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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1534 OF 2016

Vijay Chinnappan Gounder ..Applicant.
Vs.
State of Maharashtra & Anr. ..Respondents

WITH

CRIMINAL APPLICATION NO. 800 OF 2016

Ravikumar Jethmal Sharma ..Applicant.

Ms. Anjali Awasthi for Applicant in ABA 1534/2016.
Mr. Dinesh Tiwari i/b Dinesh Tiwari & Associates for applicant in APP No.800 of 2016.
Mrs. P.P. Shinde, APP for State.

CORAM: A.S. GADKARI, J.

DATE : 11th April 2017.

P.C.

1] This is an application under Section 438 of Cr. P.C. The applicant is apprehending arrest in CR No. 299 of 2016 dated 5.6.2016 registered with Powai Police Station, Mumbai under Section 408 of the Indian Penal Code.

2] The first information report is lodged by Shri Ravikumar Jethmal Sharma, Assistant Accounts Manager of Greenwich Meridian Logistic India Pvt. Ltd. It is stated in the report that, the Directors of the said Company Shri Mihir Kotecha and Shri Hemant Thakkar also established another Company namely M/s Integrity Logistic Solutions India Private Limited in the year 2010. The said Integrity Logistic Solutions India Private Limited is in the business of custom clearance and freight forwarding. The said two Companies are having inter related business relationships. As the owners/Directors of the said two Companies are the same, under the directions of the said Directors, the first informant has been assigned the work of accounts and auditing of M/s Integrity Logistic Solutions India Private Limited also.

In the year 2013, under the directions of the applicant the Directors of M/s Integrity Logistic Solutions India Private Limited opened a branch of the said Company, at Pune and the applicant was appointed as its Branch Manager. The said branch was providing services to their clients at Pune for custom clearance and freight forwarding. For the purpose of providing the said services to their clients, the Company used to utilise the services of their Transporters, freight forwarders, Airlines, shipping-lines etc. on payment. The payment of the said service providers was being made by the said branch from Pune itself. The said Company was having accounts with Standard Chartered Bank and HDFC Bank. With a view to facilitated the Branch Manager in conducting business of Pune branch, blank cheques signed by the Directors were given to the Branch Manager i.e. the applicant. Being Branch Manager it was the responsibility of the applicant to maintain the accounts of the Company about payment so made to the service providers.

It is sated that, in the year 2014 the Company installed a new software namely “SYSCON” in the Head Office and Head Accountant Shri Amrish Rai was in-charge of the said Department. The Company thereafter directed the informant and his father Jethmal Sutar to conduct checking of the accounts and audits which was already effected by Pune Branch of the Company. During the course of checking of the said account and/or audits, it was revealed that the applicant has unauthorizedly and illegally withdrawn certain amounts from the account of the Company and has not submitted vouchers and challans for the same with the Company. That when the applicant was asked about the vouchers and/or challans of the payments made by him to various persons, the applicant avoided and neglected to tender the same. It was revealed during the course of the said checking of accounts that the applicant not only had withdrawn substantial amounts from the Company in his name, but has also deposited huge amounts of the Company in the account of his wife. It was also revealed that the applicant has also transferred the amounts in the name of 12 more persons. When the Directors of the Company confronted with the applicant with the said fact, the applicant in January 2016 resigned from the said M/s Integrity Logistic Solutions India Private Limited at Pune. In the premise the first information report is lodged.

3] The learned Counsel appearing for the applicant submitted that it is under the directions of the Directors of the said Company, the amounts have been transferred and/or deposited in the account of wife of the applicant. That the 12 persons named in the first information report in whose accounts amounts shown to have been transferred by the applicant are in fact the commission of the agents and/or service providers of the Company to whom the applicant has made payments from account of the Company and TDS has been deducted from the said payment. She therefore submitted that there is no criminal breach of trust at all committed by the applicant, as alleged by the first informant. She submitted that, in view of Section 5 of the Cr. P.C. the provisions of Companies Act would prevail over the provisions of the Indian Penal Code. She submitted that the police have lodged the first information report at the instance of the first informant who is in fact not an authorize person to register the same. She submitted that in view of Section 143(13) of the Companies Act, the first informant not at all has any authority to conduct the audit of the Company. She further submitted that, in view of the provisions of the Companies Act, the grievance of the Company about defalcation of the amount and/or fraud committed by the applicant ought to have been referred to a Serious Fraud Investigation Officer established under Section 211 of the Companies Act and it is the only Agency and/or Officer authorized under the Companies Act who is entitled to conduct the investigation in the fraud as alleged by the first informant being the representative of the Company. She submitted that there is delay in registration of the first information report. She submitted that after the applicant resigned from the Company in January 2016, the present report is registered on 5.6.2016. She submitted that in the intervening period there are various emails exchanged between the parties and the same would show innocence of the applicant. That the applicant is being made a scapegoat and prayed that the applicant may be granted pre-arrest bail.

4] I haver perused the entire record annexed to the application and the record produced by the learned APP pertaining to the investigation of the present crime.

At the outset, it is to be noted here that, the learned Counsel for the applicant has placed reliance on various provisions of the Companies Act, to substantiate her submission. The various provisions of the Company"s Act specifically and categorically deals with "offences under this Act" meaning thereby offences committed by Company and/or entity mentioned in the said Act and the offence as contemplated under Companies Act and those provisions do not deal with the provisions of Penal Code. According to me, the provisions of the Companies Act does not have overriding effect over the provisionis of a substantive Penal Code which is in the field. The submissions made by the learned Counsel for the applicant with respect to Section 5 of Cr. P.C. and the provisions of Companies Act are recorded only for its rejection at its threshold for the plain and simple reason that if the said submissions are accepted, then substantive provisions of the Indian Penal Code would become otiose and negatory.

5] Apart from the allegations made in the first information report, the investigation carried out by the Investigating Agency till date would reveal that out of 13 persons whose names are mentioned in the first information report as the beneficiaries of the funds of the Company, six persons including the wife of the applicant namely Smt. Triselvi Vijay

Gounder have stated that they does not know the Company and have no concern and/or business transaction with the Company either directly or indirectly and that the applicant has transferred the said amounts in their accounts. Some of the witnesses have stated they had provided some loan to the applicant and the applicant has repaid it from the Company's Account.

6] It is to be noted here that, it is the specific allegation against the applicant that he has committed criminal breach of trust of the Company, as contemplated under Section 405 of the Indian Penal Code and therefore at this stage the prosecution has charged him with Section 408 of Cr. P.C. which is a penal provision. Prima facie, it appears that though Section 417 and 420 of the Indian Penal Code are attracted, the prosecution has not yet applied those sections to the present crime.

7] As far as the emails which are relied upon by the applicant are concerned, it is to be noted here that the applicant is the main perpetrator of the present crime and is also the author of most of the emails. It further appears that with a view to camouflage is misdeeds the applicant has created the said record to claim his innocence.

As far as the delay caused in lodging the first information report is concerned, the record reveals that immediately after coming to the knowledge about misappropriation of funds and/or criminal breach of trust committed by the applicant, the first information report is lodged and according to me there is no delay at all in lodging the first information report.

8] During the course of checking of the accounts maintained by the applicant, it is revealed that the applicant has committed misappropriation of huge amount of Rs.2,90,08,3761/- and thereby committed criminal breach of trust. The prosecution is yet to investigate as to where the applicant has invested the said amount and is yet to recover it.

9] After taking into consideration the serious allegations against the applicant being an employee of the Complainant Company and the gravity of the offence, this Court is of the view that, the applicant does not deserve to be protected by pre-arrest bail. The application being devoid of any merits, is accordingly dismissed.

10] At this stage, the learned counsel appearing for the applicant submitted that the applicant has been protected by way of interim relief since 1.9.2016 and the same may be extended as the applicant intends to question the correctness of the present Order before the Apex Court.

After taking into consideration the serious allegations against the applicant and the gravity of the offence, this Court is of the view that, the interim relief cannot be extended. The prayer is accordingly rejected.

11] In view of the Order passed in the aforestated Anticipatory Bail Application, the Criminal Application No.800 of 2016 does not survive and the same is accordingly disposed off.

(A.S. GADKARI,J.)