Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1376 OF 2015

Vimal Champaklal Gandhi ... Applicant
Vs.
The State of Maharashtra & Anr. ... Respondents

Mr. A.H.H. Ponda i/b. Mr. Dhrutiman S. Joshi, Advocate for the applicant.
Mrs. S.S. Kaushik, APP for the State.
Mr. Amarjeet H. Yadav, Advocate for respondent no. 2.
Mr. Manoj Patil, P.S.I., M.R.A. Marg Police Station, Mumbai.

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

P.C.:

This Application is moved for pre-bail, as the applicant/accused is facing charges under sections 420, 465, 466, 467, 468, 471 r/w. 34 of the Indian Penal Code in C.R. No. 163 of 2014 registered with M.R.A. Marg Police Station. The complaint is registered at the instance of Mohd. Rafiq Mohd. Hussain Tinwala, who is a builder/developer.

2. It is the case of the complainant that in the year 2013 he wanted finance, so he is introduced to one Sunil Joshi, who introduced the applicant/accused Vimal Gandhi for finance. He requested applicant/accused Mr. Gandhi to sanction loan of Rs.5 crores. The applicant/accused told him that 10% of Rs.5 crores, i.e., Rs. 50 lakhs is to be kept as a margin amount in the bank and on remaining Rs.4.5 crores, 15% interest, .i.e.,75,00,000/- will be deducted towards interest of 5 years

and thus he would get total loan of Rs.3.75 crores and the applicant also told him that 3% of the amount, i.e., Rs.15 lakhs was to be paid initially in two parts by RTGS. The applicant/accused informed that Shirish Shah and Babubhai Kaka Patel, who are directors of Finewave Trading Co. Pvt. Ltd., are the financers. He, therefore, paid Rs.7.50 lakhs by RTGS from his account to the account of Finewave Trading Company Pvt. Ltd. on 7th March, 2013. Thereafter he entered into MOU with Shirish Shah and complainant. Vimal Gandhi and Sunil Joshi showed bank guarantee of Rs.5 crores. They wanted him to give copy of bank guarantee, however, refused to part with the same as it is confidential. On 18th March, 2013, he sent Rs.7.50 lakhs by RTGS and thus, asked for the loan. However, the applicant/accused and Shirish Shah gave evasive answers. On 28th March, 2013 Shirish Shah on letter head of Finewave Trading Company Pvt. Ltd. assured the complainant that he would get loan at the earliest. Shirish Shah used to inform him about the progress in the loan by SMS which are preserved by the complainant. After few days when the complainant went there, he found one person named Tarwala who was also promised to get loan. On 1st May, 2013 the applicant/accused demanded Rs.15 lakhs as a commission. As per the case of the complainant, he gave cash of Rs.15 lakhs to Shirish Shah and that amount was distributed by Shirish Shah amongst Sunil Joshi and Babubhai Patel. It is the case that on 9th May, 2013 and on 20th May, 2013 Shirish Shah gave him cheque of Rs. 15 lakhs, so also four cheques of Rs.25 lakhs, however, all the cheques were bounced. So the complainant realized that applicant/accused, Shirish Shah, Babubhai Patel and Sunil Joshi have deceived him for Rs.30 lakhs and therefore, he gave complaint.

3. The learned counsel for the applicant/accused has submitted that the cheques were given by Shirish Shah, who is the director of Finewave Trading Co. Pvt. Ltd. and they were bounced. He submitted that the applicant/accused is not the one who has received the money, as the payment of Rs.15 lakhs was made by RTGS in the account of Finewave Trading Co. Pvt. Ltd. The applicant/accused has played a very limited role of introducing the complainant with Shirish Shah and to make the arrangement of finance for the complainant. He further submitted that the applicant did not receive any money in the said transaction. The applicant/accused is ready to cooperate the police. He further submitted that anticipatory bail application of the applicant/accused was rejected by the Sessions Court especially that the bank guarantee was to be recovered, however, he submitted that the bank guarantee of Rs.10 crores is in fact recovered from Shirish Shah who was arrested and who is released on bail. He further submitted that C.R. No. 159 of 2013 was registered at the instance of Mohd. Hussain Tarwalla, however, the applicant was granted pre-arrest bail in C.R. No. 159 of 2013 by an order dated 30th June, 2014

and the said order is confirmed by the High Court.

4. Learned APP opposed the Application and submitted that this is a second case against the applicant/accused. The custody of applicant/accused is required to recover the forged bank guarantee of Rs.5 crores. She relied on the supplementary statement of the complainant dated 15th July, 2014 wherein he has stated that bank guarantee of Rs.5 crores was shown by applicant/accused Vimal Gandhi and Sunil Joshi to him and therefore, he made second RTGS. She submitted that the custody of applicant/accused is necessary and he is not to be granted bail.

5. Perused the FIR and the earlier orders passed by the Sessions Court in the matter of Mohd. Hussain Tarwala. In the case of Tarwala, there was a bank guarantee of Rs.10 crores and that was seized by the police. As per the remand report produced before the Sessions Court, the said statement was made by the police. In the format under 154 of the FIR, the police have mentioned that the applicant/accused and other persons prepared a forged bank guarantee of Rs.10 crores. However, in the supplementary statement, the complainant mentioned that it was a forged bank guarantee of Rs.5 crores. But it is not mentioned that the bank guarantee was given by the applicant/accused. Thus, there is a confusion whether it is a bank guarantee of Rs.5 crores or Rs.10 crores. However, the said bank

guarantee was not used or produced in any proceedings or before the bank. The cheques which were bounced were issued by Shirish Shah, so aslo the payment of Rs.15 lakhs which were made by RTGS by the complainant is in the account of Finewave Trading Co. Pvt. Ltd., of which Shirish Shah is a director. As per the case of the prosecution, the complainant handed over cash of Rs.15 lakhs to the applicant/accused and it was distributed by Shirish Shah amongst all 4 to 5 accused. Considering the role played by the applicant/accused, I am inclined to grant pre-arrest bail to the applicant/accused on the following terms and conditions:

O R D E R

(i) Application is allowed.

(ii) In the event of arrest, the applicant/accused be enlarged on bail on furnishing P.R. Bond in a sum of Rs.40,000/- with one or two sureties in the like amount;

(iii) The applicant shall not pressurize the complainant.

(iv) The applicant shall not indulge into any criminal activity, while on bail;

(v) The applicant shall cooperate the Investigating officer and shall attend the concerned police station on every Monday between 5 p.m. to 7 p.m. for one month.

(vi) The applicant/accused shall not leave India without the prior permission of the Court.

(vii) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of pre-arrest bail.

6. The Application stands disposed of on above terms.

(MRIDULA BHATKAR, J.)