

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1464 OF 2015

Mahesh Matta

.....Applicant

V/s.

State of Maharashtra

(Through Nirmal Nagar Police
Station, Mumbai)

.....Respondent

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Mr. Dinesh Tiwari a/w. Mr. Swapnil Ambure, Ms. Gaurangi Pujara
and Mr. Mikhail Dey and Mr. Meit Sampathy i/by. Mr. Dinesh
Tiwari & Associates, Advocate for the applicant.

Smt. Rutuja Ambekar, APP for the respondent, State.

Mr. M.S. Mohite, Advocate for the original complainant.

CORAM :- N.W. SAMBRE, J.

DATED :- 21st NOVEMBER, 2016.

P.C. :-

1). The applicant is seeking pre-arrest bail in Crime No. 07
of 2014 for offences punishable under Sections 403, 409, 420, 465
Indian Penal Code.

2). The case of the prosecution and the present applicant is
that, company by name, M/s. Sanda Wellbeing, which is in the
business of outsourcing business, tele-marketing and tele-servicing,
hired the services of the present applicant. The terms of the

appointment, reflects, as is pointed out from the civil suit is that, the applicant was offered salary of Rs.21,00,000/-.

3). It is then claimed that, substantial amount of the Company which was working in the nature of an BPO was at the disposal of the applicant being the Head of the Marketing Division of the Company, who was also Director (Sales). The applicant has misappropriated the amount to the tune of lakhs of rupees resulting into registration of the crime in question, which amount according to complainant was meant for salary, allowances, expenses of appointment, training etc.

4). While trying to make out a case for bail, the learned Counsel for the applicant submits that, the applicant and the original Promoter, Mr. Patel of the parent Company, M/s. Sanda Wellbeing were old friends and it is upon his invitation, the applicant has joined the Company in the capacity of Director. The applicant, then submits that, differences arose between the applicant and other two Directors, particularly, on the issue of holding of shares of the Company in a particular proportion and also on the issue of share in profit. It is out of these differences, the complainant removed the applicant from the Company. In the wake of the differences, the applicant was removed from the Company by remaining two of the Directors. It is then claimed by the applicant that there is a civil suit initiated on the original side jurisdiction before the High Court of Bombay being Suit No. 898 of 2013 for recovery of the applicant in which the applicant has already filed a

counter-claim. The learned Counsel for the applicant, would then urge that criminal proceedings are pressed into motion only for the purpose of effecting recovery against the applicant through other mode than the mode prescribed by law.

5). While opposing the claim, the learned APP who is assisted by the learned Advocate appearing for the complainant, submits that, custodial interrogation of the applicant is very much necessary, as it was found that the applicant who was Director (Sales) has played fraud on the Company and misappropriated the amount in crores. My attention is also invited to the withdrawal/diversion of funds from the personal account of the applicant under the various heads. In addition, it is then brought to my notice that the applicant is not respecting the law and particularly has not co-operated in the investigation and as such prayed for rejection.

6). *Prima-facie*, upon perusal of the FIR what could be noticed is, out of the contract of personal employment of the applicant, a dispute between the applicant and the other Directors of the Company on the issue of sharing of profits and the proportion in which the stakes would be held by each of the Directors has cropped up as is apparent from the documentary record and exchange of e-mails.

7). It is thereafter since 2011 a grievance is raised that the applicant has misappropriated the amount and is time and again given a chance to cover up the same by giving proper accounts as is

reflected in the FIR. Had that been the case in 2011, there was no occasion with the complainant, Director to continue the applicant and proceedings could have been initiated then and there itself against the applicant. The above conduct of the complainant has prompted this Court to arrive at an inference of difference being Directors on the issue of administration. The complainant has already initiated civil suit for recovery of the amount being Civil Suit No. 898 of 2013 in which the applicant has filed counter-claim and it is informed that this applicant has already volunteered some interim arrangement.

8). What has sought to be canvassed before this court is that, the amount that has been spend by the present applicant should have been passed on to the customers of a BPO, however, same was diverted by the applicant for himself and as such was unable to give accounts thereof. It is to be noted that the applicant was manning a position of Director (Sales) and it was expected of him to check each and every entry, particularly as regards the restaurant bills, other small bills etc. in the Accounts. There is a dedicated Department for carrying out such activity in a Company. The dispute, *prima-facie*, appears to be civil in nature. The offence is registered pursuant to the order under Section 156(3) of Criminal Procedure Code.

9). In the above referred background, a case is made out for grant of bail. The application is allowed.

10). The applicant be released on bail on furnishing P.R.

Bond of Rs.2,00,000/- (Rs. Two Lakhs only) and again given chance to improve his working.

11). The applicant shall attend police station initially for a period of 4 weeks on Monday and Thursday between 10 to 1 p.m. from next week for four consecutive weeks and thereafter as and when called.

12). The chargesheet in the matter is already filed. Any three consecutive absence of the applicant before the learned Trial Court will entail the Court below to take out proceedings for cancellation of bail.

13). The applicant not to tamper with the evidence and/or influence the witnesses in any manner whatsoever.

14). At this stage, it is brought to my notice by the learned APP that the applicant is not co-operating in the matter of recording of statement and responding to the queries of the Investigation Officer. It is made clear that, if the applicant continues in not co-operating with the Investigation Officer in the investigation of the crime in question, it will be appropriate to grant opportunity to the Investigation Officer for cancellation, if so case is made out. This Court feels it appropriate to record an Undertaking given by the learned Counsel for the applicant, that the applicant shall extend all co-operation and shall also respect the court orders and the orders of the Investigation Officer.

(N.W. SAMBRE, J)