IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.432 OF 2017
WITH
CRIMINAL APPLICATION NO.302 OF 2017

Pujit Ravikiran Aggarwal ... Applicant
versus
The State of Maharashtra ... Respondent

Mr.A.P.Mundargi, Senior Advocate, with Mr.Subhash Jadhav, Mr.Chandansingh Shekhawat, Mr.Aniket Nikam and Mr.Shivam Nimbalkar i/by ALMT Legal for Applicant.

Smt.Veera Shinde, APP, for State.

Mr.Raghu B. Bhilare, Police Inspector, EOW, GC-1, Mumbai present.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 13th July 2017

PC :

1. This is an application for bail in connection with CR No.168 of 2016 registered with Azad Maidan Police Station, Mumbai, which was subsequently transferred to Economic Offences Wing, General Cheating-1 Branch, Mumbai and was registered as CR No.33 of 2016. The offences were registered under Sections 406, 420 and 120B of Indian Penal Code.

2. The prosecution case is that the complainant is the Director of a company called M/s.Capri Global Advisory Services Private Limited which is a private limited company engaged in the business of

providing financial solutions to various corporate sectors. The Applicant-accused is running a company namely M/s.Orbit Corporation Limited which is engaged in the business of development and construction of real estate projects. The Applicant is the director of Orbit Corporation Limited. In the year 2012, the Applicant-accused approached the complainant and represented that his company is developing a project known as Orbit Terraces at the junction of N.M.Joshi Marg and Senapati Bapat Marg, at Lower Parel, Mumbai. It was represented that the land on which Orbit Terraces was to be constructed, is a free hold land and the Applicant company is the owner of said land. It was further represented that they have acquired co-development rights over the adjoining land which will be amalgamated. It was also represented that additional FSI will be available due to amalgamation and they can construct more floors on the building. On the basis of said representation, the complainant agreed to purchase eight flats in Orbit Terraces. All the requisite documents were executed in favour of complainant. It was assured by the accused that construction will be completed within 24 months and in case there is failure to comply with the commitment, the Applicant would find a buyer and will sell the flats and refund the invested amount to the complainant. Believing the assurances given by the Applicant, the complainant invested money in the flats. Thereafter again documents were executed. Around May-2013, M/s.Orbit Corporation Ltd. approached the complainant and represented that they are developing another real estate project known as `Orbit Heaven" and offered to sell certain units to them. The complainant agreed to invest in one unit. Memorandum of understanding and agreement was executed. On 31st May 2013, the Applicant-accused informed the complainant that amalgamation process of the plots is still pending and additional FSI is not approved. The Applicant-accused accepted that sum of Rs.56,67,90,736/- is payable to complainant as on 31st May 2013. They also agreed to pay interest. A memorandum of acknowledgement of debt was executed and indenture mortgage deed was also executed on 11th June 2013. Charge was created by way of registered mortgage in favour of complainant in respect to Flat No.802. It was represented that the mortgagors should not deal or dispose off any interest in any of the mortgaged property or any part thereof. But the accused had put third party in possession and flat was encumbered by unknown person. On 20th July 2013, the Applicant-accused executed supplemental memorandum of acknowledgement of debt and mortgage deed of commercial premises at Malabar Hill Division. The Applicant-accused approached the complainant and induced him to extend further another corporate deposit of Rs.5.30 crores and another mortgage deed was executed and charge was created in respect to the property. The Applicant-accused again made representations that he is having FSI of 2.50 times of plot area and having potential of minimum 60,000 sq.fts. of salable area, however, no such plans were sanctioned. Thereafter, in response to the complainant's letter, the company of Applicant-accused tendered six cheques. The said cheques were dishonoured by the bank with intimation that "accounts are blocked". It is, therefore, alleged that the Applicant-accused persuaded the complainant on the basis of false representations and induced the complainant to part with huge amounts. The Applicant was aware that the account of the company has been blocked by Sales Tax Department and in spite of that, cheques were issued, which were dishonoured. M/s.Orbit

Corporation had created a first pari passu charge by way of registered mortgage in complainant's favour and in favour of PBPL on commercial/office premises in the building called Orbit Arya. It was subsequently learnt that the mortgaged property in Orbit Arya was reserved for Podium parking an there was no such commercial space/office. It was alleged that during the period as stated above, the accused has persuaded the complainant to believe in their false representations, suppressed facts, made false assurances and induced to part huge amount.

3. In view of aforesaid circumstances, the FIR, as stated above, was lodged on 27th April 2016. The Applicant was arrested on 21st September 2016. The investigation has been completed and charge sheet is filed.

4. Learned advocate for Applicant submitted that the dispute is purely of civil nature. It is a commercial transaction wherein several agreements/indentures were executed between the parties. It is submitted that there is no element of criminality in the said transactions. It is submitted that there is no merit in the submission that cheques were issued in spite of knowledge that account was blocked by Sales Tax Department. It is submitted that the cheques were handed over to the complainant vide letter dated 29th September 2015. The cheques were dated 30th September 2015. The account was blocked by Sales Tax Department on 22nd October 2015. The cheques were deposited by the complainant on 14th December 2015. It is, therefore, submitted that the Applicant had no knowledge that Sales Tax Department has blocked his bank account. Learned counsel appearing for Applicant-accused relied upon the

contents of first information report itself to submit that the nature of transaction between the Applicant and the complainant, is purely on account of investment and, therefore, the penal offences, as alleged, are not made out. He pointed out several documents which were executed between both the parties. It is submitted that there was no suppression of any material fact from the complainant. It is submitted that no person could invest around Rs.60 crores without understanding the nature of transaction or without making any requisite inquiry. It is further submitted that the Applicant is in custody from the date of arrest and the charge sheet has been filed against the Applicant-accused and his further custody is not required. It is also pointed out that winding-up proceedings were initiated and appropriate orders were passed by Company Court in the said proceedings. The said order has been annexed to this application. The Applicant had executed documents acknowledging the debt and also provided security in terms of mortgages that were created in favour of complainant. The complainant company filed Company Petition No.592 of 2016 before this Court. In the affidavit in support of the petition, the complainant has admitted to have created charge/mortgages by Applicant in order to secure the debt. There is no entrustment of property as contemplated under Section 405 of IPC.

5. Learned APP strongly opposed the application for bail. It is submitted that the complainant was induced to part with huge amount on the basis of false representation. It is submitted that the cheques were issued in spite of knowledge that bank account was blocked by Sales Tax Department, which shows the intention of the Applicant-accused. It is further submitted that the Applicant was

induced to part with huge amount. Although charge sheet is filed, further investigation is continued vide Section 173(8) of Code of Criminal Prosecution, 1973. She further submitted that the Applicant is having criminal antecedents. A reference is made to CR No.2 of 2014, CR No.146 of 2013, CR No.94 of 2016 and CR No.196 of 2016. Apart from that, present FIR and connected CR No.98 of 2016 were also registered against the Applicant.

6. Mr.Mundargi appearing for Applicant submitted that CR No.2 of 2014 and CR No.146 of 2013 have been settled by the complainant. It is further submitted that as far as CR No.94 of 2016 and CR No.195 of 2016 are concerned, the Applicant has been granted anticipatory bail by the Court of competent jurisdiction. It is submitted that FIRs were registered on account of non-completion of the project in the identical situation.

7. I have perused the documents on record and considered the submissions advanced by the parties. From the documents on record, it is apparent that the complainant had entered into transactions with the Applicant's company and had executed several documents. Prima facie it appears to be a transaction relating to investment by the complainant. The matter relates to documents which are already collected by investigating machinery. From time to time, several agreements/memorandum of understandings/deed of assignments were executed between the Applicant company and the complainant. The entire case is investigated by Police and charge sheet has been filed against the Applicant. Further detention of the Applicant is not necessary. The Sessions Court has observed that undoubtedly the matter arises out of purely commercial transaction

between the Applicant and complainant. The Applicant is impleaded as accused being the director of M/s.Orbit Corporation Ltd. The Sessions Court has observed that it could not be overlooked that many cheating cases are committed in the course of commercial transactions. Therefore, it is material to know the crux or intention of party making the representation and that investigation under Section 173(8) of Cr.P.C. is still in progress. The order rejecting the application was passed by Sessions Court on 2nd February 2017. Even thereafter the Applicant has continued to be in custody. The High Court by order dated 28th September 2016 granted relief to the complainant company in Company Application (L) No.535 of 2016 by restraining the accused from creating third party rights in respect to assets of accused. The first informant has also initiated proceedings under Section 138 of Negotiable Instruments Limited.

8. In view of the above, bail can be granted to the Applicant. Hence, I pass following order :

ORDER

(i) Bail Application No.432 of 2017 is allowed;

(ii) The Applicant is directed to be released on bail in connection with CR No.168 of 2016 registered with Azad Maidan Police Station, Mumbai, which was subsequently transferred to Economic Offences Wing, Crime Branch and was registered as CR No.33 of 2016, on furnishing PR bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount;

(iii) The Applicant is directed to report the investigating officer of EOW, GC-1, Mumbai once in a month on first Saturday of the month between 11.00 a.m. and 1.00 p.m;

(iv) The Applicant is directed to surrender his passport to the investigating officer of EOW, GC-1, Mumbai, if not yet surrendered;

(v) The Applicant shall not tamper with the evidence and witnesses;

(vi) Bail Application No.432 of 2017 is disposed of;

(vii) Criminal Application No.302 of 2017 also stands disposed of.

(PRAKASH D. NAIK, J.)

MST