Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 438 OF 2015

Ashish Pravinchandra Shah ... Applicant
Vs.
The Senior Inspector of Police & Ors. ... Respondents

Mr. Subodh Desai, Advocate for the applicant.
Mrs. P.P. Shinde, APP for the State.
Mr. Vinay Sonpal, Advocate for respondent no. 3.
Mr. Bhoite Sunil Shankarrao, Sr. P.I., Sales Tax Unit.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **4th April, 2016.**

P.C.:

This Application is moved for pre-arrest bail, as the applicant/accused is facing charges under sections 420, 465, 467, 468, 471 r/w. 34 of the Indian Penal Code and under section 74(1)(b,)(c), (d), (e), (f), (2), (4), (5) of Maharashtra Valued Added Tax Act, 2002 registered at C.R. No. 170 of 2012 with Borivli Police Station, Mumbai (C.R. No. 10 of 2012 of Sales Tax Department, Economic Offences Wing. The offence is registered at the instance of Anil Bhosale, Assistant Sales Tax Officer, Mazgaon, Mumbai on 27th April, 2012. At the time of verification of sales and purchases of the goods and money transactions of M/s. Jain Trading Corporation at B/31, Kailash Apartment, S.V. Road, Borivli, Mumbai, he found that one Ashwini Jamunalal Seth is the owner of the said Corporation. On verification, it was noticed that the said Corporation in fact did not deal with sales and purchases of the goods and articles but has issued bogus invoices to the beneficiary purchasers/dealers and by evading tax have caused wrongful loss to the extent of Rs.1,02,61,022/- of the Government. One Mafatlal Shah was arrested on 8th August, 2014. He was released on bail.

2. It is the case of the prosecution that on enquiry from Ashwin Sheth, it was found that due to his bad economic condition, some persons on the pretext to support him financially asked him to open the account in the name of Jain Trading Corporation in different banks and thus, those persons have transacted money on the basis of bogus invoices. The statement of these witnesses were verified and one account was opened by Ashwini Seth in the name of M/s. Jain Trading Corporation in the Vijaya Bank, Borivli and it was found that the applicant/accused Ashish Shah knew Ashish Seth, as they were resident of the same building. For opening of this bogus account, the applicant/accused Ashish Shah promised Ashwin Sheth to pay him Rs.2,000/- p.m. Mita, wife of Ashish Shah has signed as a introducer. It is transpired that the applicant/accused thereafter obtained a bank cheque book of 25 leaves on which signatures of Ashwin Sheth were obtained. Thus, he operated the said account as a proxy in the name of Ashwin Seth. It is the case of the prosecution that in the Axis Bank,

Andheri Versova Branch and Federal Bank, Borivli Branch, two accounts were opened in the name of Ashwin Sheth by the applicant/accused Ashish Shah. Hence, the offence is registered against the applicant/accused along with co-accused.

3. The learned counsel Mr. Desai has submitted that the applicant/accused is innocent. His name is not mentioned in the FIR. One Premchand Shah was earlier the owner of Jain Trading Corporation, who is now dead. Ashwin Seth is the main culprit who is the owner of Jain Trading Corporation. The learned counsel further submitted that he relied on the remand report dated 14th August, 2014 filed by Senior Police Inspector Ms. Vandana Narkar in respect of arrested accused Mafatlal Walchand Shah. He pointed out that in the said remand report, the Investigating officer has attributed the role of opening of account at the instance of Premchand Shah and accused Mafatlal Shah in the name of Bhupendra Mehta of Jain Trading Corporation. The learned counsel submitted that name of applicant/accused is not mentioned in the remand report. No allegations were made against the applicant/accused. But on 25th November, 2015 Mr. Jayesh C. Mirani, President of All Maharashtra Human Rights Welfare Association gave complaint to Commissioner of Police, Mumbai that Sr. P.I. Vandana is harassing the applicant/accused and

she has demanded Rs.10,00,000/- from the applicant/accused otherwise she has threatened that he would be falsely implicated in the case. The learned counsel submitted that only after this complaint dated 25th November, 2014, supplementary statement of Ashwin Seth was recorded wherein false allegations are made against the applicant/accused. The learned counsel further submitted that prosecution could not collect any evidence since last 4 years against the applicant/accused disclosing that the applicant/accused has withdrawn any amount from the account which is run under the name of Jain Trading Corporation during the period from 1st April, 2008 to 31st October, 2010. He submitted that the applicant has been made a scape-goat, therefore, he be granted pre-arrest bail.

4. Learned APP and learned counsel for respondent no. 3 opposed the Application. He relied on the affidavit filed by Mr. Sunil Shankarrao Bhoite, Senior Inspector of Police, Sales Tax Cell, Mazgaon, Economic Offences Wing, Mumbai. Learned APP relied on the statement of Ashwini Seth so also it is submitted that in the remand report of Mafatlal Shah, account of Jain Trading Corporation was opened in City Union Bank, Mira Road Branch. The learned counsel submitted that the applicant/accused is very much involved in making false invoices and evasion of sales tax. He

submitted that the applicant is the owner of nearly 44 companies and he is working as a Sales tax Consultant. Learned APP submitted that one Tushar Ruparel is shown as operator of 44 companies, however, it is found in the investigation that in fact these companies were run by applicant/accused Ashish Shah. Learned APP submitted that by cash, the amount was withdrawn by the applicant/accused. The custody of the applicant/accused is required to unearth the offence. The police have clues of various transactions for which the custody is necessary and moreover the applicant is not cooperating the police.

5. The offence is registered on 27th April, 2012. The investigation is going on for 4 years. The delay in investigation cannot be justified. The applicant/accused has attended the police station number of times when he was on interim bail. On perusal of the FIR, statements of Ashwin Seth and Tushar Ruparel, it appears that the role of applicant/accused is evident. It appears that many accounts were opened in the name of Jain Trading Corporation in various banks. Mafatlal has opened the account in City Union Bank, Mira Road. It appears that peculiar modus operandi is used by the applicant/accused that though the accounts were opened in the name of Ashwin Sheth and his signatures were obtained in the cheques, it appears that the beneficiary of these amounts prima facie was the applicant/accused. 44 hawala companies were opened and the bank

accounts of these companies were opened in Vijaya Bank and through bogus invoices, lot of amounts were transacted. As the applicant/accused has not opened the account in his name or did not submit the cheque of his signature, though prima facie he is the beneficiary of these amounts, his name has not surfaced immediately to the Investigating officer. I have considered that there is a complaint against the Sr. P.I. by Mr. Jayesh Mirani, President of NGO and the investigation of this offence is tardy. However, though these two factors are going against the prosecution, the nature and gravity of the offence is such that I am not inclined to grant anticipatory bail to the applicant/accused. Hence, the Application for anticipatory bail is rejected.

6. At this stage, the learned counsel for the applicant prays to stay the operation of this order as he wants to challenge this order before the Hon'ble Supreme Court. In view of this, the operation of this order is stayed for a period of four weeks from today.

(MRIDULA BHATKAR, J.)