IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1957 OF 2017

Asif Raza Khan …Applicant
Versus
The State of Maharashtra …Respondent

Mr.Niranjan Mundargi i/b Kunal D.Ambulkar for the applicant.
Mr.R.M.Pethe, APP for the State.
P.I.Chalke, Juhu Police Station.

CORAM: A.M. BADAR, J.
DATED: 15th NOVEMBER, 2017

PC:-

1. The applicant/accused in Crime No.353 of 2017 registered with police station Juhu, Mumbai for the offences punishable under Sections 406, 420 and 506 of the Indian Penal Code registered at the instance of Kekin Shaha, by this application is seeking his pre-arrest bail.

2. Heard the learned advocate appearing for the applicant/accused. He sought leave to produce photo copy of the relevant page of his passbook on record. Leave granted .

3. The learned advocate submitted that the passbook of the present applicant is demonstrating the fact that cheque at Sr.No.25 on 3rd page of the FIR, which is alleged to have been issued by the present applicant to the first informant in the year 2015 was in fact given by the applicant to the first informant in the year 2008 as a security for repayment of loan. This fact is cleared from the photo copy of the relevant page of the passbook of the present applicant. The learned advocate therefore, submits that a false and fabricated story is cooked by the unauthorised money lender to implicate the present applicant in the crime in question as per his *modus operandi* which can be gathered from the earlier crime registered at the instances of the present First Informant against similarly situated persons and the consequent threatening to the applicant that despite paying Rs.25 lakh the said accused had undergone 5 days police custody. The

learned advocate further pointed out several text messages sent by the first informant to the present applicant on day to day basis showing the amount recoverable, amount paid as well as amount offered as a loan. It is argued that the relative of the present applicant is in fact the Director of the Fox Lights and Grip (India) Private Limited and the present applicant is also in the same business to the knowledge of the first informant.

4. The learned APP opposed the application by pointing out statements of witnesses Alauddin Sayyed and Tapas Mandal to point out that the present applicant is not the Director of the said Fox Lights and Grip (India) Private Limited. By pressing in service the police report, the learned APP further argued that the applicant is convicted in two private complaints in respect of offences punishable under Section 138 of the Negotiable Instruments Act and he is accused in Crime No.61 of 2004 as well as Crime No.340 of 2004.

5. I have carefully considered the rival submissions and also perused the papers of investigation.

6. Cell number of the first informant is reflected in the FIR lodged by him. From the same cell number first informant Kekin Shah had sent few text messages with photograph of the accused in his FIR lodged earlier with a text message that the said accused is required to undergo 5 days police custody despite paying Rs.20 lakh. These text messages sent by the first informant to the applicant reveals that the first informant is adopting the *modus operandi* of lodging FIRs against his debtors. Crime No.544 of 2016 appears to have been lodged on the basis of report lodged by the present first informant against Babubhai Varma, Gunvanti Varma, Paresh Varma, etc. with MIDC, Mumbai police station for offences punishable under Section 420, 406 r/w 34 of the Indian Penal Code. The present applicant was suitably warned by the first informant by sending text messages in that regard.

7. The application is accompanied by print outs of several text messages sent by the first informant to the present applicant on day to day basis. Perusal of those text messages shows that on daily basis the first informant was informing the present applicant money due and payable, money paid as well as amount offered as a loan by the first informant to the present applicant. This appears to be going on since years together.

8. On this backdrop, if the first information report is perused, then it is seen that, even it is case of the present first informant that he is an investor, advancing loan. Upon being asked, the learned APP is unable to state whether the first informant Kekin has licence issued under Maharashtra Money Lending (Regulation Act 2014). Prima facie, it appears that he is doing illegal money lending business, by claiming himself to be an investor.

9. Be that as it may, the FIR also reveals that, right from the year 2004 the first informant is acquainted with the present applicant and from time to time he had advanced loan to the present applicant. The FIR also reveals that the applicant is doing business of renting out the lights, cameras etc to the various production houses doing business in the film industry.

10. The FIR further reveals that the present applicant misrepresented first informant Kekin Shaha that he is an promoter director of the Fox Lights and Grip (India) Private Limited doing similar business and he also introduced the first informant to a person named Tapas Mandal by stating that said Tapas Mandal is Manager of the said Company. In this way, according to the first informant, the present applicant allured him to arrange for loan and advances of Rs.20 lakh for investing in the Fox Lights and Grip (India) Private Limited and the first informant claimed that this amount is arranged by him from 5 persons apart from himself but the

present applicant had not refunded the said amount. Though contribution of the first informant Kekin Shaha is said to be Rs.4 lakh only, the FIR itself shows that the first informant had taken various cheques from the present applicant amounting to Rs.22.50 lakh. This according to the first informant was done in the midst of the year 2015. However, the last cheque mentioned by the first informant is seems to have been issued by the present applicant way back in the year 2008.

11. The cumulative effect of this fact situation emerging on record, prima facie shows that the present applicant had received amount as a loan from the first informant from the year 2008 onwards, but as he failed to repay the same, the FIR came to be lodged against him. The transaction appears to be purely Civil in nature. Statement of Alauddin and Director of the Fox Lights and Grip (India) Private Limited shows that the present applicant is brother-in-law of one of the Director named Zoyeb Baloch. Statement of Tapas

Mandal, who is referred in the FIR shows that the present applicant had introduced him to the first informant Kekin and at that time Tapas Mandal informed the first informant that he is brother of the present applicant. If this factual position coming from the mouth of these two directors of the Fox Lights and Grip (India) Private Limited is considered then prima facie it is hard to believe that the present applicant had misrepresented himself to be the director of the said company.

12. The applicant has placed on record letter of the Syndicate Bank showing that the FIR No.340 of 2004 was in respect of the housing loan taken by the applicant and he had cleared it way back in the year 2006. Other prosecutions and convictions recorded against him were for the offences punishable under Section 138 of the Negotiable Instruments Act apart from one under Section 465, 468,471, 420 of the Indian Penal Code.

13. Considering these aspects and reasons, I am of the opinion that custodial interrogation of the present applicant is not warranted and as such the following order.

ORDER

i) In the event of his arrest in Crime No.353 of 2017 registered with police station Juhu, Mumbai for the offences punishable under Sections 406, 420 and 506 of the Indian penal code, the accused/applicant be released on bail on executing P.R. Bond of Rs.15,000/- and on furnishing surety in the like amount.

ii) The applicant/accused should not tamper the prosecution evidence.

iii) The applicant / accused shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case, so as to dissuade him from disclosing such facts to the court or to the Police Officer.

iv) The applicant/accused should attend the concerned police station on every Sunday of each month in between 11.00 a.m. to 1.00 p.m. till filing of the charge-sheet and he should co-operate with the investigating officer.

(A.M. BADAR, J)