Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 438 OF 2017

Suresh Ramhari Margar ... Applicant
Vs.
The State of Maharashtra ... Respondent

Mr. M.V. Thorat, Advocate for the Applicant.
Mrs. Rutuja Ambekar, APP for Respondent – State.
Mr. Vijay Killedar, Advocate for the complainant.
Mr. S.S. Pawar, A.P.I., HC/727/Surwase, EOW, Solapur city.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd March, 2017.**

P.C.:

This Application is moved for anticipatory bail under section 438 of Cr. P.C. The applicant-accused is apprehending arrest in C.R. No. 399 of 2016 registered with M.I.D.C. Police Station, District Solapur for the offences punishable under section 420, 406, 409, 467, 468, 471 of the Indian Penal Code. The offence is registered at the instance of Vasudev Markandey Ippalpalli on 10th August, 2016.

2. As per the case of the prosecution, the offence of cheating and misappropriation has been committed by the applicant/accused during the period from 1st December, 2010 to 8th January, 2015. The complainant is authorized to file the complaint on behalf of one

Vishnu Laxmi Cooperative Grape Distillery Ltd., which is Cooperative Society. The Society has the business of manufacturing of liquor and running the distillery units. It is the case of the prosecution that the applicant/accused was working as Factory manager from December, 2008. He was looking after the entire production, sales, accounts and the administration of the factory. The applicant/accused initially worked for the Society and the Directors of the Society fully trusted him and they gave him free hand in the work. The Directors of the Society did not look into the administration and actual business of the Society which was carried out by the applicant/accused. In the year 2015 one Accounts officer Mr. Chafalkar was appointed and it was found that the entries made in the accounts during the period from 2010 to 2015 were suspicious. After making enquiry of the accounts, other entries and checking the bank statements of the Society, the society found that the applicant/accused has withdrawn huge amounts for his own use. He also transferred the amounts in his personal account. He has appointed some persons as Sales Executives and has online transferred the amounts in their accounts. The applicant/accused has appointed one person by name John Beeti and has transferred Rs.1,84,000/- from 6th May, 2011 to 26th December, 2013. He has withdrawn nearly an amount of

Rs.54,75,527/- from the companies account, for which he was not entitled to. It is the case of the prosecution that the amounts were transferred in the name of 21 persons, who were not entitled to and were not concerned with the companies business. They also found the names of five persons to whom the advance money was given, however, why the total amount of Rs.60,60,000/- was given to them and in what connection is not found. Thus, as per the case of the prosecution, the Society has suffered wrongly loss for a total amount of Rs.1,07,33,392/- and this amount is misappropriated. Hence, this Application.

3. The learned counsel for the applicant/accused has submitted that the applicant/accused is innocent. He submitted that the applicant/accused initially was drawing the salary of Rs.16,000/- and subsequently he got increment wherein his salary for 7 to 8 months was Rs.30,000/- and thereafter it was Rs.50,000/-. Thus, the amount drawn by him is in the nature of monthly salary and income tax is deducted at source from the companies account. He further submitted that one Sunil Pathak and John Beeti were present before the police at the time of interrogation of the applicant/accused during interim bail. The learned counsel further submitted that the Society

has filed a suit for recovery of the amount of Rs.1,30,00,000/- and by way of counter claim the applicant/accused has claimed an amount of Rs.2,64,000/- from the Society, as he has given loan to the Society. He submitted that this dispute is of Civil nature and the society with the ulterior motive has painted it as criminal offence. He further submitted that Mr. Chafalkar is not the regular accountant but the Society's account was audited by a Regular Auditor. However, Chafalkar is planted by the present Secretary of the Society. He further submitted that the applicant/accused is no more working with the Society, as he has left the Society. The Society has vested interest in retaining the appointment of the applicant/accused and therefore has made this false complaint. He further submitted that online payments were made by the Society by the Directors and Chairman of the society. The applicant/accused is no way concerned with the payments made to the employees of the Society. He further submitted that in the list of 21 persons, one Marlapalle Anandappa is the son-in-law of one of the Directors and now Marlapalle himself is a director and an amount of Rs.50,000/- was transferred in his name.

4. Learned APP opposed this Application and submitted that the custody of the applicant/accused is required for effective

interrogation, as at the time of interrogation during the interim bail, the applicant/accused did not give proper answers and satisfying explanation. She relied on two documents, i.e., appointment letter dated 16th November, 2008 of the applicant/accused which was signed by the Chairman of the Society where his dues are satisfied. The applicant/accused had no authority to appoint the staff of his own. She further relied on a letter dated 1st October, 2011 which is produced by the applicant/accused. She submitted that this letter is allegedly signed by Babu Ambadas, Chairman of the society wherein statement of increase in salary of the applicant/accused from Rs.16,000/- to Rs.30,000/- nearly for 8 months and thereafter Rs.50,000/- is mentioned. She submitted that this letter is a forged one, as the statement of Babu Ambadas is recorded by the police and he has denied issuance of such letter and so also increase in the salary of this applicant/accused, i.e., 30,000/- and Rs.50,000/-. She further submitted that Investigating officer has also recorded statement of Nilesh Deshmukh and John Beeti, who were given appointment by Sunil Pathak and Sunil Pathak was appointed by Vishnupant Kote, who was then Director and who is no more. She further submitted that all online payments from the accounts of the Society were made in the accounts of all these persons by the applicant/accused himself when he was not authorized to make such payments.

5. Heard the submissions of the learned counsel for the applicant/accused and the learned APP at length. Perused the documents. It appears *prima facie* that the letter dated 1st October, 2011 of the increase in salary is bogus in the light of denial of issuance of said letter by Babu Ambadas. The charges in the FIR show the names of the persons. On query about the recording of the statements of these persons, learned APP, on instructions, has submitted that the applicant/accused is not in a position to give the addresses and contact numbers of these persons and therefore it is not possible for the police to contact these persons and investigate to get the details of payments. She further submitted that the applicant/accused has committed one more offence which is registered at C.R. No. 20 of 2017 of Flying Squad of State of Maharashtra of Excise Department on 25th January, 2017 when he was working in Nakshatra Distilleries and Breweries Ltd., Solapur as Manager. He is facing charges of evasion of tax to the tune of Rs.21,44,07,000/- and production of forged certificate of accounts verification (Certificate 3). Considering all these facts of the case

and the submissions, I am of the view that custody of the applicant/accused is required for effective interrogation. Hence, Anticipatory Bail Application is rejected.

(MRIDULA BHATKAR, J.)