IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 875 OF 2018

Hitesh Rasiklal Sanghavi and ors. ...Applicants.
vs.
The State of Maharashtra and ors. ...Respondents.

Mr. Hrishikesh Mundergi with Mr. Sabir Sarkar for the Applicants.
Smt. Rutuja Ambekar, APP for the Respondent-State.
Mr. Ishwar Badigannavar with Ms. P.G. Bhardwaj for Respondent No.2.
Mr. Mohan Mane, Police Inspector, EOW GC-1, Mumbai.

CORAM : A.S.GADKARI, J.
DATE : 10th August, 2018

P.C.

1. This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No. 104/2017 originally registered with Kasturba Marg Police Station, Mumbai and subsequently transferred to E.O.W. Mumbai for investigation and renumbered as CR No.36 of 2017 for the offence under Sections 406, 420, 465, 467, 468, 471 and 120B of the Indian Penal Code.

2. The applicants were granted interim relief by an Order dated 26.4.2018.

3. Heard Mr. Mundergi, the learned counsel for the applicants, Shri. Badigannavar, the learned counsel appearing for respondent No.2 and the learned APP. Perused the record of investigation.

4. The first information report is lodged by Shri. Kiran Shah. The prosecution case in brief is that, the Applicant No.1 Hitesh Sanghavi while was in services of M/s. Manikchand Packaging Company (Division of M/s. Dhariwal Industries Ltd.) came in contact with the first informant. The applicant No.1 represented the first informant that, if he starts a new business venture he will get huge profit from the same. A very rosy picture was presented before the first informant and he was induced to invest certain amount in the said new venture. As the applicant No.1 was in service of another company he was unable to become partner and therefore he represented

that applicant No.3 has substantial knowledge in the field of the concerned business, will become partner alongwith applicant No.2 who is the wife of applicant No.1. It was decided by the parties that the informant will have 50% share while applicants 2 and 3 will have 25% share each in the partnership firm. On the representation made by applicant No.1 three partnership firms namely i) M/s. Ria International, dealing in the the trade of laminated films and packaging materials, ii) Global Packtech (India), dealing in the trade of ready to use aluminum foil and iii) Green Bioplast International dealing in the trade of buying biodegradable and compostable laminated film were formed during the period from 26.11.2009 to 15.3.2011. It is the further case of prosecution that, the applicants ordered huge quantity of goods in the name of Ria International and after its receipt sold it out and out with dishonest intention and caused huge wrongful monetary loss to the first informant and inter alia wrongful gain for themselves. It is further alleged that the applicants dishonestly and with malafide intention removed the goods, plant and machinery valued approximately to Rs.4,40,00,000/- from Vasai godown, from where the business of Green Bioplast International was being conducted. It is further alleged that, the applicants subsequently resigned from the said partnership firms on 19.9.2013 keeping huge liabilities on the head of the informant and started their own firm and diverted business of the original partnership firm for their personal benefits. That the applicants therefore, caused huge wrongful loss to the informant and wrongful gain to themselves. The first informant has categorically stated that he was only a financing partner in the said firms constituted inter-se amongst themselves. It is the precise prosecution case that, the applicant No.1 by showing rosy picture of excellent profits induced the informant to invest huge funds in the aforestated three partnership firms and subsequently by dishonest intention and by indulging into the act of forgery defalcated an amount of Rs.11,3,55,614 of the said partnership firms.

5. Mr. Mundergi, the learned counsel appearing for the applicant submitted that, as a matter of fact, the first informant had a privy to the various documents of the firms and in fact had signed the accounts of the said firms. That the respondent No.2 also used to sign the cheques of the said firms. He further submitted that as far as allegations of removal of plant and machinery from Vasai godown is concerned, after the lease deed of the said factory/godown came to an end in November 2012, upon receipt of the notice from the landlord, the applicants removed the said goods, plant and machinery therefrom and therefore, it cannot be termed that, the applicants with dishonest intention removed it. He further submitted that, the informant being a partner in the said firms cannot claim that, the applicants herein caused criminal breach of trust, as every partner has dominion over the assets of the partnership firm and therefore, there is no entrustment of property unless there is a special agreement for exclusive

possession of the applicants. In support of his contention he relied on the decision of the Apex Court in the case of Velji R. Patel vs. The State of Maharashtra reported in AIR 1965 S.C. 1433. He further submitted that, there are documents on record which support the contentions of the applicants. He therefore, prayed that the present application may be allowed by protecting the applicants by pre-arrerst bail.

6. Per contra the learned counsel for respondent No.2 vehemently opposed the application and submitted that, it is not a simpliciter case of criminal breach of trust but is also case of cheating by the applicants with the first informant. He submitted that as per the representations made by applicant No.1 the informant with bonafide intention has invested huge amount in the said three partnership firms. He submitted that, the first informant has also alleged that, certain valuable documents have been forged by the applicants thereby causing wrongful monetary loss to the informant. In support of his

contentions he also relied on the voluminous documents which are annexed to his reply.

The learned A.P.P. supported the arguments of the learned counsel for respondent No.2 and prayed that the application may be rejected.

8. The facts giving rise to the lodgment of the present crime as mentioned in foregoing paragraphs emerges from the first information report and other documents. The record indicates that, the applicant No.1 by presenting a rosy picture before the first informant for investing funds in the said partnership firms, with a promise of excellent returns thereof, lured him and in fact induced him to invest huge funds in the said partnership firms. It is the categorical case of the prosecution that the applicants gave orders to Magical Film Enterprise Co. Ltd. Taiwan and other various companies and called for raw material in the name of Ria International and after receipt of the said goods with dishonest intention sold it out and out thereby causing wrongful loss to the said firm namely Ria

International. The allegations against the applicants that, they removed the plant, machinery and raw material from the godown situated at Vasai needs to be thoroughly investigated by the Investigating agency and the same is not possible without there being thorough interrogation of the applicants in that behalf. It is to be noted here that, the applicants by taking undue advantage of the faith bestowed upon them by the informant have caused huge monetary wrongful loss to him.

9. Prima facie, it appears that, the offence under Section 420 of the Indian penal Code is clearly made out and the complicity of the applicants therein is apparent. Undoubtedly the present case constitutes economic offience which forms a class appart and needs to be visited with different approach in the matter of bail.

The Supreme Court in the Case of Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 SCC 466 in Para No. 25 has held as under:-

> "Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country".

10. After taking into consideration the aforestated facts, serious allegations against the applicants and the gravity of the offence this Court is of the considered view that, the applicants do not deserve to be protected by pre-arrest bail. Application is accordingly rejected.

11. At this stage the learned counsel for the applicants submitted that, the applicants would like to prefer an appeal before the Apex Court against the present Order and therefore the interim relief granted earlier may be extended for a period of four weeks from today.

In view thereof, the interim relief granted by Order dated 26.4.2018 is extended by four weeks from today.

(A.S.GADKARI, J.)