IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1536 OF 2014

1 Prashant alias Vishnupant Phalke.
2 Yogesh Namdev Khonge. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. Chetan Patil, advocate for Applicants.

Mr. Arfan Sait, APP for State.

CORAM : SMT.SADHANA S. JADHAV,J
DATE : JANUARY 6, 2015

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 185 of 2013 registered at Shahuwadi Police Station for offence punishable under Section 406, 408,409, 418, 420, 421, 477(A) read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that the applicants herein happen to be the Chairman and Secretary of Deshbhakat Mukatabai Sathe Sahakari Ghaypat and Zadu Udyog Sanstha Maryadit, Bhedsgaon. It is the case of the prosecution that on 7/12/2013 the auditor lodged a report at the Shahuwadi Police Station, Kolhapur alleging therein that he had conducted the audit of the said Society for the period 2011-2012. He concluded the audit on 26th March, 2013.

4 It is alleged that the State of Maharashtra Social Welfare Department(Schedule Caste) had funded project of manufacturing sacks (gunny bags). For the said purpose, it was necessary to erect a building to run the factory. The Society had given a proposal of Rs. 96,49,732/- plus architect fees of Rs. 99,90,817/-. The Government had given Rs. One Crore and the contribution of the said Society was to the extent of Rs. 36 Lakhs.

5 At the time of audit, it was revealed that the present applicants had withdrawn Rs. 36 Lakhs by drawing amount on “self cheques”. The withdrawal was not accounted for. The auditor had issued a notice to the bank on 24th May, 2013. The auditor had specifically stated in the said notice that on 31/3/2010 there were hardly Rs. 900/- in the said account. On 31/3/2012 there were Rs. 36,00,900/- in the said account. It was revealed that in fact on 31/3/2012 remainder balance was only Rs. 435/-. There was a deficit of Rs. 36,00,465/-. Withdrawals were not reflected in the account. The notice includes the data of the debit and credit in the said account, which shows as follows :

(1) On 16/8/2010 Rs. 36 Lakhs were deposited.

(2) On 17/8/2010 the applicants had withdrawn Rs. 18 Lakhs each by self drawn cheque.

(3) On 24/3/2012 they deposited Rs. 36 Lakhs in cash.

(4) On 26/3/2012 the applicants had again withdrawn Rs. 20 Lakhs and Rs. 16 Lakhs respectively by self drawn cheques.

6 The auditor had specifically stated in the notice that it amounted to temporary misappropriation, misuse of powers, falsification of account and moreover, there were no bills to show the expenditure of Rs. 36 Lakhs. The auditor had called upon the applicants to file reply within 7 days.

7 It is pertinent to note that the applicants had not given reply within the stipulated period of 7 days, but had filed the reply on 15/6/2013. The reason assigned for the delay in filing the reply is that the society had to review the record and was to take legal advice from their advisor and therefore, there was a delay. It is further stated in the reply that the accounts have been rectified. That the Society has bills to account for the expenditure of the said Rs. 36 Lakhs, which was withdrawn in cash.

8 The learned Counsel for the applicants submits that although the reply was filed on 15/6/2013, the auditor has proceeded to lodge

the first information report on 7th December, 2013. The learned Counsel submits that the first information report is lodged on misconceived facts. According to the learned Counsel, the amount withdrawn was not deposited by the Government, but was the amount of the contribution of the Society. Hence, according to the learned Counsel for the applicant, although the account had been rectified in the intervening period after receipt of notice, there was no occasion for the auditor to initiate criminal prosecution against the present applicants. The learned Counsel further submits that Section 477A of the Indian Penal Code is a non-cognisable and bailable offence triable by Magistrate of First Class and therefore, the applicants deserve pre-arrest bail.

9 This Court had put a query to the learned Counsel as to what was the occasion for withdrawing the amount in cash. No satisfactory reply has been given. However, recitals of the notice would clearly indicates that in fact, the amount was withdrawn in the year 2010 itself on the very next day after it was deposited. After it was noticed

that it could be a matter to be considered at the time of audit, the amount was again deposited and then withdrawn. It is difficult to believe that it was a negligence on the part of the Society that the withdrawal of the amount was not accounted for on the very same day and subsequently, it has been accounted for. It is apparent from the records that the office bearers of the Society have temporarily misappropriated the amount. Thereafter, they have finally withdrawn the amount and at present, it is claimed that there are bills to show that the amounts have been spent for the project.

10 Learned APP submits that in all probabilities, the bills are fabricated and that the genuineness of the documents/bills will have to be verified.

11 In fact, the project is made for the economically backward class and the amounts are being received and misappropriated by the office bearers of the Society.

12 This is a fit case for custodial interrogation, as many such instances or acts committed by the accused may surface. In view of this, the applicants do not deserve pre-arrest bail. The application being sans merit is rejected. The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)