[1]IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRI. ANTICIPATORY BAIL APPLICATION NO.743 OF 2016
WITH
CRIMINAL APPLICATION NO.941 OF 2016
WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.744 OF 2016
WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.819 OF 2016
WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.1395 OF 2016
WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.1701 OF 2016

Sudeep Kumar Ramani Bhusanprasad .. Applicant
Vs.
The State of Maharashtra & Anr. .. Respondents

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.1129 OF 2016

1) Uday Arun Shinde
2) Purshottam C. Gokule .. Applicants
Vs.
The State of Maharashtra .. Respondent

WITH
CRI. ANTICIPATORY BAIL APPLICATION NO.1699 OF 2016

Vijay Gopal Salunke .. Applicant
Vs.
The State of Maharashtra .. Respondent

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Mr. Sanjeev Kadam, Advocate for the Applicant in ABA No.743,

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1 Corrected version of order dt.12.6.017, pursuant to Speaking to the Minutes Order dt.26.07.2017.

744, 819, 1395 of 2016 and APPP 941 of 2016.

Mr. A. P. Mundargi, Senior Advocate a/w. Mr. Sanjeev Kadam, Advocate for the Applicant in ABA No.1701 of 2016.

Mr. Damle, Senior Advocate i/b. Mr. Hemant Ghodigaonkar, Advocate for the Applicant in ABA No.1699 of 206.

Mrs. J. S. Lohokare, APP for the Respondent – State.

Mr. Ashwin Thool a/w. Ms. Reshma, Mr. Rudrojit Ghosh i/b. Ms. Trilegal, Advocate for the Intervenor.

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CORAM : PRAKASH D. NAIK, J.

DATED : JUNE 12, 2017.

P.C. :

All these applications are preferred by the applicants seeking anticipatory bail by invoking Section 438 of the Code of Criminal Procedure (hereinafter referred to as “Cr.P.C.”, for short). Anticipatory Bail Application No.743 of 2016 is preferred by the applicants therein in connection with C.R.No.39 of 2016, registered with V.P. Road Police Station. Anticipatory Bail Application No.744 of 2016 is preferred in connection with C.R.No.9 of 2016, registered with L.T. Marg Police Station, Mumbai. Anticipatory Bail Application No.819 of 2016 relates to C.R.No.8 of 2016, registered with Nagpada police Station. Anticipatory Bail

Application No.1129 of 2016 is preferred in connection with C.R.No.45 of 2016, registered with Govandi Police Station. Anticipatory Bail Application No.1395 of 2016 is related to C.R.No.45 of 2016, registered with Govandi Police Station. Anticipatory Bail Application No.1699 of 2016 is preferred in connection with C.R.No.45 of 2016, registered with Govandi Police Station, Mumbai and Anticipatory Bail Application No.1701 of 2016 relates to C.R.No.69 of 2016, registered with Azad Maidan Police Station, Mumbai.

2 The complainant in all these cases is common. The offences were registered under Sections 406, 408 and 420 of the Indian Penal Code (hereinafter referred to as "IPC" for the sake of brevity).

3 The prosecution case is that M/s. Electric Payment and Services Private Limited (hereinafter referred to as "EPS" for the sake of brevity) is a company registered under the provisions of Company's Act. The complaint was lodged at the instance of the said company. The complainant

company deals with business to provide Automatic Teller Machine (ATM) and ancillary services for the retail banking sector. For that purpose, the complainant company entered into agreement with concerned banks. For the purpose of carrying cash from the concerned bank to the ATM machine, services of RCI Cash Management Services Private Limited were engaged by the complainant company. There are more than 700 ATM machines installed by the complainant company with the help of RCI Cash Management Services Private Limited. Accordingly, agreement dated 20th March, 2013 was executed between the complainant and RCI Cash Management Services Private Limited. It is alleged that several complaints were received by the complainant that services of the ATM machines are not satisfactory. Hence, the complainant conducted an audit of non working ATM machines. After verification of ATM machines, it was transpired that the amount was short. It was noticed that there was a shortage of amount in various ATM machines all over Mumbai. Subsequently, it was also found that the shortage of funds in the machines installed in the various parts of Maharashtra. Hence, complaints were lodged with various police stations on the basis of which the offences were registered with respective police stations. The applicants in the present applications had preferred these applications in connection with the respective FIR's registered with various police station.

4 Learned advocate for the applicants submitted that the applicant Sudeep Kumar Ramani Bhushanprasad is working as Director with RCI Cash Management Services Private Limited. The applicant Vijay Salunke was a regional Manager of RCI Cash Management Services Private Limited. Others were employees of the said company. However, it was contended that applicant Salunke had resigned from the services with the said company with effect from 18th December, 2015. It is submitted by the applicants that RCI Cash Management Services Private Limited (hereinafter referred to as "RCI" for the sake of brevity) was undertaking work of various banks in connection with their ATM machines like carrying the cash

after receiving it from bank and to load the same in their ATM machines by using vehicles, manpower etc. It is further submitted that EPS Company had approached the applicant company for outsourcing their work for different banks. Accordingly, on 20th March, 2013, a master service agreement was executed between the EPS and RCI. By the said agreement, RCI had agreed to work as service provider on the terms and conditions laid down in the agreement. EPS Company used to hand over necessary challan by taking money from the concerned bank. The said challan was then taken to the bank and after obtaining the cash it was handed over to RCI with an authority letter and then taken to requisite ATM machines as per the directions of the EPS. The ATM machines records refilling done by RCI. The standard operating procedure for intimating, verifying and reconciling and/or claiming any shortage between the two companies was also agreed between the parties. In the event of EPS noticing any such shortage, it has to be checked on two counts i.e. firstly, whether there is a potential shortage based on counter mismatch i.e. mismatch between the ATM and the switch counter or whether there is a physical shortage. After any shortage is reported by EPS, RCI used to request for verification by EPS if there is any counter mismatch due to wrong reporting or reconciliation or there is an actual physical shortage. It is further submitted that EPS would sent all the details in the aforesaid eventuality, after procuring it from relevant bank to RCI. Therefore, RCI was supposed to verify all the details furnished by EPS to confirm whether there is reconciliation issued or physical shortage. If after verification, the issue relates to reconciliation, then, the same is to be sorted out with EPS after which the dispute used to be closed. If the issue is of the physical shortage, then, the management of the RCI has to proceed and file a criminal complaint against its employee whoever is involved in the action relating such shortage. It was further submitted that one of such incident was reported in January 2015 by the officers of Dena Bank at their ATM Centres in Palghar area. The involvements of the employee was revealed and, therefore, the FIR was registered with Gholwad Police Station, Palghar vide C.R.

No.I-05 of 2015. It was further submitted that as per the agreement, EPS was supposed to pay necessary charges to RCI towards the work carried out by the company. However, a huge amount was kept pending by EPS. There were disputes about non-payment of dues which had reached upto Rs.3 crores. Hence, RCI had issued a letter to EPS on 21st November, 2015 in respect to their claims. It is submitted that M/s. RCI had claimed of Rs.3,72,00,000/- from EPS, whereas, EPS had claimed of Rs.1,30,00,000/-, against RCI as per their audit. It was decided to reconcile the transactions and correspondence exchange between both the parties. RCI had surrendered around 200 ATM. The claims of the EPS were disputed by the RCI. It is further submitted that RCI had called for the details from EPS with regard to alleged shortfall of cash which were not furnished. For all the ATM machines maintained by RCI company, a bank guarantee of Rs.1,25,00,000/- was issued by RCI in favour of EPS. Similarly, the transactions were issued with New India Assurance Company for which the applicants company had paid a premium of Rs.42,35,972/-. It was further submitted that in the agreement executed between both the parties, it was provided that in the event of any disputes between the parties, the matter would be referred to an arbitrator for resolving the dispute. RCI had also initiated arbitration proceedings against EPS. However, instead of resulting to arbitration, complaints were lodged with various police stations for the offences punishable under Sections 406 and 409 of the IPC. The learned advocate for the applicants relied on several documents by tendering compilation. Reliance was placed on master service agreement dated 20th March, 2013. The said agreement was executed between EPS and RCI. The terms and conditions to be followed by the parties was stipulated in the said agreement. It is submitted that Clause 14 of the said agreement refers to a clause of insurance. It was stated that the service provider shall, at its own cost and expenses, take insurance policies. It was stated that adequate and sufficient insurance for cash in transit, including, but not limited to, the cash being taken from the customer to the service provider's vault. Service provider vault to the ATM and ATM site to the service provider's vault with a minimum exclusive cover of Rs.10 crores and adequate and sufficient fidelity guarantee insurance for each staff of the service provider, who is engaged and providing the service under the agreement. It was further submitted that insurance of ATM and the cash in ATM shall be the responsibility of EPS/ customer. The learned counsel for the applicants further pointed out Clause 15 of the agreement, with regard to bank guarantee worth Rs.50,00,000/- to be arranged by the service provider for securing the obligation in respect to the cash loss. Clause 20 of the said agreement was referred to since the same was relating to arbitration. It was stated that any dispute, differences or claim that is not settled within 15 business days from the date on which such dispute, difference or claim is raised, arising out of or in connection with the agreement, including the construction, validity, execution, performance, termination or breach shall be referred to the arbitrator. Reliance was also placed on the insurance policy, the New India Assurance Company limited wherein RCI was insured. The coverage included misappropriation and shortage. It was, therefore, submitted that the agreement provided the clauses of insurance and arbitration and there was no necessity for its resorting the criminal proceedings. Reliance was also placed on the debit notes dated 5th February, 2015 and 24th February, 2015. It was also contended that there was dues of RCI to be paid by EPS which was pointed out by way of charge annexed to the said compilation. The applicants also relied upon the copies of bank guarantee, notice by RCI to EPS for appointment of arbitrator, copy of arbitration petition and the letter dated 17th May, 2016, seeking audit report of ATM and various other documents which were annexed to the said compilation. It was further submitted that applicant accused Sudeep Bhushanprasad was granted anticipatory bail in connection with C.R.No.17 of 2016. It was submitted that in view of the above, custodial interrogation of the applicant is not necessary. It is submitted that the applicants were granted interim protection and they have continued to be on interim protection for a long time. It was submitted that the applicant accused Bhushanprasad is a Director and not concerned for shortage of amount. It was also submitted that a writ petition was filed preferred before the Division Bench for clubbing the investigation of all cases and a common investigation agency is directed to investigate the said crime. They are willing to co-operate with the investigation and, hence, these applications may be allowed.

5 Learned APP strongly opposed the applications. It is submitted that the applicant's in all the applications are involved in the crime. The investigating machinery has collected evidence to show the complicity of the applicants in the said offences. It is submitted that during the course of investigation, it was revealed that there was a telephonic conversation between the aforesaid accused and Sagar Sonawane and Shivaji Meher which reflect that at the instance of the applicant Bhushanprasad, those two persons have deposited the loan amount. It was further submitted that the investigation also revealed the involvement of the other applicants wherein it is revealed that the amount was siphoned off ATM machines at the instance of the applicants

accused and the same was utilized by them. It is submitted that the acts committed by the applicants accused reflects their fraudulent intimation to cause loss to the complainant company. All the accused – applicants had connived with each other in committing the crime.

6 Learned APP submitted that somewhere in July 2015, the complainant company received complaints from their customers with regards to operation of certain ATM machines. During the inquiry, it was noticed that the RCI had committed default and has not performed its duty. During the inquiry by the complainant company, it was revealed that there was a dispute in RCI between the company and its employee on account of non-payment of their dues and the amounts from the ATM machine has been misappropriated by the said company. Hence, the audit of the ATM machine was conducted. Discussions were held with the applicant accused Sudeep Kumar, however, he did not co-operate with the complainant company. It was revealed that Sudeep Kumar, Vijay Salunke, Purushottam

Gokule, Uday Shinde, Sagar Sonawane and Shivaji Meher had acted in connivance with each other and with a dishonest intention the amount which was to be deposited in ATM machines was withdrawn and the same was utilized by them. It was submitted that there was a loss of about 19 lakhs at various ATM machines within Mumbai to the complainant company and a total loss of about 4 crores in Maharashtra. It is further submitted that during the course of investigation, it was revealed that the regional manager Shri Vijay Salunke had informed to custodian Shivaji Meher that the salaries of the employees of the said company are to be paid and, therefore, the entire amounts which is to be deposited in the said ATM machines should not be deposited and the amount be retained. On account of the said instructions, the said persons retained Rs.2 lakhs and the same was handed over to Vijay Salunke. It was further revealed that in August 2015 Shri Salunke had again contacted him and told him not to deposit Rs.10 lakhs and asked him to bring the said amount in the office of the company. On the basis of the said instructions, he did not deposit the said amount and handed over the same to Vijay Salunke in the presence of Uday Shinde, Purushottam Gokule and Satish Dasri. It was revealed that similar instructions were given from time to time and the amount was not deposited in the respective ATM machines and the same was misappropriated. Learned APP therefore submitted that the accused had adopted the said method causing loss to the complainant company. It is further submitted that applicant accused Sandeep Kumar used to hold amounts in his office instruct the other employees to deposit the amount in the ICICI Bank. On the basis of the instructions, the amount which was supposed to be deposited in the ATM machine had been deposited in the ICICI bank on various accounts. Learned APP further pointed out the statements of the witnesses which attributes the role to the applicants hereinabove in misappropriating the amount which was to be deposited in the ATM machines. Learned APP therefore submitted that merely on the basis of the agreement executed between the parties, it cannot be contended that the complainant should have resorted to the remedies stipulated under the agreement. The applicants – accused had misappropriated the amount and have thereby committed the offences at various places. The custodial interrogation of the applicant is, therefore, necessary.

7 During the course of hearing, it was revealed that a meeting was held at Sahara International Hotel between the applicants and other staff of the RCI. The video recording of the said meeting was conducted by Shri Satish Dasare on his mobile and pen-camera. The said recording was stored in the pen-drive. The meeting was held on 19th July, 2016. The said pen-drive was seized by the police by recording panchanama. The recording in the pen-drive was copied on the laptop. In the said recording it was revealed that Director of RCI Shri Sudeep Kumar, Pawan Gupta, Vijay Salunke, Giri Rajan, Uday Shinde, Purushaottam Gokule and Satish Dasre were present in the said meeting. It was discussed that they have to receive money from EPS. The issue about shortage in the ATM machine was discussed wherein applicant Sudeep assured them that the issue will

be sorted out. In the said recording it was heard in April 2016, it was noted that the Director of Company RCI Shri Pavan Gupta was having discussion with the employee that this is a tough time for everybody and the situation will be dealt with, with the intervention of politicians, use of money and police administration. It was also discussed that if need arises, they will resort to unlawful methods and would even cause harm to owners and employees of EPS.

8 Learned advocate for the intervenor submitted that the conduct of the applicant – accused clearly shows *malafies* and the role has been attributed to them.

9 It was further submitted by the learned advocate for the intervener that initially the applicant and RCI represented that they were cooperating with migration process but, delayed the same on some pretext or the other. The said delays were nothing but deliberately created impediments by the co-accused in the migration process.

10 The learned advocate for the intervener further submitted that as there was no support or cooperation in the process of migration of the ATM’s, EPS was constrained to break open certain ATM’s after due intimation of the same to the RCI. The said break open was done by ATM engineers in the presence of EPS officers and bank officers. RCI officers were also requested to be present at the time of the break open of the ATM’s, however, nobody from RCI was present. The same was also recorded through emails dated 3rd November, 2015, 4th November, 2015 and 20th November, 2015.

11 Learned advocate submits that the applicants now at a belated stage to mislead the investigating agencies and the Courts have come up with false, lame and baseless urgings that the said crime is a arbitrable civil dispute and that it is EPS who has filed false complaints to pressurize the RCI. It is stated that the said claims and allegations of the applicant are false, baseless, mischievous and a *malafide* attempt to throw a blanket over crimes of the

applicants.

12 He further submitted that EPS has submitted around 86 complaints in Maharashtra out of which 75 complaints has been converted into 38 FIR's. The said complaints and FIR's cover an amount of Rs.4,12,25,700/-. In addition to Maharashtra, the applicants have also committed similar offences using the aforesaid modus operandi in the State of Andhra Pradesh. The amount under investigation in Andhra Pradesh is around Rs. 9 crores. The High Court at Hyderabad has also cancelled the anticipatory bail granted by the Additional Sessions Judge, Hyderabad to co-accused Mr. Pawan Kumar who has played a role similar to the applicants in the conspiracy. The said order dated 25th October, 2016 has been upheld by the Hon'ble Supreme Court vide order dated 29th November, 2016.

13 After hearing the rival submissions, I am of the opinion that the applicants are not entitled for relief under Section 438 of Cr.P.C. In the light of the role played by them custodial interrogation of the applicants is necessary. The

modus operandi adopted by the applicants shows dishonest intention to cause loss to the complainant. This is not a civil wrong and applicants cannot take shelter of the said agreement. The investigation machinery has collected evidence against the applicants. Huge loss has been caused to the complainant due to meticulous fraud played by accused. The complicity of the applicant accused is established during investigation. The submissions advanced by the learned prosecutor are well founded. The fraudulent acts were committed at various places. The accused company had committed similar crime in another state. Taking into consideration the aforesaid circumstances, the material on record, this is not a fit case to grant anticipatory bail.

14 Hence, the applications deserved to be rejected.

13 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Anticipatory Bail Application Nos. 743, 744, 819, 1395, 1701, 1129 and 1699 of 2016 are rejected;

(ii) In view of the order passed Anticipatory Bail Applications, the Criminal Application No.941 of 2016 does not survive and is disposed of accordingly;

(iii) Learned counsel for the applicants submitted that the applicants were protected by interim order for a long time and the same may be extended for eight weeks. Hence, the interim protection granted earlier is extended for eight weeks from today.

(PRAKASH D. NAIK, J.)