IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1921 OF 2017

GAURAV GULSHAN GANDHI)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Haresh Jagtiani, Senior Counsel, a/w. Mr.Siddesh Bhole, Mr.Aaditya Gore, Mr.Ryan Mendos i/b. Haresh Jagtiani & Associates, Advocate for the Applicant.

Mr.Amit Ghag, Advocate for the Intervenor.

Ms.P.N.Dabholkar, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 8th NOVEMBER 2017

P.C. :

1 The applicant/accused in Crime No.252 of 2017 registered with Azad Maidan Police Station, Mumbai, now transferred to Economic Offences Wing (EOW) - C.R.No.61 of 2017, for offences punishable under Sections 408, 420, 465, 467,

468, 471, 477A and 120B of the Indian Penal Code (IPC) and under Section 65 of Information Technology Act, by this application, is seeking pre-arrest bail.

2 Heard the learned advocate appearing for the applicant/accused. He argued that the applicant/accused is the Chief Executive Officer of M/s.Elite IT Services India Private Limited. The learned senior counsel further argued that the Company of the applicant/accused is financing the business and in the case in hand, it has financed the Company of the First Informant for procuring the material. In the said business transaction, the Company of the present applicant / accused has earned handsome margin, and ultimately, the dispute between both of them is settled, which is evident from the Settlement Agreement signed by the First Informant. My attention is drawn to this Settlement Agreement annexed at page 27 with the present application. It is argued that the settlement took place on 11th February 2015 but as the First Informant was having dispute with his ex-employees, the First Information Report (FIR) came to be

lodged after about 2½ years implicating even the present applicant/accused in the crime in question. The FIR itself shows that the same came to be lodged after the present applicant/accused has informed the First Informant about the transaction in question. It is further argued that the present applicant/accused has supplied material documents to the First Informant which are now being used against the present applicant/accused.

3 The learned APP opposed the application by pointing out two affidavits sworn by the present applicant/accused and contended that the present applicant/accused has indulged in cheating the First Informant who is owner of the Company named M/s.Xalted Information Systems Pvt. Ltd. The learned APP submitted that inflated invoices were pressed in service for extracting the amount from the Company owned by the First Informant and for effective investigation of the crime in question, custodial investigation of the present applicant/accused is warranted.

4 I have also heard the learned advocate appearing for the First Informant extensively. He drew my attention to the compilation of documents pressed in service by the First Informant and argued that the Settlement Agreement on record page 27 pressed in service by the applicant/accused is Settlement Agreement in respect of the transaction regarding M/s.Intense Technology Ltd. and the present applicant/accused as well as the Company owned by the First Informant. For this purpose, my attention is drawn to the invoice of Intense showing the name of buyer as Elite IT Services India Pvt. Ltd. It is argued that this forged invoice shows the amount as Rs.1,42,00,000/- though infact, the original invoice was for Rs.1,00,00,000/- only. For this purpose, email sent from B.N.Ramakrishnan along with attachment came to be relied by the learned advocate for the intervenor. With this, it is argued that, ultimately, the Company of the First Informant decided to make payment directly to the Intense instead of routing the payment through the present applicant/accused. It is argued that till this settlement dated 11th February 2015, the First Informant was not at all aware about the

fraud in the matter of purchase of hardware from Redington Singapore Pvt. Ltd.

5 The learned advocate for the intervenor placed reliance on the email forwarded by co-accused Mitesh Vageriya to the present applicant/accused as well as enclosure thereto, in order to point out that the deal was to siphon the amount from the Company of the First Informant and shares of ex-employees of the Company of the First Informant is reflected from the Chart annexed to the said email.

6 The learned advocate appearing for the intervenor further argued that Chart prepared by the Xalted Information Systems Pvt. Ltd. i.e the Company owned by the First Informant as well as by the Elite IT Services India Pvt. Ltd. i.e. the Company owned by the present applicant/accused shows that on 19th September 2014, payment of Rs.3,64,42,890/- came to be made to the Company of the present applicant/accused. Immediately, thereafter, relatives of ex-employees of the First Informant got

hefty payment from the present applicant/accused. With this, it is argued that the present applicant/accused is indulged in cheating as well as forgery for the purpose of causing wrongful loss to the Company of the First Informant. For this purpose, invoices and documents in respect of Redington Singapore Pvt. Ltd. are also pressed in service.

7 I have carefully considered the rival submissions and also perused the First Information Report (FIR) as well as papers of investigation.

8 The crime in question is registered on the basis of report lodged by Ajay Batheja, the Chief Executive Officer of M/s.Xalted Information Systems Pvt. Ltd. (hereinafter referred to as “Xalted” for the sake of brevity). Case of the prosecution is reflected from this FIR lodged with due deliberation by examining the record by First Informant Ajay Batheja. He alleged that in the year 2014, the Company named BSNL had given a contract of supply of hardware to a Company named ZTE Telecom India Pvt.

Ltd. (hereinafter referred to as "ZTE" for the sake of brevity). ZTE, in turn, gave subcontract to the the Xalted i.e. the Company owned by the First Informant for supply of that material. As per this contract, EMC VMAX storage was to be supplied to the Company named the BSNL. The said material was not available with the Xalted – Company owned by the First Informant Ajay Batheja. Co-accused Mitesh Vageriya and Gurjyot were employees of the Xalted i.e. the Company of the First Informant. They were dealing with this contract as seen from the FIR.

9 First Informant Ajay Batheja further averred that for fulfilling the obligations arising out from this contract, co-accused Mitesh Vageriya decided to purchase EMC VMAX storage from a Company named the Redington Singapore Pvt. Ltd. hereinafter referred to as "Redington" for the sake of brevity). He informed the Xalted that this hardware is costing US$12,05,000 (Rs.7,36,20,000/-). It is stated in the FIR that the Xalted was not having that much amount and therefore, the Company directed its employee i.e. co-accused Mitesh Vageriya to arrange for money

from the Elite IT Services India Pvt Ltd. (hereinafter referred to as "Elite" for the sake of brevity) i.e. the Company of which the present applicant/accused is the Chief Executive Officer. It is averred in the FIR that as per the Purchase Agreement between the Xalted and the Elite, the Elite supplied the hardware from the Redington on 25th august 2014. That Company then supplied hardware to the ZTE. The Xalted then made payment of purchase price to the Elite on several dates, the last being 11th February 2015.

10 Next part of the FIR deals with allegations against the present applicant / accused. The First Informant averred that subsequently, when he was having discussion with the present applicant / accused, the present applicant / accused informed him that in the year 2014, the Company of the First Informant had purchased the hardware at a very inflated price. The First Informant averred that the present applicant / accused had informed him that the actual cost of the hardware procured from the Redington was US$ 7,05,000 i.e. Rs.4,30,73,452/-. However,

it was purchased by the Company of the First Informant for US$ 12,05,000 i.e. Rs.7,36,20,000/-. In this way, the First Informant averred that he has been cheated by his ex-employees named Mitesh Vageriya and Gurjyot Singh. It is further averred that these two ex-employees indulged in conspiracy with the present applicant / accused and committed breach of the trust reposed by their employees.

11 Perusal of the FIR shows that the First Informant came to know about the real facts regarding the transaction from the present applicant / accused himself. Compilation of documents placed on record by the First Informant goes to show that the present applicant / accused had, infact, forwarded necessary documents to the First Informant, in respect of the transaction in question. This is clear from the email dated 16th August 2017 sent by the present applicant / accused to First Informant Ajay Batheja. The Chart annexed to that email shows details of the transaction with Redington. It reflects the commission payable to the present applicant / accused apart from other aspects.

12 Payment Settlement Agreement between the Xalted and the Elite at record page 27 is an undisputed document. The copy of the same is also found at page 73 of the compilation of documents tendered by the First Informant across the bar. Perusal of this Payment Settlement Agreement shows that Invoice No.EISI/XAL/SALE/14-15/039 dated 25th August 2014 for Rs.7,36,22,000/- towards supply of EMC VMAX storage hardware is the subject matter of the Payment Settlement Agreement. Clauses 1 and 2 of this Settlement dated 11th February 2015 read thus :

> "**1** Against the above referred invoices, Xalted has made payments of Rs.7,02,59,800/- as per statement enclosed, which Elite hereby receipt of said payments.
>
> **2** Xalted shall be making payment of Rs.1,72,50,000/- (Elite confirms that there is no TDS applicable) as full and final settlement towards above referred invoices, following which there shall be no amount due from Xalted towards M/s. Elite for above referred invoices."

13 The FIR itself indicates that the last date of payment i.e. payment of the final installment made by the First Informant to the present applicant / accused towards purchase and supply of EMC VMAX storage was on 11th February 2015. The Payment Settlement Agreement is also dated 11th February 2015. Prima facie, it is seen that after due deliberation, the First Informant as well as the present applicant / accused had settled the issue by granting some concession or reduction in the final payment to the Company of the First Informant. There is no reference to this settlement in the FIR lodged with due deliberation.

14 The record made available shows that it is the present applicant / accused who has supplied the necessary information in respect of the transaction in question to the First Informant. It also shows that he has supplied documentary evidence in the matter to the First Informant. In other words, it is seen that the present applicant / accused, with whom the subject matter was prima facie settled by the First Informant, is co-operating the First Informant in the matter. The transaction appears to be a

commercial transaction of finalising a deal between the two companies with a manipulation by the employees of the Xalted. In this view of the matter, in my considered opinion, custodial interrogation of the present applicant / accused, who is the supplier and financer of the First Informant, is not warranted. Therefore the order :

ORDER

i) The application is allowed.

ii) In the event of arrest in Crime No.252 of 2017 registered with Azad Maidan Police Station, Mumbai (now transferred to Economic Offences Wing (EOW) - C.R.No.61 of 2017) for offences punishable under Sections 408, 420, 465, 467, 468, 471, 477A and 120B of the IPC and under Section 65 of Information Technology Act, the applicant / accused shall be released on bail on his executing P.R.Bond in the sum of Rs.15,000/-, and on furnishing surety in like amount.

iii) As a condition of this order, the applicant / accused should co-operate the Investigator in investigation of the crime in question by supplying all necessary documents to the Investigator.

iv) The applicant / accused should attend and co-operate the Investigating Officer as and when directed by written notice for the purpose of investigation.

v) The applicant / accused should inform his address of residence and change in the said address, if any, from time to time, to the Investigator.

vi) The applicant / accused shall not leave India without the prior permission of the Court.

vii) The application is disposed of accordingly.

(A. M. BADAR, J.)