IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1987 OF 2017

MITESH VAGERIYA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.1061 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.1987 OF 2017

AJAY MURLIDHAR BATHEJA)...INTERVENOR

IN THE MATTER BETWEEN

MITESH VAGERIYA)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

WITH

ANTICIPATORY BAIL APPLICATION NO.1988 OF 2017

GURJOT SINGH SANDHU)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

WITH

CRIMINAL APPLICATION NO.1062 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO.1988 OF 2017

AJAY MURLIDHAR BATHEJA)...INTERVENOR

IN THE MATTER BETWEEN

GURJOT SINGH SANDHU)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.M.S.Mohite a/w. Mr.Manish Bohra i/b. A.S.Khan & Associates, Advocates for the Applicant in Anticipatory Bail Application No. 1987 of 2017.

Mr.Subhash Jha a/w. Ms.Sanjana Pardeshi i/b. Gunjan Thakkar, Advocate for Applicant in Anticipatory Bail Application No.1988 of 2017.

Mr.Pranav Badheka i/b. Mr.Amit Ghag, Advocate for the Intervenor in Criminal Application Nos.1061 of 2017 and 1062 of 2017.

Ms.P.N.Dabholkar, APP for the Respondent – State in both matters.

CORAM : A. M. BADAR, J.

DATE : 5th DECEMBER 2017

P.C. :

1 Both applicants/accused who are accused in Crime No.252 of 2017 initially registered with Police Station Azad Maidan and now being investigated by the Senior Inspector of Police, Economic Offences Wing, vide its 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, 2000, at the instance of First Informant by this application, is seeking pre-arrest bail. The First Information Report (FIR) came to be registered at the instance of First Informant Ajay Batheja, the Chief Executive Officer of M/s.Xalted Information Systems Pvt. Ltd. (hereinafter referred to as the "Xalted" for the sake of brevity).

2 Heard the learned advocate Mr.Subhash Jha appearing for applicant/accused Gurjot Singh Sandhu and Shri M.S.Mohite the learned advocate appearing for applicant/accused Mitesh Vageriya. It is argued on behalf of applicants/accused that applicant/accused Mitesh Vageriya was working as

Implementation Manager from the year 2006 whereas applicant/accused Gurjot Sandhu was working as Assistant Manager, Pre-Sale, with the Xalted. In September 2015, applicant/accused Mitesh Vageriya resigned whereas in April 2016, applicant/accused Gurjot Sandhu resigned from the Xalted and they both had joined a Company named Pert Telecom Sales Pvt. Ltd. (hereinafter referred to as Pert for the sake of brevity) of which Priyanka Vageriya – wife of applicant/accused Mitesh Vageriya and Impaldeep (brother-in-law of applicant/accused Gurjot Sandhu) are the Directors. The learned advocates further argued that even prior to resignation of service of the Xalted by both applicants/accused, they were running another partnership firm in the name and style as Smart World Intel Solution (hereinafter referred to as Swis for the sake of brevity). This partnership firm of both applicants/accused was dealing with the Xalted. My attention is drawn to the agreement dated 15th September 2014 between the said firm and the Xalted and it is argued that intercepted software came to be supplied by this partnership firm to the Xalted. The learned advocate further argued that even Pert was also in software business. The learned advocates further relied on order dated 20th January 2017 passed by this court in Arbitration Petition No.12 of 2017 filed by the Xalted against the Swis, in which Pert was arraigned as respondent no.4. Order passed in Contempt Petition No.2 of 2017 in the said Arbitration Petition bearing no.73 of 2017 and Notice of motion (L) bearing no.147 of 2017 filed by the Pert against the Xalted is also relied in order to demonstrate that the lodgment of the First Information Report (FIR) against both applicants/accused is an outcome of frustration caused due to adverse orders in the litigations.

3 The learned advocates relied on emails exchanged between the parties and argued that the emails are tampered by the Xalted in order to fasten criminal liability on both applicants/accused. The learned advocates relied on the email dated 8th December 2015 sent by First Informant Ajay Batheja to applicant/accused Mitesh Vageriya in order to demonstrate that the First Informant was knowing that excessive amount was paid

to the Elite IT Services India Pvt. Ltd. (hereinafter referred to as the Elite for the sake of brevity) and subsequently there was settlement between the Xalted and the Elite on 11th February 2015. It is further argued that though emails are alleged to have been sent, email address of co-accused Gaurav Gandhi is different than what is reflected from the email.

4 The learned advocates appearing for the applicants/accused further argued that the affidavit dated 19th January 2017 sworn by co-accused Gaurav Gandhi shows that actual cost of hardware was US$ 705000 and he had not received invoice for US$ 1205000. Affidavit dated 20th June 2017 of co-accused Gaurav Gandhi shows that he received US$ 1205000 from Mitesh Vageriya and had paid US$ 705000 to Redington Singapore Pvt. Ltd. (hereinafter referred to as Redington for the sake of brevity). My attention is drawn to the letter dated 23rd August 2017 sent by co-accused Gaurav Gandhi to the Joint Commissioner of Police to demonstrate that Clause (7) shows that Rs.1.80 crore were paid to both applicants/accused for developing

new software solutions and sales. It is further argued that whatever amount was received by applicants/accused and their relatives was sent back to the Elite and the case is based on documentary evidence which is with the Investigating Officer. All accounts of both applicants/accused are freezed by the Investigating Officer and infact the Xalted is liable to pay to applicants/accused in the civil proceedings.

5 The learned advocates further argued that the deal was a commercial deal in which the manufacturer i.e. EMC-Dell to the last supplier i.e. ZTE Telecom India Pvt. Ltd. (hereinafter referred to as ZTE for the sake of brevity) made profit. The Xalted has also made profit of Rs.1.34 crore in the transaction and there was no question of altering the invoices. Profit margin of Elite will have to be considered so also their entitlement to earn profit. It was further argued that the Redington and the Elite are Companies known to the Xalted and First Informant Ajay Batheja was knowing the transaction in question.

6 The learned advocate further argued that several facts are suppressed in the FIR. Transactions with other Companies are suppressed by the First Informant. Transaction of the Xalted with the Swis i.e. the partnership firm of both applicants/accused is also suppressed. Pendency of civil proceedings is not mentioned in the FIR. Settlement between the Xalted and the Elite is not stated in the FIR. It is further argued that the offence did not take place within the territorial jurisdiction of Azad Maidan Police Station and the FIR is registered out of business rivalry.

7 The learned APP opposed the applications by placing reliance on the revised worksheet prepared by the applicant/accused Mitesh Vageriya to show that both applicants/accused received huge kickback in the transaction by cheating their employer i.e. the Xalted of which the First Informant is the owner. The learned APP place reliance on invoices raised by the seller. She further relied on statement of Priyanka Vageriya – wife of applicant/accused Mitesh Vageriya to show that without doing any transaction or business with the

Elite, she has received hefty sum from the said Company. The learned APP further relied on service agreement between applicants/accused and their employer.

8 I have also heard the learned advocate appearing for the First Informant who intervened in the instant applications. He argued that appointment orders issued in favour of both applicants/accused show that during the course of their employment with the First Informant, applicants/accused were not permitted to take up any other employment or business without permission of the employer. The learned advocate for the First Informant/intervenor argued that in the year 2014 applicant/accused Mitesh Vageriya was granted permission to start his business and that is how the Swis came to be started by him. However, no such permission was granted to Gurjot Sandhu. The learned advocate further argued that both applicants/accused were holding the key post with the Xalted and they were asked to search for the hardware at best available price from the market. Emails exchanged between the parties show that both

applicants/accused were to negotiate the price of the hardware which was to be procured by their employer. The learned advocate for the First Informant/intervenor relied on the Purchase Order dated 13th June 2014 sent by applicant/accused Mitesh Vageriya to the Elite and argued that dealer of the hardware was the Redington. It is further argued that as the Redington was ready to supply the hardware on payment of its cost and as funds were not available with the Xalted, the Elite was engaged as a financier on a fixed percentage of their commission. The learned advocate further argued that though the cost of the hardware to be procured was US$ 705000, by forging the invoice, both applicants/accused showed its cost as US$ 1205000 in collusion with the co-accused and obtained huge commission in the deal by cheating their own employer. Reliance is placed on proforma invoice raised by the Redington on the Elite as well as the revise worksheet sent by applicant/accused Mitesh Vageriya to co-accused Gaurav Gandhi pointing out the amount payable to applicant/accused Mitesh Vageriya as well as applicant/accused Gurjot Sandhu. The learned advocate further argued that both applicants/accused fabricated the documents and obtained kickback not only in this transaction but in other two projects of the First Informant and therefore, custodial interrogation of both applicants/accused is warranted.

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

10 The crime in question is registered on the basis of report lodged by Ajay Batheja, the Chief Executive Officer of the Xalted. Case of the prosecution is reflected from this FIR lodged on 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 i.e. EMC VMAX storage to a Company named ZTE. The 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. Applicants/accused Mitesh Vageriya and Gurjot were employees of the Xalted i.e. the Company of the First Informant. They were dealing with this contract as seen from the FIR.

11 First Informant Ajay Batheja further averred that for fulfilling the obligations arising out from this contract, applicant/accused Mitesh Vageriya decided to purchase EMC VMAX storage from the Company named Redington. He informed the Xalted that this hardware is costing US$ 1205000 (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. applicant/accused Mitesh Vageriya to arrange for money from the Elite i.e. the Company of which the co-accused Gaurav Gandhi 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.

12 Next part of the FIR deals with allegations against applicants/accused and co-accused Gaurav Gandhi. The First Informant averred that subsequently, when he was having discussion with the co-accused Gaurav Gandhi, the co-accused Gaurav Gandhi 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 co-accused Gaurav Gandhi had informed him that the actual cost of the hardware procured from the Redington was US$ 705000 i.e. Rs.4,30,73,452/-. However, it was purchased by the Company of the First Informant for US$ 1205000 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 Gurjot Singh i.e. present applicants/accused. It is further averred that both applicants/accused indulged in conspiracy with the co-accused Gaurav Gandhi and committed breach of the trust reposed by their employees.

13 It is case of the prosecution that both applicants/ accused being employees of the Xalted were expected to procure hardware named EMC VMAX storage for the purpose of supplying it to the ZTE. They have represented to the Xalted that cost of the said hardware is US$ 1205000 and applicant/accused Mitesh Vageriya had even submitted forged quotation of Redington to show that its costing is US$ 1205000 to the Xalted and as the Xalted was not having financial capacity to purchase it by payment of money, it employed services of the Elite on commission basis. This is reflected from the email of applicant/accused Mitesh Vageriya addressed to Lata Raman and copies to B.N.Ramakrishnan as well as Sunil Alawat mentioning conversion rates applicable as Rs.59.70 and the interest calculated ranging from 1.5 % onwards on the purchase value in respect of hardware order of Redington.

14 It is seen from email dated 13th January 2015 sent by applicant/accused Mitesh Vageriya to co-employee B.N.Ramakrishnan of the Xalted, that by the said email, copy of

quotation obtained by applicant/accused Mitesh Vageriya from the Redington was forwarded to said co-employee B.N.Ramakrishnan. The quotation allegedly procured from the Redington by applicant/accused Mitesh Vageriya is addressed to the Xalted mentioning the cost of EMC VMAX hardware as US$ 1205000. The email exchanged between the employer and applicants/accused Mitesh Vageriya and Gurjot Sandhu shows that they were asked to negotiate and to procure the subject hardware at the best possible price. The email dated 13th June 2014 from co-employee B.N.Ramakrishnan addressed to both applicants/ accused reflects this position. Even co-accused Gaurav Gandhi had addressed email on 15th May 2014 to the First Informant and others stating the cost of the subject hardware as US$ 1205000. Thus, both applicants/accused had represented their employer that the cost of the hardware which was to be procured by the Xalted for being supplied to the ZTE was US$ 1205000. Accordingly, they had submitted quotation and tax invoices showing this much cost of the hardware to their employer. It is seen that ultimately, the employer of both applicants/accused i.e.

the Xalted had decided to purchase the said hardware by getting it financed through the Elite. Infact, the cost of the hardware to be procured was only US$ 705000 and this was known to applicants/accused, as seen from the email sent by co-accused Gaurav Gandhi to applicant/accused Mitesh Vageriya on 14th August 2014. By this email, the purchase order of EMC VMAX hardware and proforma invoice showing the cost as US$ 705000 was sent to applicant/accused Mitesh Vageriya by co-accused Gaurav Gandhi of the Elite. Infact, by email dated 25th August 2014, Ajay Singh of the Redington had emailed the tax invoice dated 20th August 2014 to co-accused Gaurav Gandhi of the Elite as well as both applicants/accused from the Xalted showing the cost of the EMC VMAX hardware as US$ 705000. It is seen that then a forged tax invoice of very same date i.e. 20th August 2014 came to be prepared quoting the same P.O. number as well as Customer number. This tax invoice is mentioning the cost of the hardware as US$ 1205000. Applicant/accused Mitesh Vageriya then sent this tax invoice to co-employee Lata Raman of the Xalted on 14th January 2015. Thus, one tax invoice of the

Redington addressed to the Elite of 20th August 2014 is showing the cost of the hardware as US$ 705000 whereas the another tax invoice of very same number and date is showing the cost of the hardware as US$ 1205000. This tax invoice is apparently forged tax invoice and applicant/accused Mitesh Vageriya had forwarded it to co-employee Lata Raman for showing the cost of the hardware.

15 It is seen from the record that an amount of Rs.3,64,42,890/- came to be paid by the Xalted i.e. employer of applicants/accused to the Elite of co-accused Gaurav Gandhi on 19th September 2014. Similarly, on receipt of this amount by co-accused Gaurav Gandhi of the Elite, it is seen that he had transferred a huge amount in favour of applicants/accused and their relatives. On 20th September 2014, an amount of Rs.45 lakh was transferred by the Elite to the account of Rajbeer Sandhu – father of applicant/accused Gurjot Sandhu. On 22nd September 2014, an amount of Rs.45 lakh was transferred to the account of Navdeep Kaur Sandhu – wife of applicant/accused Gurjot Sandhu.

On 23rd September 2014, the Elite had transferred an amount of Rs.38 lakh to the account of Priyanka Vageriya – wife of applicant/accused Mitesh Vageriya. On the very same day, the Elite had transferred an amount of Rs.52 lakh in the account of applicant/accused Mitesh Vageriya. Thus, both applicants/ accused had received an amount of Rs.90 lakh each from co-accused Gaurav Gandhi of the Elite, immediately after their employer paid an amount of more than Rs.3.50 crore to the Elite of co-accused Gaurav Gandhi.

16 Applicant/accused Mitesh Vageriya, then sent an email dated 5th September 2015 to co-accused Gaurav Gandhi of the Elite enclosing the revised worksheet with it. This was for settling the accounts. This revised worksheet shows that both applicants/ accused had charged an amount of Rs.2.38 crore as liaisoning fees. Total margin in the EMC VMAX deal is also calculated in this revised worksheet. Net share of both applicants/accused is shown as Rs.24,62,069/-. This has reference to the purchase value of Rs.7,36,20,000/- i.e. roughly US$ 1205000. Apart from the deal

in respect of purchase of EMC VMAX hardware, this revised worksheet forwarded by applicant/accused Mitesh Vageriya to co-accused Gaurav Gandhi of the Elite further shows that both applicants/accused have also received their share in atleast two other deals of their employer the Xalted with the Elite of Gaurav Gandhi. This prima facie shows that, both applicants/accused were dealing with co-accused Gaurav Gandhi of the Elite on behalf of their employer i.e. Ajay Batheja of the Xalted and were earning hefty kick backs on such transactions. Refund of money by applicants/accused and their relatives to the Elite will not exonerate them from the breach of trust prima facie committed by them. Statement of wife of applicant/accused Mitesh Vageriya recorded by the Investigator shows that she was not having any business relations with the Elite, still she has received huge amount from the Elite i.e. supplier of the employer of the applicant/accused Mitesh Vageriya.

17 It is seen that, ultimately, both applicants/accused were exposed by co-accused Gaurav Gandhi of the Elite by

providing necessary information in respect of kick backs paid to applicants/accused by his Company in respect of dealings with their employer. Then, there was Payment Settlement Agreement between the Xalted and the Elite and co-accused Gaurav Gandhi had settled the account with the Xalted by giving some discount to the Xalted.

18 So far as present applicants/accused are concerned, applicant/accused Mitesh Vageriya was appointed as Implementation Manager whereas, applicant/accused Gurjot Sandhu was appointed as Assistant Manager, Pre-Sales, by the Xalted and terms of their appointment reflected from the appointment orders and service record were not permitting both applicants/accused to engage themselves directly or indirectly with or without remuneration in any other employment, service or business without specific written permission from their employer. Prima facie, it is seen that both of them have cheated their employer i.e. the Xalted by obtaining kick backs from the supplier of the Xalted and by misrepresenting their employer by submitting

forged documents showing the cost of hardware named EMC VMAX storage. Apparently, the subject matter is not limited to only one deal, but the revised worksheet sent by applicant/accused Mitesh Vageriya shows that there were other transactions in which similar kick backs were received by present applicants/accused – employees of the First Informant.

19 In this view of the matter, custodial interrogation of present applicants/accused is necessary for effective investigation of the crime in question. In the result, the following order :

ORDER

i) Both these applications for grant of anticipatory bail filed by applicant/accused Mitesh Vageriya and applicant/accused Gurjot Singh are rejected.

ii) In view of disposal of Anticipatory Bail Applications, Criminal Applications bearing Nos.1061 of 2017 and 1062 of 2017 stand disposed of.

iii) At this stage, request is made by the learned advocates appearing for both applicants/accused to continue the interim relief in order to enable applicants/accused to approach the Hon'ble Supreme Court in the matters.

iv) Order granting ad-interim anticipatory bail was operating in favour of both applicants/accused. The same shall be continued for a period of three weeks.

(A. M. BADAR, J.)