IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 744 OF 2014

Promod Kumar Surolia .....Applicant

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION NO. 728 OF 2014
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 744 OF 2014

Rakesh Kabra ….Intervener

IN THE MATTER BETWTEEN

Promod Kumar Surolia .....Applicant

V/s.

The State of Maharashtra ....Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 760 OF 2014

Ravinder Reddy Perati ….Applicant

V/s.

The State of Maharashtra ….Respondent

Mr. M. S. Mohite a/w Ms. Shweta Sangtani i/b Mr. Niranjan Mundargi Advocate for Applicant in ABA 744 of 2014
Mr. A. H. H. Ponda a/w Mr. Shyam Kalyankar for intervenor
Mr. Shirish Gupte, Senior counsel i/b Ms. Racheeta Dhuru Advocate for applicant in ABA 760 of 2014
Ms. P. P. Shinde APP for the State.
Mr. Pathan, A.P.I. Meghwadi Police Station, Mumbai.

CORAM : SMT. SADHANA S. JADHAV, J.

RESERVED ON : NOVEMBER 27, 2015.

PRONOUNCED ON : FEBRUARY 4, 2016.

PC :

Heard. These are applications under section 438 of Code of Criminal Procedure, 1973 seeking pre-arrest bail in crime no. 18 of 2013 registered at Sakinaka Police Station, Mumbai. It is the case of prosecution that on 11/01/2013 Rakesh Radhesham Kabra lodged a report at the police station alleging therein that he is a businessman and is a director of NRK Overseas (India Pvt. Ltd.). His wife Namrata Kabra also happens to be one of the director. They are holding 100% shares of the said company.

2) It is alleged that complainant was operating account in the bank of Rajasthan, Andheri (East) branch. He was frequently visiting the Nariman Point branch of the said bank where the applicant was working as a branch

manager. Complainant was well acquainted with him since they hail from the same place. In the year 2005-2006 he had appointed the applicant as financial advisor. There was no written agreement or appointment to that effect. Applicant had resigned from his job as a manager and was practicing as a chartered accountant. Complainant had computerized his transactions of the company. Complainant had to often travel outside Bombay. Applicant had obtained digital signature of the complainant for the purpose of uploading the balance-sheet and other documents. In the year 2009 also, applicant had obtained the digital signature of the complainant. It is alleged that in September 2009, applicant herein had misused the digital signature of the complainant and had inducted two persons as directors of the said company. The said persons were Dynaneshwar Babaji Phalke and Ravindra Reddy Perati. It was revealed that Dynaneshwar Phalke was working as office clerk of the applicant whereas Ravindra Perati was a close acquaintance of the applicant. In the year 2010-2011 when the complainant was surfing through site of Registrar of Companies, he had noticed that the above mentioned two persons were inducted in his company without his consent and without there being a resolution to that effect.

3) It is contended by the complainant that in July 2012, police of Shirole Police Station had brought present applicant to the factory premises of the complainant at Rabale and had informed him that present applicant had fabricated the documents of some other factory.

4) Complainant had thereafter filed a petition under section 284 of the Companies Act for removal of newly inducted directors. On 12/11/2012, a resolution was passed to remove the newly inducted members from their directorship. On 16/11/2012, chartered accountant Shri. Makarand Joshi and company had noticed on ROC website that the complainant and his wife had resigned from the said company and the said letter was sent to the Registrar of Companies. In a nutshell the allegations are that the digital signature of the complainant was misused by the applicant to fill up form 32, resignation letters of the complainant and his wife were forged and fabricated by the applicant to show that they had resigned on 30/10/2012, that there is no transfer of shares and the complainant and his wife did not cease to be share holder w.e.f. 26/09/2009. On the basis of his report, crime no. 18 of 2013 was registered at Sakinaka Police Station against the applicant and others for offence punishable under sections. 419, 420, 467, 468, 469 r/w 34 of

Indian Penal Code and section 66 (c) & (d) of Information Technology Act 2000. The occurrence of offence is shown from 2006 to 30/11/2012.

5) Applicant herein had applied for pre-arrest bail before the Sessions Court. Application was rejected. Applicant was protected by ad-interim relief by this Court (Coram: Mrs. Mridula Bhatkar, J.) vide order dated 25/06/2014 and the applicant was directed to attend the police station.

6) In the course of hearing of the present application, complainant had filed an application seeking intervention and has filed several documents on record. The compilation of the documents also includes company petition no. 87 of 2012 filed by the complainant against NRK Overseas India Ltd and others. The main contention in the company petition is that complainant had not transferred their shares to anybody and continued to hold 100% of the issued share capital of the company. It is contended that respondent no. 1, 2 & 3 had been appointed as Additional Director of the company w.e.f. 26/09/2009 and that respondent nos. 2, 4 & 5 falsely claim that during the period

17/06/2008 and 30/12/2010 complainant/petitioners had transferred all their 7,47,600 equity shares to them. **It is specifically contended in the said petition that since the complainant was required to travel extensively in the company's business purposes, company signed blank letter heads, signed blank papers, rubber stamps, digital signature of petitioner no. 1 and other relevant documents of the company were left in his possession and he undertook the responsibility of filing necessary statutory compliances including I.T. returns, other returns etc.** The relief sought against respondents in company petition was in the nature of injunction that they shall not have ingress to the office/factory premises, issue or allot any further shares without the prior written consent of the petitioner therein, shall not create any third party interest in the assets of the company, shall not interfere with shareholding of the petitioner, utilize the funds of the company etc. The company petition was filed in the year 2012.

7) Applicant who happens to be respondent no. 5 in the company petition had filed his reply on 30/07/2013 i.e. after registration of crime no. 18 of 2013. It was contended on behalf of the applicant that

applicant had never worked as C.A. or financial consultant. It was specifically contended that complainant be put to strict proof to prove that he had ever paid professional fees, remuneration, compensation etc to the applicant.

8) That on 12/10/2012, complainant Rakesh Kabra had filed a caveat in the court of Civil Judge Junior Division Thane, Vashi & Belapur. Applicant had issued a legal notice through Advocate Karunesh Maurya to the caveator and had specifically contended that complainant Rakesh Kabra, his father Radhesham Kabra and other family members had defrauded and cheated many suppliers in Bhilwara, Rajasthan. That they had de-frauded several banks and other firms. It was brought to the notice of the complainant that it was his own c ase that the company was in financial crisis and it was required to clear the company mess.

9) In the course of arguments of present application, learned counsel for the intervenor has vehemently contended that applicant herein has criminal antecedents. Attention is drawn to the panchanamas after Dnyaneshwar Phalke was arrested. It is seen that

the entire investigation of the present case is being conducted under the supervision of the complainant. This Court had directed Investigating Officer to file an affidavit. Implicit reliance is being placed on the panchanama dated 13/11/2013 wherein :

(i) Witness Smt. Aruna Prabhu had produced copies of two forged resignation letters dated 25/10/2012 purported to have been signed by the complainant and his wife, downloaded from ROC site.

(ii) Forged share transfer forms purportedly signed by complainant and submitted by the applicant before Company Law Board.

(iii) Minutes of the meeting dated 29/09/2009 and 26/09/2009.

(iv) Forged M.O.U. purportedly signed by the complainant and his wife.

10) According to Investigating Officer several other documents like forged rubber stamps and seals, hard disk, computer etc were found in the office. That the forged documents were sent to the State Examiner

of documents along with specimen signature and admitted documents which is received in a sealed cover and that the same would be submitted before Hon'ble Court. It is pertinent to note that till today, report is not submitted before this court. Complainant appears to have had access to the said report as it is contended in one of his reply that the State Examiner of documents has arrived at a conclusion that they are forged documents.

11) Application for anticipatory bail is being contested tooth and nail by the complainant. In fact, it is prerogative of the State to demonstrate before the court that investigation would be hampered in the absence of custodial interrogation. It is contended by learned APP, upon instructions from Investigating Officer who is present before the court that custodial interrogation is necessary to find out the source of prepared forged rubber stamps, seals etc.

12) At this juncture, learned counsel for the applicant submits that applicant cannot be forced to make any inculpatory statement in the course of investigation and that cannot be the ground for custodial interrogation. It is pertinent to note that applicant has placed on record

the written complaint filed by son of the applicant to the senior Police Inspector of Rabale Police Station on 20/11/2012 alleging therein that he had filed a complaint to the said police station on 02/06/2012 against Rakesh Kabra for having committed criminal breach of trust, misappropriation of property, cheating, falsification of accounts, counterfeiting seal of Auditor, forgery of signature of chartered accountant and directors. In continuation of the said complaint, Mr. Amit Surolia had further alleged that the acts of Shri. Rakesh Kabra and his wife are fraudulent in the sense that they had assured chartered accountant Mr. Ravish Singh that they would not interfere in the working of NRK company, however, they have interfered with the functioning of the said company.

13) It appears from the records that on 08/09/2012, applicant herein had filed a report at Shirol Police Station against complainant Rakesh Kabra, his wife and others for having committed offence under section 465, 469, 470 & 471 of Indian Penal Code. On the basis of his report, crime no. 13 of 2012 was registered at Shirol Police Station against Shri Kabra, his wife and others. It appears from the records that in the

enquiry in application filed by Shri. Amit Surolia, complainant was called to the police station and he had informed the police that present applicant had assured Shri. Kabra that he would give him Rs. 70,00,000/- for discharging liabilities of the company and in lieu of Rs. 70,00,000/-, the open space of the company should be given to applicant and to the owner of Siddharth Milk and Food Product Shri. Salunke. It was contended that applicant had also given a cheque of Rs. 70,00,000/- which was dishonored. He had also contended that applicant had prepared the balance-sheet for the year 2010-2011 and handed over the C.D. to him in the office premises. Complainant had given the said C.D. to company Secretary Shri. Atul Jain and the same was uploaded. That the applicant had allegedly informed Atul Jain that the uploaded balance-sheet was prepared by I. V. Shah and Co. which is closed down and that balance-sheet is false and fabricated. The said balance-sheet was rather audited by Hitesh Shah & Co. Inquiry Officer had arrived at a conclusion that the proceedings between both the parties are pending before Company Law Board and that false balance-sheet was uploaded, the cognizance of which can be taken by Andheri

Police Station and hence, application filed by Amit Surolia was disposed of. In fact, Amit Surolia had filed a complaint against Rakesh Kabra on 06/12/2012 at Rabale Police Station which was in continuation to the complaint filed on 20/11/2012.

14) It is pertinent to note that F.I.R. in the present case was filed on 11/01/2013. It is also contended by the learned counsel for the applicant that Mr. Surolia had filed first complaint to Rabale Police Station against Rakesh Kabra and others on 16/06/2012. In the report dated 28/01/2013, Investigating Officer had considered the said allegations made in complaints dated 02/06/2012, 16/06/2012 and had arrived at a conclusion that dispute appears to be civil in nature.

15) It is pertinent to note that unless and until it was brought to the notice of this court that son of the applicant initially approached Rabale Police Station against the complainant, it was not stated nor demonstrated by the complainant before any authority or firm including Company Law Board. Upon enquiry made by this court, learned Advocate for the complainant had asked him in the court as to whether the son of the applicant had filed any complaint. The said fact

was admitted, however, learned counsel for the complainant/intervenor submits that police had informed the applicant that he should take appropriate action since no criminal case is made out. Applicant had not taken any steps and that would be sufficient to hold that report lodged at Rabale Police Station by the son of the applicant had no foundation. It is further submitted that in the given eventuality, it would by open for the applicant to approach the court of Magistrate and file a complaint under section 2 (d) of Code of Criminal Procedure, 1973 which he has not done. As against this, learned counsel for the applicant submits that in fact, applicant had decided to agitate the issue before Company Law Board and therefore, had not taken further steps.

16) The prayers in the petition before Company Law Board are as follows:

> “a. Appoint an Administrator and/or Special Officer and/or an Independent Committee of Management or such other body or person as this Hon'ble Board deems fit and proper to carry on the business and manage the affairs of the Company;
>
> b. Appoint Special Auditors to conduct a special audit of the

books and records of the Company and make a report to this Hon'ble Board within a period of six weeks from the date of appointment, particularly with regard to the utilization and disbursement of funds of the Company;

c. In the alternative to prayers herein above, appoint a special committee of management with an independent Chairman along with Petitioner and Respondent No.2, to carry on the business, management and affairs of the Company.

f. That this Hon'ble Board be pleased to restrain the Respondent nos. 2 to 5, their servants, agents and assigns, by an order and injunction of this Hon'ble Board from in any manner:

i) increasing, issuing and/or alloting any further shares in any form or manner whatsoever in the Company, save and except with the prior written consent of the Petitioner;

ii) investing, selling, disposing off, encumbering or alienating any property or assets of the Company save and except with the prior written consent of the Petitioner;

iii) interfering with or disturbing the shareholding of the Petitioner in the Company;

iv) creating any liability and/or capital expenditure in the Company, giving loans or transfers in the Company save and except with the prior written consent of the Petitioner;

v) utilizing the funds of the Company for the purpose of the instant litigation in any manner whatsoever;

vi) making any payment from the accounts of the Company save and except with the prior written consent of the Petitioner."

17) It is pertinent to note that complainant has pleaded before Company Law Board as follows:

"The aforesaid resignation letters also claim that Respondent no. 2, Respondent no. 4 and Respondent no. 5 have together made payments to the tune of Rs. 86,00,000/- (Rupees Eighty Six Lacs only) to the Petitioners for the purported transfer of 747,600 Equity Shares i.e. the entire 100% shareholding held by them during the period from 17th June 2008 to 13th December 2010.

The Petitioners hereby submit and confirm that the payments referred to in the resignation letters are in no way towards purchase consideration for acquisition of shares. These payments were made pertaining to business dealings of the petitioners with other parties not at all related to the respondents and hence fraudulently and wrongly being claimed by the respondents as having being made for the purchase of the Shares of the Company. The Petitioners have not signed any Transfer Deeds for transfer of any shares of the Company."

18) Learned counsel for the complainant has submitted that the shares were never transferred, the amounts were received, but for another purpose. It is also pleaded that complainant had never appointed the applicant as chartered accountant of his firm or for any other purpose. Despite this, it cannot be believed that huge payments were accepted by the complainant for different transactions, the details of which are not furnished.

19) Applicant was granted interim relief by this court (Coram: Mrs. Mridula Bhatkar, J.) vide order dated 25/06/2014. Learned counsel for the applicant submits that applicant had co-operated with the investigating agency to the best of his capacity and therefore, custodial interrogation would be unwarranted and unjustified.

20) Section 41A (3) of Code of Criminal Procedure, 1973 contemplates as follows:

> "Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested."

21) In the affidavit filed by the investigating agency it is contended that they wish to interrogate the applicant to find out the source of preparing the forged seals and *modus operandi* in committing the offence of forgery and fabrication of documents. Learned counsel for the applicant submits that it was contended by the complainant that he had deposited blank letter heads, seals and other documents in the office of applicant. The alleged stamps and seals were discovered in the office premises in the presence of the complainant and that too in the second visit. The manner in which the discovery is caused is seriously objected to by the learned counsel for the applicant.

22) It is a matter of record that offence is registered in January 2013. The complainant has stated in the petition before Company Law Board that he has complained to Sakinaka Police Station against applicant. Company Law Board petition is filed in the year 2012 and at that stage,

no offence was registered. Applicant has attended the police station and further undertakes to co-operate with the investigation to the best of his capacity. In the opinion of this court, custodial interrogation in the facts of the present case would not be justified. Learned counsel for the applicant rightly submits that it may amount to punitive detention and that stringent conditions can be imposed upon the applicant and be enlarged on bail.

23) It is a matter of record that all the allegations made in the F.I.R. are previously made before Company Law Board. Company Law Board is seized with the matter. That any observation by this Court would have an impact on the petition before the Company Law Board. In the given circumstances, when there are allegations and counter allegations, it would not be appropriate to pre-determine the issues. That applicant cannot be deprived of his liberty in such circumstances and therefore, applicant deserves to be granted pre-arrest bail in the interest of justice.

24) It is the case of complainant that applicant Ravinder Reddy Perati in Criminal Anticipatory Bail Application No. 760 of 2014 was inducted

in NRK Overseas India Pvt. Ltd. by Promod Kumar Surolia by misusing the digital signature of the complainant. It is alleged by the complainant that in fact, he had taken steps to remove the applicant and Dnyaneshwar Phalke as director. Complainant has specifically alleged that Dnyaneshwar Phalke and present applicant were inducted in the company without his consent and without there being a resolution to that effect. No specific overt act is attributed to the present applicant, except that he is a close acquaintance of applicant Promod Surolia. Since, this court is inclined to grant pre-arrest bail in favour of accused/applicant Promod Surolia, applicant Ravinder Perati also deserves same relief.

25) Taking into consideration the facts of the case and the submissions advanced across the bar, applicant deserves grant of pre-arrest bail.

O R D E R

(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. 1,00,000/- each and two or more solvent sureties in the like amount.

(iii) Applicants shall deposit their passport with investigating officer and investigating agency shall retain the same till filing of charge-sheet.

(iv) Applicants shall not leave India without prior permission by this Court.

(v) Applicants shall report to investigating officer on the first Sunday of each month till the filing of the charge-sheet.

(vi) Applicants shall furnish their permanent address, temporary address, cellphone number, land-line number and also keep investigating agency informed, in case there is change their address.

(vii) Intervention application is heard, allowed and disposed of.

(viii) In the above directions, applications are allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)

ism