IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 50 OF 2018

Jaideep Baburao Daingade ... Applicant

Versus

The State of Maharashtra and another ... Respondents

Mr. Rahul Kate I/b V. V. Phatate for the Applicant.

Mr. Prashant Jadhav, APP for the State.

Mr. M. A. Choudhari for original complainant.

CORAM : A. M. BADAR, J.

DATE : 23rd JANUARY, 2018.

P. C.

1. Complainant Vikram Gajanan Patil approached the learned J.M.F.C. Mohol, making a complaint for offences punishable under Sections 420, 406 r/w 34 of the Indian Penal Code, against the present applicant as well as M/s B. R. Sukale Construction. Vide order dated 06/09/2017 below Exh.01 in Criminal Miscellaneous Application No. 246 of 2017, the learned J.M.F.C. Mohol had directed the police station officer Mohol to register the offence against Jaideep Daingade – the present applicant and to submit report.

2. The applicant Jaideep Daingade moved the instant application for seeking pre-arrest bail.

3. Heard the learned advocate appearing for the applicant. He argued that applicant Jaideep and the complainant Vikram Patil entered into a partnership firm named as M/s. V.J. Construction. This firm had procured work order for laying down OFC data cable in Ambegaon Block Cluster 4 and Cluster 5 in Pune district. The learned advocate further argued that it is the prosecution case that an amount of Rs. 20,90,000/- towards 4th running account bill of this contract allotted by M/s. B.R. Sukale Construction was paid by cheque to the applicant, who had misappropriated the said amount. By relying on judgment of the Hon'ble Apex Court in the matter of **Velji Raghavji Patel Vs. The State of Maharashtra** reported in **AIR 1965 Supreme Court 1433,** the learned advocate appearing for the applicant argued that the remedy, if any, under the law for such type of allegations is that of filing of suit for settling accounts and the criminal proceedings cannot lie at the instance of one partner against the another partner.

4. In the alternative, the learned advocate appearing for the applicant argued that the contractor M/s B.R. Sukale Construction had terminated the contract allotted to M/s V.J. Construction – a partnership firm vide letter dated 20/10/2016 and thereafter, the applicant had flouted the property firm with a similar name and procured similar contract from M/s. B.R. Sukale Construction vide Memorandum of Understanding dated 25/09/2016. In this view of the matter, according to the learned advocate for the applicant, custodial interrogation of the present applicant is not warranted.

5. The learned APP opposed the application by contending that during the course of investigation, the Investigator has recorded the statement of a person named Sukale from M/s B.R. Sukale Construction and this statement shows that the subject payment was in respect of the work done by the partnership firm under name M/s. V.J. Construction.

6. I have also heard the learned advocate appearing for the complainant. He vehemently argued that the applicant was never informed about the termination of contract by the firm named M/s. B.R. Sukale Construction and the letter dated 20/10/2016

was not served by the said firm on the complainant. He further argued that the complainant was not even made aware about alleged Memorandum of Understanding dated 02/11/2016. With this, it is further argued that intention of cheating since inception is writ large from the conduct of applicant Jaideep Daingade. Out of 4 running account bills, payment upto 3rd running account bills were made by RTGS in the account of the partnership firm with the Bank of Maharashtra. However, the last payment was made by the cheque and the said cheque was received by the applicant. The learned advocate further argued that the said cheque was not deposited in the account of the partnership firm, but in the account of the firm with the same name by the applicant and that is how the amount in question is misappropriated. As the offence alleged is punishable under Section 420 of the Indian Penal Code, custodial interrogation of the applicant is warranted. The learned advocate further argued that custodial interrogation of the applicant is warranted for recovering the documents such as, termination letter as well as the letter depicting memorandum of understanding. He further argued that for recovering the amount, custodial interrogation of the applicant is warranted.

7. I have carefully considered the rival contentions and also perused the papers of investigation tendered by the learned APP. It is not in dispute that a partnership firm named M/s. V.J. Construction of which the present applicant and the complainant were partner was allotted with a contract for laying down OFC data cables by M/s. B.R. Sukale Construction. The work agreement dated 07/09/2015 reflects this fact. It is not in dispute at this stage that the payment of Rs.20,90,000/- was made by M/s. B.R. Sukale Construction by cheque drawn in the name of M/s. V.J. Construction and the same was deposited in its proprietary firm by name M/s. V.J. Construction in the account maintained at Bandhan Bank at Mohol. The question which falls for consideration is whether the custodial interrogation of the applicant is warranted in the backdrop of these facts. So far as the offence in respect of the breach of trust is concerned, the Hon'ble Apex Court in **Velji Raghavji Patel (supra)** in paragraph 8 of the judgment has held thus;

> "8. ....
> ....
> *It is obvious that an owner of property in whichever way he uses his property and with whatever intention will not*

> *be liable for misappropriation and that would be so even this is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partner over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected.*"

8. The observations of the Hon'ble Apex Court makes it clear that one of the partner cannot be made liable for misappropriation as a partner has undefined ownership along with the other partner over all the assets of the partnership. In the case in hand also, if these observations are made applicable, then, applicant Jaideep Daingade shall have undefined ownership along with complainant named Vikram Patil over the amount of Rs. 20,90,000/-, if really the said amount was towards the due payable by the partnership firm. Therefore, when the applicant Jaideep Daingade is having undefined ownership over the amount in question, at this stage it is difficult to hold that he is liable for cheating in respect of that amount. The proper course would be a suit for accounts, in which rights of the parties can be crystallized. In the alternative, if this is for the payment for the work done by the proprietary firm, then no further scrutiny would be required.

9. So far as recovery of the amount in question is concerned, the judgment of the Hon'ble Apex Court makes it clear that each partner has undefined ownership over the amount in question. Therefore, the question of recovery and custody of the applicant, for that purpose would not arise. Other documents can be recovered by directing the applicant to remain present before the concerned police officer. Section 27 of the Indian Evidence Act, 1872, is applicable also in respect of recoveries effected under such directions. In this view of the matter, considering the facts of the instant case, in my opinion, custodial interrogation of the present applicant is not warranted. Hence, the following order.

O R D E R

(i) The anticipatory bail application is allowed.

(ii) In the event of arrest of the applicant in Crime registered pursuant to the complaint lodged by complainant Vikram Patil, the applicant-accused 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) The applicant-accused is directed to attend the concerned police station on 27/01/2018, 30/01/2018 and 03/02/2018 in between 11.00 a.m. and 1.00 p.m. and he should cooperate the investigating agency. In addition, he should also remain present before the Investigating Officer as and when directed by written notice for the purpose of investigation.

(iv) The applicant should not tamper prosecution evidence and he should not extend any threat promise or inducements to the persons acquainted with the facts of accusations against him so as to dissuade them from disclosing the same either to the police or to the Court.

(A. M. BADAR, J.)