IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 106 OF 2017

Jagannath Armaram Pawade …Applicant

Versus

The State of Maharashtra …Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 83 OF 2017

Manoj Anant Jadhav …Applicant

Versus

The State of Maharashtra …Respondent

Mr. Sujit B. Shelar for the applicant in ABA/106/2017.
Mr. Manoj S. Mohite for the applicant in ABA/83/2017.
Smt. Veera Shinde, APP for the respondent-State.

CORAM : PRAKASH D. NAIK, J.
DATE : 3 JULY 2017

P.C. :

1. The applicants are apprehending arrest in connection with C.R. No.I-244 of 2016 registered with Boisar Police Station, Palghar. The FIR was registered on 6th December, 2016.

2. The prosecution case is that the complainant / Deputy Executive Engineer attached to Boisar Rural Sub-Division of Maharashtra State Electrical Distribution Company Ltd.

(MAHADISCOM) lodged the FIR. It is alleged that the company did not receive bills of several customers for October, 2016 and hence bills were forwarded to them in November, 2016 including the arrears for the month of October, 2016 with penalty and interest.

3. The customers approached the company saying that the payment is being made to some private entities namely Om Sai Services and Jai Jagat Agency and Sardar Enterprises. It is further alleged that the aforesaid agencies collected the bills for Otomax Technology Pvt. Ltd. (Otomax) The incharge of the said company is Sachin Salunkhe. There was distribution agreement between Otomax and G.I. Technology which is situated at Chennai. There was no license in favour of the said purported agents to collect electricity bills. The total amount involved in the crime is to the tune of Rs.9 lakhs. The amounts collected from the customers did not reach the company and there is misappropriation of the said amount.

4. The applicant in ABA No.106 of 2017 is concerned with Jai Jagat Agency, the partner of the said agency is one Mr. Ajay Patil. The applicant in ABA No. 83 of 2017 is the employee of the aforesaid electrical company. It is alleged against the applicant in ABA No. 106 of 2017 that he had no authority to collect the amount and without

authority the amounts were collected in cash towards the electricity bills which were mis appropriated. As far as applicant in ABA No.83 of 2017 is concerned, it is alleged that he is employee of the electrical company. He had introduced several distributors to Otomax and induced them to act as an agent on behalf of the Otomax. It is further alleged that the amount of Rs.50,000/- was credited in the account of wife of the said applicant from the account of the Otomax.

5. The co-accused Ajay Patil had preferred an application for anticipatory bail which is granted by the Sessions Court. Learned counsel appearing in ABA No.106 of 2017 submitted that he has been falsely implicated in this case. He was authorized by Otomax to act as an agent. The said company was authorized by G.I. Technology as an agent. He submitted that on receipt of the complaint from the customers about payments being made in respect of bills being issued. He approached the Otomax and informed them about the aforesaid issues. The applicant was informed that the issues will be resolved by Otomax. He also pointed out that whatever money received towards the collection of electricity bill was credited into the bank account of Otomax. He placed reliance upon the bank statement which shows that the amount has been transferred to the

account of the Otomax. He also submitted that the complaint was lodged by him which is prior in point of time against the Otomax on account of the fact that the amount was transferred to their account but the same was not paid to the said company. He further submitted that since co-accused i.e. partner of the applicant firm has been granted anticipatory bail, the applicant may be granted similar relief. He further submitted that on account of the aforesaid submissions the custodial interrogation of the applicant is not necessary.

7. Mr. Mohite, learned counsel for the applicant in ABA No. 83 of 2017 submitted that the applicant is employee of MAHADISCOM since 13 years. He submitted that role which is being attributed to him is that he had introduced some distributors to act as an agent on behalf of the Otomax. He submitted that he had cordial relationship with Salunkhe who is concerned with Otomax and beyond that there is no connection of the said applicant with the crime. He submitted that the amount of Rs.50,000/- was credited to the account of wife for personal reason as he had cordial relationship with Mr. Salunkhe. He submitted that the statement of the said applicant was recorded wherein the said explanation has been tendered. He relied upon

several documents in support of his submission that the system which is adopted for collecting the bills is being prevalent in this country and it has been followed up by various companies. He submitted that the applicant is government employee and his arrest will cause irreparable damage to his reputation and his employment will be in jeopardy. He is willing to cooperate with the investigation agency.

8. Perused the FIR and all the documents annexed to the applications as well as tendered by the applicants. Learned APP strongly opposed the application for anticipatory bail. She submitted that the applicants in ABA No.106 of 2017 and others had no authority to collect the money towards bill. She pointed out that the statement of the officer of RBI is recorded wherein it is stated that there cannot be such agencies and the same are not approved by RBI and were not authorized by GI Technology. It is submitted that the applicant had collected the amount unauthorizedly which has been misappropriated by them. It is submitted that the agreement relied upon by the applicant are unregistered and has no legal sanctity. She further submitted that the applicant in ABA No. 82 of 2017 has misused his position as employee of electricity company. The statements of the distributors indicate that they were induced by the

said applicant to be the agent of Otomax. She submitted that the said applicant has received an amount of Rs.50,000/- from Otomax and the explanation tendered by the applicant is not plausible. It is further submitted that custodial interrogation of both the applicants is necessary.

9. Applicant in ABA No. 106 of 2017 was acting in accordance with the agreement in the form of letter of intent. It is brought to my notice that the amount collected by him was credited into account of Otomax. He had also lodged the complaint with the police against the Otomax. The other partner of the said firm has been granted anticipatory bail.

10. I have perused the order dated 6th January, 2017 granting bail to accused Bhavesh Patil, Yogesh Suryakant Paithankar who were concerned with the other agencies against whom the similar allegations were made. In the said order, it is observed that initially it was the case of the prosecution that MAHADISCOM did not issue the the licenses for collecting bills to anybody. Earlier G.I. Technology from Chenai was also treated as an accused. However, now prosecution has accepted that electricity company has entered into contract with the said G.I. Technology. The G. I. Technology had

thereafter entered into an agreement for Otomax for distribution purposes. Thus, there is prima facie material to show that Otomax works on the basis of agreement with G.I. Technology and thereafter Otomax appointed other agencies to collect bills those issued from time to time and deposited the amount with the Otomax. It is further observed that arrangement was working fine till June 2016 to October 2016. The electrical Company received amount from Otomax wherein there was no dispute and therefore one cannot say that entire exercise of collection of bills was without authority or licences. The said order has not been challenged by the prosecution. In fact the role assigned to the applicant is similar to the said accused who has been granted bail after arrest. On the contrary, the bona fide of the applicant Jaganath Pawde can be seen from the fact that the amount was credited by him in the account of Otomax and he had also lodged complaint against the Otomax prior to registration of FIR. It is also admitted position that major role is played by Otomax. The account of the said company were seized. I do not want to make any further observations about role of Otomax since the application of the accused connected with the the said company is still pending. However, the fact remains that Otomax had appointed agents including the present applicant in ABA No 106 of 2017. As far as applicant in ABA No. 83 of 2016, the allegations is that he had introduced some persons as distributor to be the agents of the Otomax and that no role as far as collection of money or misappropriating the said amount is attributed to him. He is government employee and arrest would jeopardize his employment. It is true that an amount of Rs.50,000/- has been credited in the account of wife the said applicant. He has tendered explanation during the course of investigation and admitted that he had cordial relationship with Salunkhe. There is no link to establish the fact that the amount so given to the applicant was from the misappropriated money which was received by the Otomax. In any case for that purpose the custodial interrogation of the said applicant is not necessary. In the circumstances, the application preferred by both the applicants can be allowed.

ORDER

(i) Anticipatory Bail Application No.106 of 2017 and Anticipatory Bail Application No.83 of 2017 are allowed.

(ii) Interim order date 2nd March, 2017 passed in both the applications are hereby confirmed.

(iii) The applicants are directed to report Boisar Police Station, Palghar once in a week on every Saturday between 11.00 am to 1.00 pm till filing of chargesheet and thereafter as and when called for.

(iv) The applications stand disposed of.

[PRAKASH D. NAIK, J.]