IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1601 OF 2014

1. Mr. Anil Agarwal s/o Beni Prasad Agarwal
2. Annu Agarwal w/o Anil Agarwal
3. Bharat Shiroya s/o Nanubhai Shiroya
4. Janak Mehta s/o Tunvantrai Mehta .....Applicants

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1612 OF 2014

Anand Agarwal s/o Hariprasad Agarwal ….Applicant

V/s

The State of Maharashtra ….Respondent

Mr. A.H.H. Ponda i/b Mr. A. M. Saraogi for Applicants
Ms. S. K. Shinde PP A/W Ms. Rutuja Ambekar APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : 20th JULY 2015

PC :

Heard. These are applications under section 438 of Code of Criminal Procedure, 1973. Applicants herein are apprehending his arrest in crime no. 601 of 2014 registered at Malad Police Station for offence punishable under sections 465, 467, 468, 471, 420 r/w 34 of Indian Penal Code.

2) It is the case of prosecution that on 08/12/2014, Mr. Jesudas Glauster, officiating as manager of Reserve Bank of India (Hereinafter referred as R.B.I.) lodged a report at the police station alleging therein that any finance company or firm to start another company in a foreign country as a Wholly Owned Subsidiary (Hereinafter referred as W.O.S.), then it is incumbent upon the said firm/company to obtain no objection certificate from R.B.I. Office of R.B.I. Supervises the issuance of certificate. It is alleged that Comfort Intech Limited (Hereinafter referred as C.I.L.) registered on 17/10/1994 and the company has obtained certificate of registration from R.B.I. On 25/01/2012 C.I.L. Registered a company in the name of Finnsolution Services FZE in United Arab Emirates. The Company had obtained no objection certificate from R.B.I. By a letter dated 12/02/2013, company had informed that it has obtained no objection certificate issued by the office of department of Non Banking Supervision of Reserve Bank. The copy of the no objection certificate was annexed along with letter. Upon enquiry, it was revealed that the said no objection certificate has not been issued by R.B.I. Therefore, the said copy of no objection certificate was sent to Department of Non Banking

Supervision (D.N.B.S.) of R.B.I. The department could not locate the application filed by C.I.L. for obtaining no objection certificate. On the basis of this report, crime no. 601 of 2014 was registered at Malad Police Station for offence punishable under sections 465, 467, 468, 471, 420 r/w 34 of Indian Penal Code.

3) Heard respective counsel Perused papers of investigation. Applicant no. 1 herein is the Managing Director of C.I.L., whereas, other applicants are the directors of the said Company.

4) Learned counsel for the applicants submits that by a letter dated 29/03/2014, company had written a letter to Malad Police Station, thereby informing the police that for setting up of a W.O.S. in any other foreign country, compliance with section 7 of The Foreign Exchange Management Act is mandatory. It is incumbent upon the company engaged in financial sector to comply with minimum capital requirements, registration with D.N.B.S., R.B.I., financial status in the preceding three years and a no objection certificate from D.N.B.S., R.B.I. before making an application for setting up of W.O.S. That C.I.L. had entrusted the said responsibility to the employees of C.I.L., namely Mr. Sarthak Vijlani who was Vice President

(Merchant Banking Division) and Mr. Deepak Mor, Assistant Vice President (Merchant Banking Division). That Both the officers had obtained N.O.C. from R.B.I. and had presented the same before the directors. On the basis of said no objection certificate, W.O.S. had obtained necessary permission from the U.A.E. Authorities to set up the said firm. That W.O.S. has commenced its operation which are satisfactory. It was further averred that in the course of routine inspection of C.I.L., by the R.B.I., it was noticed that the company do not have the copies of the application made to R.B.I. to obtain the said N.O.C., although copy of N.O.C. was available.

5) The company therefore, by a letter dated 29/04/2013 had requested R.B.I., Ahmedabad Branch to furnish them a copy of application submitted to R.B.I. for obtaining N.O.C., since the directors were under a bonafide impression that the employees had filed an application. It was revealed that no such application was filed. On 23/10/2013, company had therefore, lodged a complaint against Mr. Sarthak Vijlani and Mr. Deepak Mor in the police station.

6) Learned counsel for the applicants submits that in fact the transactions in regard to Finnsolution Services FZE had started way back in the year 2012.

From the perusal of the record, it is clear that all communication in respect of setting up a W.O.S. in Dubai and other necessary formalities were being looked after by Mr. Deepak Mor and Mr. Sarthak Vijalni, Ms. Shruti Banka who were working as Senior Manager (Merchang Banking Division). That according to learned counsel, work was entrusted with said employees and directors had no reason to even suspect the genuineness of the no objection certificate dated 23/02/2012. Learned counsel for the applicants has placed implicit reliance on E-mail exchanged between Mr. Sarthak Vijlani and Ms. Shruti Banka sent on 24/02/2012. In the course of investigation, Investigating Officer had recorded the statement of Shruti Banka. As contended by the Investigating Officer in his affidavit, she had specifically disclosed that she was on leave from 22/02/2012 to 27/02/2012. On 05/03/2012, she had sent an E-mail to Axis Bank regarding transfer of funds to their subsidiary company. Axis Bank had requested for certain documents which included the approval from R.B.I. She had informed Mr. Sarthak Vijlani about the same. Mr. Sarthak Vijlani had asked her to prepare the requisite documents, except the approval from R.B.I. and that he would get the approval. After some days, he had given her one paper which was an approval from R.B.I. and asked her to submit it in the file. Shruti Banka had prepared the file and had submitted the same for approval before the applicants. That after the said file was signed by the present applicants, it was sent to the Axis Bank, however, the funds were not transferred to the subsidiary company at Dubai due to some technical difficulty.

7) In June 2012, Mr. Sarthak Vijlani and Mr. Deepak More had quit the job and informed the applicants that they had better prospects elsewhere. In October 2012, Shruti Banka had also quit the job and had shifted to Vapi. Investigating Officer had recorded the statements of all the three employees who had stated that by forging a no objection certificate in favour of company, they would not be benefitted in any way and therefore, had denied that the said no objection certificate was fabricated by Mr. Sarthak Vijlani.

8) Perused the statement of Ms. Shruti Banka which goes to the root of the matter. She admits to have placed no objection certificate in the file and according to her, the said certificate was given to her by Mr. Sarthak Vijlani. That employee Mr. Sarthak Vijlani has come up with a case that the computer from which the E-mail was sent was the computer of the office. That the possibility that it was tampered with cannot be ruled out. It is pertinent to note

that Sarthak Vijlani, Deepak Mor and Shruti Banka are not the accused in the present case, but are witnesses.

9) Learned counsel for the applicants vehemently submits that E-mail sent by respective employees is available in the computer, even today and it would clearly show that the said E-mail have been forwarded by the said three persons and the print out was made available to the applicants. It is also submitted that in all probabilities the said employees had obtained the signatures of the applicants by misrepresentation or hastily. Learned counsel further submits that in the absence of interrogation of the employees of the company, custodial interrogation of the applicants cannot be deemed to be effective. According to learned counsel, applicants had informed the police station about the conduct of their employees much prior to registration of F.I.R. and immediately upon realizing that there is no application made for obtaining N.O.C.

10) The case rests upon documentary evidence. All the documents are in the custody of investigating agency. The State by filing the affidavit has also reported that N.O.C. Purportedly issued by the Assistant General Manager is a forged document. It is further contended that C.I.L. Had opened W.O.S. in

U.A.E. on 25/01/2012 without obtaining mandatory approval from R.B.I. Learned counsel for the applicants submits that applicants have joined and co-operated with the investigation to the best of their capacity. It is further submitted that offences alleged against the applicants are triable by Court of Magistrate. It is also submitted that once accused have joined the investigation and have co-operated, custodial interrogation would be unwarranted and unjustified.

11) Learned APP submits that the conduct of the applicants of maintaining silence from February 2013 till October 2013 would speak volumes for itself, because in February 2013, R.B.I. had informed C.I.L. that R.B.I. had not issued any N.O.C. A notice was issued to the company and its directors on 05/02/2014 to clarify and explain its conduct. The company had filed the reply on 28/02/2014 and had prayed for a sympathetic and lenient view and hold its two employees namely Mr. Sarthak Vijlani and Mr. Deepak Mor responsible for fabricating and manufacturing N.O.C. dated 24/02/2012.

12) As on today, no specific ground is made out for custodial interrogation of the applicants and hence, they deserve grant of pre-arrest bail. Taking into consideration the criteria laid down by the Hon'ble Apex Court in the cases of

Gurbaksh Singh Sibia vs State Of Punjab reported in **(1980) 2 Supreme Court Cases 565, Siddharam Mhetre Vs State of Maharashtra and Ors** reported in **(2011) 1 SCC 694**, this Court is inclined to grant pre-arrest bail.

<u>O R D E R</u>

(i) Applications are allowed.

(ii) In the event of arrest, applicants be enlarged on bail on furnishing P. R. bond in the sum of Rs. 50,000/- each with one or two solvent sureties in the like amount.

(iii) Applicants shall report to concerned police station on 1st and 3rd Sunday of each month, commencing from 09/08/2015 for a period of 3 months or till the filing of the charge-sheet, whichever is earlier.

(iv) Applications stand disposed of.

(SMT. SADHANA S. JADHAV, J.)

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