IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1549 OF 2016

Fahim Firoz Khan .....Applicant

V/s.

The State of Maharashtra ....Respondent

Mr. Sanjeev P. Kadam Advocate for Applicant.
Mr. M. S. Mohite i/b Mr. Vinayak Patil for Intervener
Mr. Prashant Jadhav APP for the State.
Mr. Suresh Pandit Mane, A.P.I. Vishrantwadi
Police Station, Pune.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : SEPTEMBER 14, 2016.

PC :

1) Heard respective counsel. This is an application under section 438 of Code of Criminal Procedure, 1973. Applicant herein is apprehending his arrest in crime no. 158 of 2016 registered at Vishrantwadi police station for offence punishable under sections 406, 408, 464, 468, 420 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 12/08/2016, Vishal Agarwal who is the builder by profession and is the director of a project with Bramha

Multicon Private Ltd, lodged F.I.R. at the police station alleging therein that one Nitin Mewawala was working with him as a manager. Present applicant happened to be the project manager. Applicant has been referred as interior decorator in the F.I.R. since he claims to be interior decorator by profession. It is specifically alleged by the complainant that Nitin Mewawala has cheated the company. He has misappropriated the funds of the company. It also appears that the building material was purchased at a higher rate. They were of sub-standard quality. It is also alleged that purchases were made from specific companies. As far as the present applicant is concerned, the allegation is that the company was cheated Rs. 50 Lakhs by purchasing material at a higher rate and of a sub-standard quality. The representative of Chandan Impex LLP Shri. Suresh had brought it to the notice of the present applicant who reacted by saying that the matter will be looked into by the proprietor of the company i.e. the co-accused Nitian Mewawala. There are various allegations in respect of the misappropriation in the company.

3) The learned counsel for the applicant has placed implicit reliance upon a letter dated 14/08/2016 which is purportedly issued by the director of Bramha Multicon Private Ltd/complainant which is addressed to the

investigating officer of Vishrantwadi police station which reads as follows:

> *"After elaborate internal enquiry we have reached the conclusion that Mr. Fahim Khan had intimated the purchase department about higher purchase price of tiles. However advice of Mr. Fahim Khan was ignored.*
>
> *Mr. Fahim Khan is working with our organisation for last 15 years and we do not have any grievance against Mr. Fahim Khan".*

4) The compilation of the application also shows that on 15/08/2016, present applicant had given in writing to the company that he owes Rs. 1 Crore 40 Lakhs to the employer and he has intention to repay the same. It is also stated in the letter that he has used the said amount in purchasing a flat in Amanora scheme.

5) The learned counsel for the applicant submits that the said letter is obtained under coercion and at the most it shows that there was some entrustment with the applicant which he desires to repay. It is also submitted that the bank accounts of the applicant have been freezed and the outstanding balance in the account is of Rs. 11 Lakhs and some odd amount and that he desires to repay the amount of Rs. 10 Lakhs to the company as per the allegations in the F.I.R. The learned counsel for the applicant submits that no

offence can be attributed to the applicant and hence, he deserves to be protected.

6) The learned APP has placed on record the property missing report dated 11/08/2016 lodged by the representative of the complainant company that certain blank cheques, blank signed letter heads of the company were missing from the office and that there should be an appropriate inquiry. The said report is registered as property missing report no. 918 of 2016 and was under inquiry. The investigating officer is present in the court. Upon instructions, the learned APP submits that the letter dated 14/08/2016, purportedly signed by Vishal Agarwal was never given to the investigating officer. It is placed on record by the learned counsel for the applicant. It was neither received by the investigating officer, nor by the complainant.

7) In the course of investigation, it is revealed that the principal accused Nitin Mewawala had floated bogus companies. It also appears that building material used for Bramha Multicon Private Ltd was purchased from these bogus companies. The bank statement of the present applicant also shows that he had received an amount of Rs. 10 Lakhs from Nitin Mewawala which was used for booking a flat in Amanora scheme. Upon enquiry made by this

Court, the learned counsel for the applicant, upon instructions submits that applicant is a co-worker of Nitin Mewawala and had requested him to give a loan for purchasing a flat and hence, Nitin Mewawala had given a loan of Rs. 10 Lakhs to the applicant.

8) Nitin Mewawala, Vithal Galande and Santosh Galande have been arrested. It appears that there was a collusion between Nitin Mewawala & present applicant. Papers of investigation further reveal that present applicant had conspired with the co-accused to cheat the company.

9) It is pertinent to note that the applicant has forged and fabricated the documents to show that he was exonerated by the complainant within 48 hours of lodging the F.I.R. This would be a more serious offence. Applicant would also be liable for offence punishable under section 468, 471 of the Indian Penal Code. In any case, criminal prosecution is not to be taken as recovery proceeding and therefore, the statement of the learned counsel for the applicant that he is willing to repay Rs. 10 Lakhs cannot be taken into consideration. It is apparent that custodial interrogation of the applicant in the given circumstances would be imperative for a fair investigation.

10) In view of this, application being sans merits, stands rejected.

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11) It is made clear that the observations made herein above are restricted to application under section 438 of the Code of Criminal Procedure, 1973 and shall not be taken into consideration while deciding an application under section 439 of the Code of Criminal Procedure, 1973 or in any other proceeding.

(SMT. SADHANA S. JADHAV, J.)