IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 920 OF 2016

Vilas Chandrakant Gaonkar ... Applicant

vs.

The State of Maharashtra ... Respondents

Mr. A. M. Chopra, for the applicant.
Mr. Deepak Thakare, A.P.P. for the State/respondent no.1.
Mr. Rakesh Pathak, for respondent no.2.

Coram : N. W. SAMBRE, J.

Date : 2nd DECEMBER, 2016.

P.C. :

1). The matter has been placed on the board for speaking to the minutes of the order dated 23rd November, 2016. The following corrections are sought :

(i)In para-1, date of formation of partnership firm is erroneously recorded as '24th December, 2012' instead of '20th October, 2010'.

(ii)In para-4, date of partnership firm is erroneously recorded as '24th December, 2012' instead of '20th October, 2010'

(iii)In para-4, the date on which complainant is the partner is erroneously recorded as '26th December, 2016' instead of '24th December, 2010'.

2). The following corrections be carried out and the order be read accordingly.

(N.W. SAMBRE, J)

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1. A partnership firm formed on **20th October, 2010** by name Swami Samarth Buildcon was managed by the complainant and the applicant, from where complainant stood retired as a partner on 21st September, 2013. However, it is alleged in the prosecution story that the present applicant continued said firm as it the complainant is live partner in the firm and processed loan application for Rs.5 Crore at C.K.P. Bank and misappropriated the loan amount. As such, an offence came to be registered as Crime No. 24 of 2016 for the offence punishable under Sections 420, 465,

467, 468, 471 r/w 34 of the Indian Penal Code, on 13th January, 2016 for a crime committed in between 2008 to 2013.

2. The submission of Mr. Chopra, the learned counsel for the applicant, is that the applicant admits to be a partner of said firm and also the fact that the complainant was its partner. According to him, the entire offence as has been alleged in the F.I.R. is solely on the basis of documents and in view thereof his custodial interrogation is not necessary. The learned counsel for the applicant then submits that the applicant is very much available for the investigation and also if required for the purpose of prosecution. According to him, apart from delay in lodging F.I.R., the offence came to be registered pursuant to the order of enquiry passed by the Magistrate under Section 202(1) of Criminal Procedure Code. Hence police in the light of Judgment of Apex Court in the matter of ***Ramdeo Food Products Pvt. Ltd. Vs. State of Gujarat reported in (2015) 6 SCC 439***, can not arrest the applicant. The entire offence as claimed in absence of criminal motive could be inferred as civil dispute. The applicant is a man of status and in view of above submissions his custodial interrogation is not warranted.

3. Mr. Thakare, the learned A.P.P. who is assisted by Mr. Pathak, the learned counsel for the complainant opposed the

application on the ground that the applicant has practiced fraud on complainant inconnivance with C.K.P. Bank officials for obtaining loan on behalf of the firm, of which an applicant is a Managing partner. The applicant has forged the signature and other documents, by practicing fraud on the complainant for obtaining loan of Rs.5 Crore from C.K.P. Co-operative Bank.

4. Having considered rival submissions, it is required to be noted that the applicant and the complainant were the partner of Swami Samarth Buildcon since **20th October, 2010** is not an issue which is in dispute. The complainant stood retired from the said partnership firm on 21st September, 2013. Present applicant has applied for loan with the C.K.P. Bank for and on behalf of the partnership firm stating that the complainant is the partner on **24th December, 2010** by forging his signature on the documents i.e. loan papers. Though the complainant claimed to be a partner, however, according to him he never signed loan documents.

5. The investigation carried out till date depicts that there is prima facie material to infer that the complainant was a partner as reflected from the documents and involvement of the applicant in the crime in question, as the applicant prima facie appears to be under doubt as the applicant practiced fraud and cheated the partner, however, the documents of loan reflects his signature.

6. The applicant has rightly claimed that the offence is based on documents which are very much available to the investigating agency. The applicant is also very much available for the investigation. There is also delay in lodging F.I.R.

7. However, what could be noticed from the material available is that the offence is an economic crime. The fraud is alleged to the extent of Rs.5 crore. The economic offence is to be viewed with seriousness.

8. Hence, the prayer of the applicant for grant of pre-arrest bail is rejected. The application stands rejected.

[N. W. SAMBRE, J.]

Note : The order is corrected pursuant to speaking to minutes order dated 2nd December, 2016.