IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1716 OF 2016

Vishal Maheshwari. ... Applicant.

Versus

The State of Maharashtra. ... Respondent.

Mr. Abhijeet N. Gosavi, advocate for Applicant.

Mr. R.M. Pethe, APP for State.

Mr. S.V. Bile, API, Kalamboli Police Station.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 3, 2016

P.C.:

1 Heard the learned Counsel for the applicant and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicant herein is apprehending his arrest in M. Case No. 179 of 2016 registered at Kalamboli Police Station for

offence punishable under section 406, 408, 418, 420, 468, 471, 477A of the Indian Penal Code.

3 It is the case of the prosecution that the complainant Ramdhan Maheshwari filed a complaint before the learned Magistrate First Class alleging therein that the present applicant was one of the partners of M/s. Shipra Transport and Logistic. The applicant was in-charge of the branch at Kalamboli. He was authorised to withdraw cash from Shipra Company and issue cheques to the concerned party.

4 That on 5/6/2015 N. Patidar and Co. a firm of chartered accountants issued a certificate after conducting an audit for the period from 1st April, 2007 to 31st March, 2013 alleging therein that after conducting audit of the said firm, more particularly, the cash transactions of ICICI Bank Ltd., Mumbai, Canara Bank-Kalamboli Navi Mumbai, cash books, freight register, bank ledgers etc., it was noticed that there is a discrepancy of Rs. 1,08,24,980/-. All the partners of the firm had a meeting and it was ultimately decided that a private

complaint should be filed. The learned Magistrate issued directions under section 156(3) of the Code of Criminal Procedure, 1973.

5 The learned APP at this stage submits that similar complaints were filed against the brother and father of the present applicant and in all probabilities one of the dispute has been settled. Learned Counsel for the applicant at this stage submits that the complaint was also filed on the basis of the similar certificate issued by N. Patidar and company.

6 The learned Counsel for the applicant submits that till June, 2015, the audit of the firm was conducted by several auditors and no such discrepancy was found. According to the learned Counsel for the applicant, the firm is not functioning since April, 2012, as it was in losses. That the complainant in collusion with the Chartered Accountant has falsely implicated the present applicant. It is also submitted that the Court cannot be oblivious of the earlier certificates issued by the Chartered Accountant.

7 Learned APP has placed on record the papers of investigation. The statement of one of the partners clearly shows that all the transactions in respect of branch at Kalamboli were undertaken by the present applicant. Ravindra Maheshwari, who happens to be the son of the complainant had expired in an accident in the year 2009 and thereafter, the present applicant was looking after the transactions and functioning of the said firm. It is specifically stated that audit of the said firm was being conducted every year only on the basis of the income tax return submitted by the applicant and the balance sheet of the said branch was never prepared. That in the absence of the balance-sheet, certificates were being issued. It was revealed that although the work was being conducted properly, the company was running in loss. Ultimately, it was decided to conduct the actual audit of the firm on the basis of the vouchers, debit and credit account and only after preparing of the balance-sheet. It was in these circumstances that the certificates were being issued for the first time by N. Patidar and Company. Earlier certificates were being

issued by Patidar and Co. but the certificates were issued by H. Patidar, who happens to be the son of N. Patidar.

8 The learned APP submits that it was only after N. Patidar had conducted audit, certificate showing discrepancies was issued. There is possibility that the son i.e. H. Patidar was negligent in conducting the audit and had only relied upon the income tax return shown by the applicant, cannot be ruled out. It is clear from the papers of investigation that the applicant had rather misappropriated the funds of the company gradually and after taking advantage of the fact that Ravindra Maheshwari who happens to be the son of the complainant had expired, all the discrepancies are shown after 2009, since the audit period is 1/4/2007 to 31/3/2013.

9 It is clear that the applicant had fabricated documents in order to mislead the chartered accountant who was negligent in performing their duties. In this case custodial interrogation would be imperative. Hence, the application being sans merits stands rejected.

10 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the same at the time of deciding the application under Section 439 of the Code of Criminal Procedure, 1973.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)