEEN

Mr.Mukesh S/o. Jwalaprasad Gupta ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr.Manoj Mohite a/w Mr.Anand Mishra, Ms.Sneha Singh i/b Ashok M. Saraogi, for the Applicant

Ms.Veera Shinde, A.P.P for the Respondent-State

Mr.Akhilesh S. Dubey a/w Mr.A.A.Khan, Mr.Rahul Sharma and Ritika Gupta i/b Law Counsellors, for the Intervener/Original Complainant.

CORAM : REVATI MOHITE DERE, J.
DATE : 20th OCTOBER, 2015

1. Heard learned counsel for the applicant, learned counsel for the intervener – original complainant and the learned A.P.P.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R. No.I-139 of 2015 registered with the APMC Police Station, Navi Mumbai for the alleged offences punishable under Sections 420, 406, 467, 468, 471, 120-B r/w 34 of the Indian Penal Code.

3. The allegations as against the applicant as alleged by the complainant are more or less similar to C.R.No.I-134 of 2015 registered with the APMC Police Station, Navi Mumbai for the alleged offences punishable under Sections 420, 406, 467, 468 of the Indian Penal Code. It appears from the complaint dated 16th June, 2015 lodged by Kalpesh J. Palan, pursuant to which the aforesaid FIR was registered, as against the applicant - Mukesh Jwalaprasad Gupta, Vikas Gupta, the brother of the applicant and one Ashok Mewani, that the said complaint is with regard to a property situated at Sector 23, Plot No.121, admeasuring 399.98 mtrs at Ulve, Navi Mumbai. The said plot was purchased by the complainant jointly alongwith Ashok Mewani ; from one Jaya Sagar Koli, pursuant to a Tripartite Agreement which was entered into between the said Jaya Koli, CIDCO and the complainant and Ashok Mewani. The said Tripartite Agreement which was entered into on 21st July, 2008, is at page 110 of the

compilation of documents submitted by the learned counsel for the applicant.

4. It appears that pursuant to the Tripartite Agreement, the aforesaid plot was transferred in the name of the complainant and Ashok Mewani on 21st July, 2008 and the same was recorded in the Office of the Registrar, situated at Panvel. According to the complainant, as he was on friendly terms with the applicant, his brother – Mukesh Gupta and Ashok Mewani, the said persons asked the complainant to transfer the said plot in the name of Mukesh Gupta i.e. applicant in ABA No.1284 of 2015, stating that they would give him substantial amount over and above the market price for the said plot. According to the complainant, in view of the representations made by the said persons and trusting them, he entered into the Tripartite Agreement on 20th October, 2010 with the applicant, CIDCO and himself. The said Tripartite Agreement dated 20th October, 2010, is on page 134 of the compilation of documents submitted by the learned counsel for the applicant. According to the complainant, in connection with another plot i.e. Plot No.43, when he was constrained to go to the Panvel Court, he realized and learnt from the documents which were filed

before the Court that certain documents were forged and fabricated by the applicant i.e. Memorandum of Understanding dated 24th September, 2010 and Power of Attorney dated 5th May, 2012. According to the complainant, when it was brought to the notice of the Civil Court that the said documents were forged and fabricated, the Civil Court was pleased to vacate the stay which was initially granted in favour of the applicant. According to the complainant, after receipt of the documents which were filed by the applicant in the Civil Court, he realized that the applicant had sold his plot i.e. Plot No.121 to M/s.Satguru Realtors, pursuant to a Tripartite Agreement which was entered into between the applicant, CIDCO and the M/s.Satguru Realtors. He has stated that pursuant to the aforesaid sale, no amount was transferred or received by the complainant as promised. According to the complainant, the applicant had falsely shown, that he had paid him a sum of Rs.1,02,00,000/-, however the said amount was never paid to the complainant and the account of the complainant was misused by the applicant to show the deposits, after which the said amounts were transferred by RTGS to various fictitious companies, the beneficiary of which was the applicant. According to the complainant on 15th September, 2010, an amount of Rs.19 lacs was transferred by the applicant into the complainant's account and on the very same day the said amount was again transferred by RTGS in the name of M/s.V.M.Uydog ; thereafter an amount of Rs.50 lacs was transferred from the applicant's account in Karur Vysya Bank and on the same day the said amount of Rs.50 lacs was transferred by RTGS to M/s.Jay Industries and M/s.Balaji Trading i.e. Rs.25 lacs each ; thereafter on 16th September, 2010 an amount of Rs.7,50,000/- was transferred by the applicant in the complainant's account and on the same day the said amount was transferred in the account of Tiptop Real Account by RTGS. On 20th September, 2010 an amount of Rs.16,50,000/- was again transferred by the applicant in the complainant's account and on the very next day i.e. 21st September, 2010, the said amount of Rs.16,50,000/- was transferred by RTGS in the name of M.s,Balaja Trading. According to the complainant, the applicant had misused the blank signed cheques given by him to the applicant and had misused the account which was opened in his name. According to the complainant, he has been cheated for a sum of Rs.1,02,00,000/- by the applicant, in connection with Plot No.121 and that the said amount has been misappropriated by the applicant himself.

5. Learned Counsel for the Applicant submitted that the account

in Karur Vysya Bank was in the name of complainant and it is not possible that the complainant was not aware of the transactions that were taking place in his account. He further submitted that there is a delay of 3 to 4 years in lodging of the complaint. According to him, the complainant had received various amounts and was aware of the transactions that were taking place in his account.

6. Learned APP opposed the present application. She submitted that it has transpired in the investigation, that various amounts deposited by the applicant in the complainant's account were transferred by RTGS in favour of various companies, of which the applicant himself was the beneficiary. She submitted that there are statements of the so called Directors of the fictitious companies i.e. M/s.V.M.Udyog ; M/s.Jay Industries ; M/s.Balaji Trading ; M/s. Tiptop Real and others to show that all these companies were fictitious companies, which were opened at the behest of the applicant, for transferring of the aforesaid funds. She relied on certain statements which were recorded under Section 164 of the Code of Criminal Procedure in support of her submission to show that all the so called Directors of the said companies were employees of one Tushar

Ashish Ruparel and were being paid a sum of Rs.5,000/- per month. She also submitted that the applicant has misused the account of the complainant and the blank cheques which were issued not only by the complainant in favour of the applicant, but also the blank cheques which were signed and given by the Directors of the aforesaid various companies to the applicant.

7. Learned Counsel for the Intervener supported the submissions advanced by the learned APP. He submitted that there was no question of the complainant having knowledge that his account was misused as the Bank form had the telephone number of the applicant and not of the complainant. He submitted that therefore there was no question of the complainant receiving any alerts. He submitted that the complainant had no reason to know that his bank account was misused or was being misused by the applicant in this manner. According to the complainant, he had nothing to do with any of the aforesaid companies i.e. companies i.e. M/s.V.M.Udyog ; M/s.Jay Industries ; M/s.Balaji Trading ; M/s. Tiptop Real and others. He submitted that the applicant has systematically defrauded the complainant by creating fictitious companies for the

purposes of siphoning of the money by showing that the payments were made by the applicant towards sale of Plot No.121 to the complainant, when infact no payments were made.

8. Perused the papers, the statements recorded under Section 164 of the Code of Criminal Procedure of various witnesses viz., Tushar Ruparal, Ashwin A. Ruparel, Kisan G. More, Bhavesh R. Shah, Mehul N. Darji and Samarbahadu P. Verma and the RTGS Forms allegedly signed by the applicant for transferring various amounts from the complainant's bank to various companies such as M/s.V.M.Udyog ; M/s.Jay Industries ; M/s.Balaji Trading ; M/s. Tiptop Real etc. A perusal of the statement of Tushar Ruparel shows that the applicant had asked him that he wanted to open 5 - 7 accounts in any bank at Vashi. He has stated that various companies were opened in the name of his employees i.e. M/s.Sai Enterprises and M/s.G.R.Trade Link were opened in the name of his employee Jagdish T. Jadhav ; M/s.Balaji Trade Link was opened in the name of his employee Mehul N. Darshan ; M/sV.M.Udyog was opened in the name of Sunil P. Chavan, the brother-in-law of his employee Mehul Darji ; M/s.Somnath International was opened in the name of his employee

Vineet V. Gawade ; M/s.M.R.Corporation was opened in the name of Gopal S. Sutar ; Kisan G. More ; M/s.Jay Industries was opened in the name of Sunil Chavan. He has stated that it is at the behest of the applicant that various accounts were opened in the name of these companies, by showing his employees as the Directors of the aforesaid company. A perusal of the statement of the said Tushar Ruparel shows that he and his employees in whose name the said companies were opened were on the pay role of the applicant and that they were paid a sum of Rs.5,000/- per month ; that the said persons had given blank cheques signed by them ; and that the accounts were being operated exclusively by the applicant and one Sushil Kadam. It appears that although a Tripartite Agreement was executed between the complainant, CIDCO and the applicant, no amount pursuant thereto, was paid to the complainant. Infact, the applicant has admitted that various amounts were paid by him to the complainant by depositing the said amount in the complainant's account of Karur Vysya Bank. However, documents reveal that the very same amounts were transferred by RTGS/NEFT on the very same day in the name of the aforesaid companies and thereafter withdrawn by the applicant himself. It appears that the applicant had systemically tried to defraud the complainant and others from the year 2008 - 2009 itself as is evident from the statements recorded under Section 164 of the Code of Criminal Procedure. It appears, that in both the CR's a total amount of Rs.5 crores odd was deposited in the complainant's account, without his knowledge, in a systematic way.

9. Considering the manner in which the applicant had formed fictitious companies, transferred the money and forged and fabricated the documents, the custody of the applicant is necessary. It also needs to be investigated from where these huge amounts deposited were received from and for what purpose they were withdrawn. Apart from the aforesaid, it also appears that one the witnesses i.e. Tushar Ruparel was threatened by the applicant during the pendency of this application. Considering the material as against the applicant, this is not a fit case to exercise the discretionary powers under Section 438 of Cr.P.C.

10. Hence, the Application for anticipatory bail is rejected and disposed of as such.

11. It is made clear that if an application for regular bail is filed,

the same shall be considered on its own merits, uninfluenced by the observations made in this order.

12. In view of the disposal of the Anticipatory Bail Application No.1285 of 2015, the Intervention Application being Criminal Application No.747 of 2015 does not survive and the same is also disposed of.

13. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.