IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 2315 OF 2016

Nitin Pitambardas Mewawala ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 1035 OF 2016
IN
CRIMINAL BAIL APPLICATION NO. 2315 OF 2016

Vishal Surendrakumar Agarwal ...Intervener

IN THE MATTER BETWEEN :

Nitin Pitambardas Mewawala ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Mahesh Jethmalani, Sr. Counsel with Mr. Mandar Goswami & Ms. Gunjan Mangla I/b Mr. Jitendra Pathade for the Applicant

Mr. Sooraj S. Hulke, A.P.P for the Respondent-State

Mr. M. S. Mohite I/b Mr. Vinayak Patil for the Intervener

API Mr. Suresh P. Mane from Vishrantwadi Police Station, Pune, is present

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 4th MAY, 2017

P.C. :

1. Heard learned Counsel for the parties.

2. By this application, the applicant seeks his enlargement on bail in connection with C.R. No. 158 of 2016 registered with the Vishrantwadi Police Station, for the alleged offences punishable under Sections 406, 408, 420, 464, 467, 468, 411 r/w 34 of the Indian Penal Code.

3. Learned Senior Counsel for the applicant submitted that the applicant has been falsely implicated in the said case. He submitted that the allegations as against the applicant that he created fake bills and duped the complainant's company for a sum of Rs. 4 crores, are baseless. According to him, the complainant was aware of the said front companies that were formed, as it was done on the behest of the complainant for tax evasion. Learned Senior Counsel tendered certain Xerox receipts to show that certain amounts which were deposited in the applicant's account, were again paid by the applicant to the complainant. According to the learned Senior Counsel, the applicant is in custody since 13th August, 2016 and that investigation is complete and charge-sheet and supplementary charge-sheet are filed and as such, the applicant deserves to be enlarged on bail.

4. On the last date, learned Senior Counsel had submitted that the applicant is ready to tender an affidavit-cum-undertaking of the applicant stating that he will not alienate or create any third party interest in the immoveable properties standing in his name. Learned Counsel has tendered today, the affidavit-cum-undertaking of the applicant. The same is taken on record and marked `X' for identification. Learned Senior Counsel had on the earlier date, tendered the affidavit-cum-undertaking of the applicant's mother-Chandra Mewawala and sister-Ritu Mewawala, stating therein that they will not seek release of any of the immoveable or moveable property mentioned in the said affidavits-cum-undertaking till the conclusion of the trial. The same are marked as `X-1' and `X-2' respectively.

5. Learned A.P.P and the learned Counsel for the intervener opposed the application. They submitted that the applicant is the main accused, who has defrauded the complainant's company to the tune of Rs. 4 crores. It was submitted that the applicant alongwith two other Galande brothers had created 7 fake companies i.e. Shree Siddhivinayak Traders, Shree Balaji Traders, Tirupati Enterprises, Shree Ganesh Supplier, Munna

Niyaz Shaikh, Om Traders, Om Transport and Om Enterprises, and that the monies from the complainant's company were being diverted to the said Companies. They submitted that there are documents and statements which show the complicity of the applicant. Learned Counsel for the complainant submits that the cash receipts are being produced for the first time by the applicant and as such are doubtful and require investigation.

6. Perused the papers. According to the complainant-Vishal Agarwal, he is the Director of Brahama Multicon Pvt. Ltd. He has stated that the applicant was appointed as a Purchase Manager and Project Manager for the housing project, which was launched at Dhanori. It is alleged that as a Purchase and Project Manager, the applicant had complete authority over the housing project and could purchase the required construction material, from the company's fund. According to the complainant, the applicant in collusion with Vitthal Galande and Maruti Galande, floated bogus 7 companies i.e. Shree Siddhivinayak Traders, Shree Balaji Traders, Tirupati Enterprises, Shree Ganesh Supplier, Munna Niyaz Shaikh, Om Traders, Om Transport and Om Enterprises and showed purchase of construction materials from the said companies and as such

prepared bogus vouchers and bills and diverted monies from the complainant's company to these bogus companies. According to the complainant, bogus bills, challans and invoices were prepared and that only when audit was done, the complainant realised that monies were diverted from the applicant to the said 7 fake companies. Pursuant to the aforesaid, the complainant lodged a complaint as against the applicant and others.

7. It appears, that co-accused Santosh Galande had lodged an NC as against the complainant with the Vishrantwadi Police Station, alleging offences of criminal intimidation etc. According to Santosh Galande, the complainant was forcing him to lodge a complaint against the applicant for misappropriation of funds and also pressurizing him through criminals and hence, he was constrained to lodge a complaint as against the complainant. Whether or not the 7 Companies that were opened, were at the behest of the complainant or it was done by the applicant and others, is a matter which will be decided by the trial Court. Learned Counsel for the applicant has today brought the original cash receipts and states that the applicant is ready to hand over the same to the Investigating Officer API Mr. Marne through the learned A.P.P. The Investigating Officer to look into the

original receipts, by which cash was withdrawn by the applicant and allegedly handed over to the complainant. It also appears that the applicant's accounts have been attached by the Investigating Officer and jewellery has been seized. The applicant has tendered an affidavit-cum-undertaking, wherein he has stated that he is the absolute owner of the three immoveable properties listed therein. He has further undertaken not to sell, transfer, alienate or create any third party rights interest in the said immoveable properties, till the disposal of the trial and has also undertaken not to seek release of any of the moveable properties. It appears that a substantial amount is secured till date, by way of both, moveable and immoveable properties. Learned Senior Counsel for the applicant, on instructions, states that the applicant will continue to pay the balance EMI with respect to the flat at Amanora Future Tower. Learned Counsel for the applicant states that the applicant will hand over the original cash receipts, xerox of which were tendered in this Court during the course of hearing, to the Investigating Officer, within three days of his release, so as to enable the Investigating Officer to draw a panchanama of the said original receipts and conduct investigation with regard to the said receipts and take the same to its logical conclusion. The said statement is accepted. All the three affidavits-cum-undertaking (marked `X', `X-1' and `X-2') are also accepted. It is not in dispute, that Santosh Galande and Vitthal Galande have been enlarged on bail by the Sessions Court. The entire nature of dispute is documentary in nature. It also appears that investigation is complete and charge-sheet is filed.

8. Considering the aforesaid, the application is allowed and the applicant is enlarged on bail on the following terms and conditions :

ORDER

(i) The applicant be released on cash bail in the sum of Rs. 1,00,000/-, for a period of three weeks;

(ii) The applicant shall thereafter furnish P.R. Bond in the sum of Rs.1,00,000/- with one or more sureties in the like amount, within a period of three weeks of his release on cash bail.

(iii) The applicant shall attend the concerned Police Station on the first Monday of every month between 10:00 a.m. to 12:00 noon for a period of 12 months from today;

(iv) The applicant shall not leave the Country without prior permission of the trial Court;

(v) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

(vi) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(vii) The applicant to cooperate with the conduct of the trial.

9. The application is accordingly disposed of.

10. It is made clear that the observations made herein are *prima facie*, and the trial Court shall decide the case on its own merits, in accordance with law, uninfluenced by the observations made in this order.

11. In view of the above order, the intervention application No. 1035 of 2016 does not survive. The same is accordingly disposed of.

12. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.