IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATIN NO.679 OF 2015

Mr.Haresh Kantilal Thakkar. ....Applicant.
vs.
The State of Maharashtra and ors. ....Respondents.

Ms.Krupali H.Rajani for the Applicant.
Mrs. S.D. Shinde, A.P.P. for the State.
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CORAM : A.S. GADKARI, J.

DATE : 5th December 2015

P.C. :

The applicant, original complainant has filed the present application for cancellation of pre-arrest bail granted to the respondent Nos. 2 and 3 by the District Judge-8 and Additional Sessions Judge,Thane in ABA No.607/2015 in Cr No.I-06/2015 registered with APMC Police Station, Navi Mumbai.

2) The applicant is the original complainant in CR No.I-06/2015 registered with APMC Police Station as stated above. The applicant is the nephew of the respondent No.2.The applicant in his first information report dated 11.1.2015 has stated that the applicant, his mother Smt.

Kantagauri Thakkar and the respondent No.2 were the Directors of of Shri Laxmi Food Products Pvt. Ltd. situated at MIDC, Tarapur, Boisar, District Thane. The said company suffered losses in the year 1991-92 and therefore, the MSFC (Maharashtra State Financial Corporation) took over the said company and put it for auction. That, the Canara Bank helped the applicant and in the year 2004 the said company was again came into the possession of the applicant and the respondent No.2.The directors of the Shri Laxmi Food Products Pvt. Ltd. thereafter gave its approximately 5500 sq.ft. area to Bellavista Pvt. Ltd. and Tata Telecom Pvt. Ltd. The applicant thereafter went to West Africa for the purpose of business. At that time the respondent No.2 was looking after the business of the said Shree Laxmi Food Products Pvt. Ltd. After the applicant came back to India he made enquiry with the respondent No.2 about the accounts of the said company however, the respondent No.2 avoided to give details of the same. The applicant thereafter served a notice on respondent No.2.The applicant subsequently came to know that the respondent No.2 has transferred an amount of Rs.53,10,000/- from the account of Shri Laxmi Food Products Pvt. Ltd. to his own account. Likewise the respondent Nos. 2

and 3 also transferred an amount of Rs.39,61,000/- in their names. He has further stated that the respondent No.2 has in all withdrawn an amount of Rs.1,06,38,000/-from the account of Shri Laxmi Food Products Pvt. Ltd. for his personal use without informing the other directors of the said company.

3) After registration of the FIR, the respondent Nos. 2 and 3 filed an application for anticipatory bail in the Court of District Judge-8 and additional Sessions Judge bearing ABA No.607/2015. The learned Trial Court after taking into consideration the facts and circumstances of the present case, was pleased to grant pre-arrest bail to the respondent Nos. 2 and 3 by the impugned order dated 20.8.2015.

4) Heard the learned counsel for the applicant original complainant at length. She submitted that the respondent Nos. 2 and 3 by committing criminal breach of trust have siphoned off and/or misappropriated an amount of Rs.1,06,38,000/- of the said Shri Laxmi Food Products Private Ltd. of which the respondent No2. is Director. She further submitted that the respondent No.2 without giving any information or without there being any board resolution of the said company has withdrawn that amount for his

personal use and therefore,the respondent Nos. 2 and 3 have not only committed criminal breach of trust but also committed the act of cheating as contemplated under Section 420 of the I.P.C. The learned counsel for the applicant contended that the Trial Court while granting per-arrest bail to the respondent Nos. 2 and 3 ought to have taken into consideration the said facts and the intention of the respondent Nos. 2 and 3 in the present crime. The learned counsel appearing for the applicant in support of her contention relied on a decision of the Supreme Court reported in (2012) 5 SCR 1 in the case of Jai Prakash Singh vs. The State of Bihar and anr.

5) I have minutely perused the record produced before me and I have also considered the decision Supreme Court relied upon by the learned counsel for the applicant in support her contentions. The record discloses that while passing the order dated 20.8.2015 the Trial Court has taken into consideration the various facets of the transaction involved in the present crime. There is no dispute about the fact that the terms and conditions of the memorandum of understanding, the other documents on which the applicant is relying upon, provides that in case of any dispute or

differences amongst the directors they shall refer the matter for arbitration. The learned trial court while passing the impugned order has also taken into consideration various documents relevant for deciding the said application such as Memorandum of understanding, statement of account and the audited report etc. It is further apparent that the learned Trial Court has also taken into consideration the factor of age of respondent Nos. 2 and 3 herein. In view of the peculiar facts and the circumstances of the present case, the reliance placed by the learned counsel for the applicant on the aforesaid decision of the Supreme Court, in my view is totally misplaced.

6) It is the settled position of law as has been enumerated by the Supreme Court, in its celebrated judgment in the case of, Gurcharan Singh and others vs. State (Delhi Administration) reported in (1978) 1 SCC 118 wherein the Supreme Court has categorically held that ordinarily the High Court will not exercise its discretion to interfere with an order granted by the Sessions Judge in favour of the accused. The Supreme Court has further elaborated the parameters to be considered while dealing with an application for cancellation of bail in the case of

Puran vs. Ramvilas and anr. reported in 2001 AIR SCW 1938. Thus, after taking into consideration the entire material available on record, I am of the considered opinion that the Trial Court has not committed any error while passing the impugned order. I also could not find any perversity in the impugned order thereby granting pre-arrest bail to the respondent Nos. 2 and 3.

7) In view of the above, I find that the present application does not have any merits in it and the same is accordingly, dismissed in limine.

(A.S. GADKARI, J.)