

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 262 OF 2015

Siraj Pyaresaheb Rana ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. M.K. Kochrekar i/b. Mr. Prakash V. Vare, Advocate for the applicant.
Mrs. P.P. Shinde, APP for the State.
Mr. Prashant Chauhan, Advocate for respondent no. 2.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **11th March, 2016.**

P.C.:

This Application is moved by the applicant for anticipatory bail, as the applicant is facing charges under sections 408, 420, 120B r/w. 34 of the Indian Penal Code. The complaint is filed at the instance of Vidyadhar Ramchandra Ranade. Earlier a private complaint was lodged with the Assistant Commissioner of Police on 28th December, 2012 and thereafter the offence was registered on 4th April, 2013.

2. It is the case of the prosecution that the complainant is working as a Senior Executive in a Spice Retail Ltd. Co. The main office of the company is in Himachal Pradesh, however, the Regional offices are in Mumbai and Noida. The company is in the business of selling cell phones and accessories of cell phone. The company is running its business through various franchises or shops in the State. In every shop, there is one Store

Manager and 2 to 3 Sales Executives and one Business Development Manager (BDM) is appointed for 3 to 5 shops. There is only one Regional Sales Manager (RSM) who supervises and monitors all these Business Development Managers for Maharashtra Region. There is another post of Executive (Human Resource). The applicant/accused was appointed as RSM for the State of Maharashtra. As per the case of the prosecution, Sales Managers were directed to sell the cell phones at lower price to show increase in the cell phones. Their original cost was fed in the computer, however, the difference between the original price and lesser price of the cell phone was recovered by selling other phones in the shop and its account was not kept. Thus, when the stock of the total phones were taken, the Managers of the respective shops were directed to adjust the stocks under the supervision of the applicant/accused. Similarly, in order to cover up and adjust the amounts, the employees who have resigned from the job were directed to furnish their debit card to the applicant/accused or to one BDM. The fact of their resignation was not communicated to the main office and so the salary was collected in the name of those employees. Though they were not in the employment, their salaries were withdrawn and it was again adjusted to the amounts. It is the case of the prosecution that these amounts were withdrawn under the supervision of the applicant/accused and thus, the company suffered

losses. It is the case of the prosecution that after audit and stock of the goods, it is found that there was shortage of goods amounting to Rs.4,84,632/- though the fake transfers of the articles was shown.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. He relied on the FIR of the complainant who has stated in the FIR itself that one meeting was conducted of all the Store Managers and these Managers have accepted their responsibility and they have given in writing accordingly and the money is recovered from their respective salaries. He further submitted that if at all the responsibility is accepted by other Store Managers, the applicant/accused cannot be held responsible for this act. He has not committed any offence of criminal breach of trust. It is further submitted that the custody of applicant is not required and he be granted pre-arrest bail. He further submitted that the allegations in respect of withdrawing of salaries of the employees who were not in service is the only charge and he has not committed any offence of misappropriation.

4. Learned APP and learned counsel for the original complainant both has opposed this application. Learned APP relied on the affidavit of Chandrashekar B. Gaikwad, Assistant Inspector of Police attached with

Economic Offences Wing. She submitted that on enquiry it is found that the applicant/accused has obtained the permission from the Head office to recruit new employees and to bridge the gap by selling mobile phones from the company systems and he forced the store manager to mark attendance of bogus employees. The learned APP and learned counsel for the complainant have submitted that under the supervision of applicant/accused, the cell phones were sold and the amounts were withdrawn from the bank accounts and cheques from the salary account was encashed unauthorisedly by the accused persons and there is evidence against the applicant. The custody of the applicant/accused is required for enquiry and investigation.

5. Perused the FIR, documents and the affidavit of Chandrashekar Gaikwad. The prosecution has produced a file wherein the statements of witnesses are recorded. 2 to 3 witness have stated that they were working as Sales Executives. I have perused the Statement. When they resigned, they were getting good salary between 18,000/- to 19,000/- p.m. However, after submission of the resignation, there was a demand of debit card by the applicant/accused and he informed that unless debit card is given, the resignation would not be accepted. They were also informed that applicant/accused is going to use the salary received by them to adjust

the short stock. When they refused to give their debit cards, a threat was given by the applicant/accused that he would be lodging a complaint against them alleging of short stock and, therefore, these witnesses succumbed to the pressure of applicant/accused and allowed him to use their debit cards. It appears from the record that other Sales Manager though have accepted the liability, all the acts were committed offence under the supervision of the applicant/accused. I am of the view that in order to find out the volume of the misappropriation or falsification, the custody of the applicant/accused is required for effective investigation. Hence, the Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)