IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1636 OF 2018

Mr.Sarthak Vijlani ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH
CRIMINAL APPLICATION NO. 1018 OF 2018
IN
ANTICIPATORY BAIL APPLICATION NO. 1636 OF 2018

M/s.Comfort Intech Limited ...Applicant/ Intervenor

IN THE MATTER BETWEEN

Sarthak Vijlani ...Applicant

Versus

State of Maharashtra ...Respondent

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Mr.Ashok Mundargi, Senior Counsel a/w. Mr. Manoj S. Mohite I/b. Mr.S.R.Phanse for the Applicant.
Mr. Ashok M. Saraogi for the Intervenor.
Mrs.A.A.Takalkar, APP for the Respondent/ State.

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CORAM: PRAKASH D. NAIK, J.
DATED: AUGUST 23, 2018

P.C. :

1. This is an application for anticipatory bail in connection with M.E.C.R.No. 25 of 2017 registered with Malad Police Station, Mumbai for offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

2. The M.E.C.R. was registered on the basis of the private complaint filed by the complainant Ravindra Kumar Sharma on 16th January, 2017. The learned Magistrate directed an investigation under Section 156 (3) of the Code of Criminal Procedure, 1973. Pursuant to that, the MECR was registered and investigation commenced.

3. The case of the complainant is that Comfort Intech Limited was the parent company of Comfort Security Ltd, where the present applicant was working as a Vice President. The work profile of the applicant is mainly as an expertise in Merchant Banking Division, Group Legal Issues and financial issues of the said company. Co-accused Deepak Mor and Shruti Banka, both Chartered Accountants were also working in the same company. In August 2011, the company in order to expand its business decided to set up a Wholly Owned Subsidiary by the name Finnsolutions Services FZE in United Arab Emirates (U.A.E.). Accordingly, No Objection Certificate (NOC) was required from Reserve Bank of India (RBI) as a matter of procedure. The company obtained certificate of registration from R.B.I. on 25th January, 2012 and registered a company in the name of Finnsolution Services FZE in U.A.E. The company had obtained NOC vide letter dated 23rd February, 2012 issued by the department of Non- Banking supervision of RBI.

On enquiry, it was revealed that NOC was never issued by RBI and accordingly, the copy of NOC was forwarded to the said department of RBI. It is further alleged that upon detailed enquiry, it transpired that the applicant had forwarded an e-mail alongwith an attachment from Dubai to Mumbai addressing the same to co-accused Shruti Banka on 24th February, 2012 by virtue of which it is alleged that the accused forwarded the permission alleged to have granted by the RBI. First Information Report (F.I.R.) was registered vide CR No. 601 of 2014 at the instance of RBI against the Directors of the company viz. Mr.Anil Agarwal, Ms. Annu Agarwal, Mr.Bharat Shiroya and Mr. Janak Mehta for offences under Sections 420, 465, 467, 468 and 471 of the Indian Penal Code on 8th December, 2014 with Malad Police Station, Mumbai.

4. On the basis of private complaint filed by the present complainant and in pursuance to the directions under Section 156 (3) of the Code of Criminal Procedure, F.I.R. has been registered against the applicant and others, which is under investigation.

5. The learned counsel for the applicant submits that the applicant is falsely implicated in the said crime. The private complaint was filed by the complainant with a view to shift the burden upon the applicant and other co-accused implicated in the present complaint.

6. It is submitted that earlier F.I.R. clearly indicates that the Directors of the said company were responsible for commission of the alleged crime. They were implicated as accused and the investigation proceeded. The applicant and the other employees were witnesses in the said case. In the complaint lodged at the instance of RBI, it was through out the case of the prosecution that the applicant was not responsible for commission of the alleged crime and it was committed by the accused impleaded in the said F.I.R.

7. Learned counsel for the applicant drew my attention to reply filled by prosecution opposing the application for anticipatory bail preferred by the accused in the earlier F.I.R. The statements of the applicant and other employees were recorded as witnesses and the prosecution had proceeded with the case that the Directors of the company were instrumental in committing crime. He also drew my attention to the statements of the said witnesses recorded in the said F.I.R. It is submitted that RBI had issued show cause notice to the said company dated 5th February, 2014 to which company had filed its detailed reply dated 28th February, 2014. The said reply no where mentions about any email sent by applicant to the co-accused Shruti Banka dated 24th February, 2012. RBI cancelled the licence of Comfort Intech Ltd. vide order dated 24th September 2014, wherein there was no reference of any email sent by applicant. In the complaint, it is alleged that email

was sent by applicant to the co-accused from Dubai, but the applicant has never gone to Dubai. The Directors of company approached the Court for anticipatory bail and for the first time, they came up with theory of an e-mail dated 24th February, 2012 alleged to be forwarded by applicant to Shruti Banka. It is submitted that Shruti Banka never sent email to Axis Bank for fund transfer, but infact email was sent to HDFC Bank dated 5th March, 2012. This falsified the allegation that the applicant had forged the NOC for seeking transfer of funds since the first fund transfer took place in March 2013 i.e., after applicant had resigned from company.

8. It is submitted that the statement of the applicant is recorded in the earlier case which is registered by the police and the investigation proceeded. It is submitted that the applicant had left the company. The case related to documents and custodial interrogation of the applicant is not necessary.

9. Learned APP submits that the investigation is in progress. The investigation reveals that the applicant is responsible for committing alleged offence by forwarding disputed document. It is submitted that expert's opinion has been received, which indicates that the e-mail/document emanates from the laptop of the applicant. It is further submitted that DRI had conducted the proceedings wherein it is

observed that the applicant and other employees of the company were instrumental in forwarding the said document. It is submitted that NOC was found to be forged in the name of RBI, even without applying for NOC. Statement of Shruti Banka indicate that applicant handed over the forged NOC to her. Hence, custodial interrogation is necessary.

10. The learned counsel for the intervenor has also opposed the application for anticipatory bail. It is submitted that the applicant and the other accused were responsible for creating the alleged forged document. He further submitted that the evidence on record clearly shows his involvement. The statement of the employee Smt. Shruti Banka also shows that the document was forwarded by the applicant to her. It is submitted that the DRI had also conducted enquiry, which clearly indicates that the applicant and others were responsible for commission of crime although earlier FIR was registered against the Directors of the company. During the course of the investigation at later stage, the involvement of the applicant is disclosed. It is submitted that the reply which was filed before the Sessions Court opposing grant of anticipatory bail, which was relied upon by the applicant was filed on the initial stage. However, thereafter, the investigation is conducted. The statements of the employees were recorded, which show complicity of the applicant in the said crime. It is submitted that for forwarding

document, it is not necessary for the person to go abroad. There is no substance in the submissions advanced by the counsel for the applicant that he has never visited Dubai. It is submitted that the statement of Smt. Shruti Banka, which was recorded in the earlier investigation also clearly shows that the fabricated document was forwarded by the applicant. After realizing that the applicant was involved in the crime, he left the job. It is submitted that expert's opinion, which is referred to by learned APP also substantiates the involvement of the applicant in the crime. To find out the truth, it is necessary to interrogate the applicant. The custodial interrogation will reveal the source of the document and as to how the accused was involved in committing forgery of the said document. It is submitted that the application for anticipatory bail preferred by the applicant be rejected.

11. I have heard both sides and perused the documents on record. RBI forwarded letter dated 2nd August, 2013 to Police Inspector Navanpura Police Station, Ahmedabad. It was stated that RBI intends to file a FIR in respect of Comfort Intech Ltd. Which uses fabricated and forged letter alleged to have been issued by RBI Ahmedabad office granting NOC to incorporate overseas subsidiary which might have been submitted to regulatory bodies in India and abroad with intent to deceive. Subsequently, FIR was lodged by RBI Officer with Malad Police Station vide statement dated 8th December, 2014. The FIR was

registered against the Directors of the company. The statements of various witnesses were recorded and the investigation had proceeded. The statements of the applicant was recorded as witness on 27th December, 2014 and 19th May, 2015. Private complaint was filed by M/s. Comfort Intech Limited on 12th February, 2015 against applicant, Deepak Mor and Shruti Banka for offences under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code. It was alleged that employees had created this NOC alleged to have been issued by RBI. By order dated 4th August 2016, Court directed investigation under Section 156(3) of Code of Criminal Procedure. Thereafter, MECR was registered. From tenor of statements of applicant recorded in earlier complaint indicate that he was confronted with situation that according to Directors of company, employees have created the document. Thus, explanation was tendered by applicant. The accused /Directors preferred Anticipatory Bail Application No. 1601 of 2014 in this Court. In the reply submitted before this Court by affidavit of Inspector of Police, it was mentioned that the copy of e-mail dated 22nd February 2012, which was submitted by the accused to prove that forged no objection certificate was created by their employees seems to be contradictory. The applicant and the other employees left the job from the said company for better prospects. It is further mentioned that the employees denied the allegations and stated that they have no benefit in doing such act. In February 2013, the company requested to transfer the funds to their subsidiary company at Dubai and about one lakh Dirham has been transferred from the Axis Bank after necessary requirement has been fulfilled by the company. It was further stated that on enquiry with the RBI, it revealed that in March 2013, inspection was made by the officer from the RBI at the company's office and asked for no objection certificate. The company was unable to submit the required copy of NOC. After scrutinizing the papers submitted by the company, it was found that the subsidiary company was started on 25th January, 2012 and the date mentioned on the NOC is 23rd February, 2012. Thus, the subsidiary company at Dubai was started without prior and proper approval from RBI and since the company is dealing with finance division, they were well aware about the requirements and it is their responsibility to follow the rules. RBI came to know that NOC submitted by the said applicants is forged and it was informed to them. After that, necessary procedure was followed by RBI certificate of registration of the company was cancelled in September, 2014. Thus, the documents submitted and submission made by the said applicants therein during preliminary enquiries found to be not sufficient to prove the allegations made by them against their employees and the same is communicated to them vide letter dated 8th January, 2015. The affidavit further indicates that after receiving written complaint from RBI and after noting down the submissions of RBI officer, the offences were registered against the Directors of the company in CR No. 601 of 2014 under Sections 465, 467, 468, 471, 420 read with 34 of the Indian Penal Code. In concluding paragraph of the said affidavit, it is stated that there was no sufficient documentary evidence is available to prove the connivance of three employees of company in forgery of NOC of RBI. The emails submitted by said applicants who preferred anticipatory bail application found to be controversial and it was not sufficient to prove that forgery has been done by employees. After all whole responsibility belongs to said applicants as directors of the company as they are responsible for the ongoing affairs of the company. Thus, while investigating FIR against Directors of company, it was contended by them that applicant and other employees were responsible for forgery which was investigated and their defence was not accepted. The statement of Shruti Banka which is being relied upon to state that the applicant had forwarded the said documents was before police while she was cited as witness. Thereafter, the private complaint is filed. The accused in earlier case are witnesses in present case and the witnesses in earlier case are accused in this case. Thus, the entire prosecution case at that point of time had proceeded on the basis of that the Directors of the company were responsible for creation of the alleged document. The statement of the applicant and others were recorded as witnesses.

12. The learned counsel for the intervenor submits that while allowing the said application, this Court had factually accepted the case of the Directors of the company. They were not responsible for commission of the said crime and the same was committed by the employees of the company including the present applicant.

13. I have perused the order granting anticipatory bail passed by this Court in Anticipatory Bail Application No. 1601 of 2014. This Court had recorded the submissions of both the parties. The prosecution strongly objected the application for anticipatory bail preferred by the said Directors of the company. The Court observed that case rests on documentary evidence and all the documents are in custody of investigating agency, and no specific ground is made out for custodial interrogation. Considering these circumstances, the application preferred by the accused in the earlier FIR was allowed. As far as expert's opinion relied by prosecution, the learned advocate submitted that the email which is alleged to have been forwarded from the company of the applicant to which he has no access since his resignation in June 2012. It is contended that the Directors for the first time came up with the said e-mail in 2014 and possibility cannot be

ruled out that the company account which is accessible to the Directors have been tampered. It is further submitted that in any case, the applicant has no personal benefit. The company was entrusted in opening subsidiary company and the document was required for the company. Admittedly, the applicant was the employee. Co-accused were employees of the company. They have no personal interest in creating any document for the benefit of the company. The investigation in relation to the earlier FIR is already in progress. As far as the submission regarding the order passed by DRI, it was submitted that the applicant was not a party to the said proceedings and there was no opportunity of hearing to him and the authority has passed the order imposing fine on the company.

14. Be that as it may, the case of the complainant in the present case is that the applicant and other employees were responsible for creating alleged forged document. In the earlier FIR, the prosecution has proceeded on the basis that the Directors of the company were responsible for committing crime and the applicant and other employees were witnesses in the said case. The accused in the earlier FIR were granted anticipatory bail by this Court and one of the primary reasons is that the matter relates to the document. The documents are already in custody of Investigating Officer. Two parallel investigations are in progress. Apparently, the first complaint was registered on the

basis of FIR, which was lodged by RBI. The present investigation is proceeded on the basis of private complaint, which was filed at the instance of company in which the directions were issued by the learned Magistrate under Section 156 (3) of Cr.P.C.

15. Taking into consideration the issue involved in the aforesaid matter and the submissions advanced by both the parties, the custodial interrogation of the applicant is not required and the applicant can be granted anticipatory bail. In the circumstances, I pass following order :

ORDER

(i) Anticipatory Bail Application No.1636 of 2018 is allowed.

(ii) In the event of arrest of the applicant in connection with M.E.C.R.No. 25 of 2017 registered with Malad Police Station, Mumbai for offences punishable under Sections 420, 465, 467, 468, 471 read with 34 of the Indian Penal Code, the applicant shall be released on bail on furnishing PR Bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand only) with one or more sureties in the like amount.

(iii) The applicant is directed to report Malad Police Station once in a week on every Saturday between 10.00 a.m. and 12.00 noon, till further orders.

(iv) The applicant shall not leave India without prior permission of the trial Court.

(v) Anticipatory Bail Application stands disposed of.

(vi) In view of disposal of Anticipatory Bail Application, Criminal Application No. 1018 of 2018 does not survive, therefore, same stands disposed of.

(PRAKASH D. NAIK, J.)