IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1279 OF 2016

Tejas Chokshi .. Applicant
Vs.
The State of Maharashtra & Anr. .. Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 2169 OF 2016

Ashish L. Srivastava .. Applicant
Vs.
The State of Maharashtra & Anr. .. Respondents

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Mr.J. Shekhar i/b. Mr.M.V. Thorat, Advocate for the Applicant in ABA No.2169 of 2016.

Mr.Girish Kulkarni a/w. Mr.Karan Kadam and Ms.Deepa Shetty i/b. M/s.Nankani & Associates, Advocate for the Applicant in ABA No.1279 of 2016.

Mr.Amit Palkar, APP for the Respondent – State.

Mr.Kamlesh Mishra, Advocate for Respondent No.2 in ABA No.1279 of 2016.

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CORAM : PRAKASH D. NAIK, J.

DATED : JULY 5, 2017.

P.C. :

Both the applicants are seeking anticipatory bail in connection with C.R.No.I-323 of 2015, registered with Nerul

Police Station. First Information Report was registered on 20th November, 2015 for the offences punishable under Sections 406, 420, 465, 467, 468 and 471 read with Section 34 of the IPC. The FIR was lodged by respondent no.2 in ABA No.1279 of 2016.

2 It is the prosecution case that the complainant was introduced to the Chief Executive Officer of D.B. Shapriya Construction Limited by accused no.1. Accused Tejas Chokshi at the instance of Kishor Shapriya filled up the R.O.C. form of the complainant as a director of the said company. Accordingly, he started working as a Director. On 20th April, 2012, Kishor Shapriya has established a company in Gujarat with the help of accused Chokshi. Shri Chokshi was working as chartered account for the company. He was holding several posts. In December 2012, the company had six contracts worth Rs.95 crores in different states of India. Kishor Shapriya (accused no.1) was supposed to provide the entire finance to complete the project. Accused Chokshi was asked by Shri Shapriya to manage funds from India. Accordingly, he obtained cash credit facility of Rs.50 crores from Indian Overseas Bank. For obtaining said facility, there was requirement of mortgage to the tune of 40%. Hence, Shri Shapriya gave his property situated at Rajkot, as a security.

Since the said property was short, the complainant was asked to give his property and mortgage the same for a period of six months. The complainant being the CEO and considering the interest of the company, forwarded documents of the property worth Rs.1,53,00,000/- to accused Shapriya in April 2013. Accused Shapriya also taken advance from the company of the complainant. The construction work of Rajasthan and Kanpur was stopped on account of lack of funds. The complainant neither received his property nor has received his monthly salary since January 2015. The funds were utilized by Kishor Shapriya and accused Chokshi. It is also alleged that the signature of the complainant was forged and it was made to resign him from the company. Hence, the FIR was lodged.

3 FIR does not attribute any overt-act to the applicant in ABA No.2169 of 2016. In the last paragraph of the FIR, however, a vague allegation is made that the said applicant in connivance with the other accused had committed the offence.

4 Both the applicants preferred application for anticipatory bail before the Sessions Court which were rejected. The learned advocate for the applicant in ABA 2169 of 2016

submitted that the FIR does not attribute any overt-act to the applicant. He has not played any role in the transaction. He, therefore, submitted that custodial interrogation of the said applicant is not necessary.

5 Learned advocate appearing for the applicant in ABA 1279 of 2016 submitted that the R.O.C. form of the complainant was filled up by the said applicant as a chartered accountant with the consent of the complainant. He submitted that he acted as a chartered accountant in discharging his duty and, there is no evidence of misappropriation of any amount by the applicant. He submitted that the decision to form the company was taken in 2011 and the applicant got attached to the company in 2012. The representations were allegedly made by accused no.1 to the complainant and not by the applicant. He submitted that beyond discharging his duty as a chartered account of the company, he has not committed any fraudulent act. The complainant alleges that his digital signature is being utilized by the accused to show that he has resigned from the company. It is submitted that assuming that the said allegations to be true, it does not amount to forgery. He further submitted that the primary role is assigned to Shri Shabriya. The matter relates to documents and he is

willing to cooperate with the investigating agency.

6 Learned APP and learned advocate for the intervener opposed the application for anticipatory bail preferred by the applicants. However, as far as the applicant in ABA 2169 of 2016 is concerned, the learned APP submitted that except the allegations made in last paragraph of the FIR, there was no evidence against the applicant involving him in the said crime. Learned APP, however, submitted that as far as the applicant in ABA 1279 of 2016 is concerned, he played a major role. The main accused is absconding and the applicant is acting on the instructions of accused no.1. From the contents of the FIR, according to him, the said applicant has committed several acts which amounts to commission of offence. He submitted that investigation is required to be carried out by taking custody of the said applicant. Learned advocate for the intervener reiterated the submissions advanced by learned APP. He submitted that the present accused and the accused no.1 has acted in connivance with each other and caused wrongful loss to the complainant. The complainant was induced to part with his property which was submitted as security. The accused have forged the documents showing that the complainant has resigned

from the company. He relied upon reply filed by him annexing several documents. He, therefore, submitted that the applications may be rejected.

7 Perused the FIR, the documents annexed to the application and the rely filed by the complainant.

8 From the tenor of the FIR, it is apparent that the complainant was induced to become the Chief Executive Officer of the company formed by accused no.1. On the said inducement, he was appointed as the C.E.O. It is also apparent that credit facilities were obtained from the financial institutions. There is no evidence of whatsoever nature against the applicant in ABA 2169 of 2016, as submitted by the learned advocate appearing for the applicant which is not rebutted by the learned APP. The applicant in ABA 1279 of 2016, has acted as Chartered Accountant of the company. Allegedly the amount has been transferred in the account of applicant no.1. The applicants were called by the investigating machinery by issuing notice under Section 160 and their statements were recorded. There is no adverse proceedings against the company by any financial institution or any authority. The matter relates to documents. Considering the role attributed

to the applicants, the custodial interrogation of both the applicants is not necessary and hence, the applications can be allowed.

9 Hence, I pass the following order:

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

(i) Anticipatory Bail Application Nos.1279 and 2169 of 2016 are allowed;

(ii) In the event of arrest of the Applicants in connection with C.R.No.I-323 of 2015, registered with Nerul Police Station, the applicants may be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) each with one or more sureties in the like amount;

(iii) Applicant in ABA No.1279 of 2016 is directed to report Nerul Police Station from 10th July, 2017 to 14th July, 2017 between 11.00 a.m. to 1.00 p.m. and, thereafter, as as when called for by the investigating agency;

(iv) Applicant in ABA No.2169 is directed to attend Nerul Police Station, as and when called for;

(v) Both the Anticipatory Bail Applications are disposed of accordingly.

(**PRAKASH D. NAIK, J.)**