IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.1935 OF 2018

1. Vinod Chaturvedi, Age 52 years,
R/o.Flat No.1402, La Sarena Co-op. HSL,
J.P.Road, Andheri (W), Mumbai-400 058.

2. Manoj Pathak, Age 43 years,
R/o.346, Nagla Pesa, Mathura,
Uttar Pradesh-281 001. Applicants

versus

1. The State of Maharashtra
2. Mohit Varma, Mumbi. Respondents

WITH
CRIMINAL APPLICATION NO.1169 OF 2018

Mohit Verma Applicant

versus

The State of Maharashtra and others Respondents

Mr.Ashok P. Mundargi, Senior Advocate, I/by Yashpal M. Thakur for applicants.
Mr.Girish Kulkarni with Karan Kadam and Rani Mishra I/by MZM Legal for intervenor.
Ms.A.A.Takalkar, APP, for State.
Mr.Amol Misal, API, Banking-I (EOW), present.

CORAM : PRAKASH D. NAIK, J.

DATE : 5th October 2018

PC :

1. Heard learned counsel for intervenor. For the reasons stated in the application, Criminal Application No.1169 of 2018 is allowed and intervenor is allowed to intervene in the anticipatory bail application.

2. The applicants are apprehending arrest in connection with first information report bearing EOW CR No.2 of 2017 for offences under Sections 465, 467, 468, 471, 420 and 120(B) of Indian Penal Code. The applicants had preferred application for anticipatory bail before Sessions Court, which has been rejected vide order dated 6th August 2018.

3. The prosecution case in nutshell is that M/s.Ushar Agro Limited (`the said company') approached M/s.PT Bank Maybank Indonesia Tbk for financial facility of Supplier Bill Purchase Facility of Rs.27 crores. Applicant no.1 is the promoter and managing director of M/s.Usher Agro Ltd, whereas applicant no.2 is promoter and Ex-Director of said firm. Upon grant of aforesaid facility, the said company exhausted the said facility. There was failure on the part of accused company to repay the amount. In 2016, as there was failure on the part of said company to repay the loan, the bank deputed its personnel to visit the factory premises of the company. It was found that the factory of the company was closed and was functioning for namesake. Therefore, the bank decided to conduct forensic audit of the company. Subsequently it was revealed that the accused company had entered into transactions with supplier companies and purchaser companies and some of the directors of the purchaser and suppliers of M/s.Ushar Agro Ltd were common. It was revealed that various amounts were disbursed to suppliers, however, the supplier companies never supplied any material to the said company and on the basis of forged documents, the amounts disbursed by the bank to the suppliers of the said company, were again diverted to the bank of said company. It is alleged that the

applicants and other directors of the said company, in collusion and connivance with their internal auditor and their suppliers and purchasers, cheated the bank by providing forged, fabricated and tampered documents which resulted into loss of Rs.17,80 crores. It is alleged that the accused had submitted bogus bills showing purchase of goods transported by certain vehicles. On verification those vehicles turned out to be scooters, motorcycles, tractors, mini bus, light goods vehicle and heavy goods vehicles which were not supposed to transport such goods. It was also revealed that no transportation of the goods shown in the bills took place in those vehicles. The FIR was lodged on 4th January 2017 with N.M.Joshi Marg Police Station. Considering the nature of offences, case was transferred to Economic Offences Wing.

4. Learned counsel for applicant submitted that the dispute is purely of civil nature. Custodial interrogation of the applicants is not necessary. There was transaction between both the parties to the tune of approximately Rs.255 crores and the applicants' company had paid Rs.244 crores. It is submitted that present dispute is only in respect to a sum of Rs.17.80 crores and the allegation that false bills were submitted, is false. It is submitted that considering the continuous transactions which the applicants' company had with the complainant bank and huge amount has been repaid to the complainant, for minor dispute in respect to the repayment, custodial interrogation of the applicants is not necessary. It is submitted that after knowing about alleged false bills, the applicants had entered into correspondence with the complainant bank. The applicants have co-operated with the investigation. The matter relates to documents and custodial interrogation of applicants is not necessary.

Learned counsel for applicants drew my attention to the allegations referred to in the FIR and pointed out that the disputed amount is Rs.17.80 crores , whereas there were transactions of about Rs.255 crores with the complainant. It is further submitted that the complainant bank has also initiated proceedings u/s 138 of Negotiable Instruments Act and had also filed a petition for winding up of the company which was subsequently withdrawn. It is submitted that the investigating agency has raided the residences and official premises of applicants. Therefore, police custody should not be granted for recovery of dues , especially in the given facts of the case. Learned counsel also drew my attention to the letter addressed to the Joint Commissioner of Police dated 8th May 2017 furnishing details about the transactions and the financial relationship with the complainant company. It was stated therein that since 2013, the applicants' company had entered into agreement for financial assistance with the bank and had also repaid substantial amount. The details about transactions are reflected in the said letter. Learned counsel also pointed out that there was a formation of joint lenders forum and invocation of strategic debt restructuring scheme and the applicants' company has extended all the co-operation. He further pointed out that it is not case of prosecution that the applicants had diverted the funds to their private accounts. It is further submitted that the applicants' company had initiated correspondence pursuant to registration of FIR with Alampata Trading Private Limited, Patil Trading Private Limited, Prabhakaran Traders Private Limited etc and they were asked to verify at their end about the aspect of false delivery challans etc and about wrong lorry numbers. It is thus submitted that considering the nature of dispute which relate to documents, the applicants may not be subjected to custody. The applicants are willing to co-operate in the investigation.

5. Learned APP, however, submitted that the case of grant of anticipatory bail is not made out by the applicants. They are involved in preparing false and fabricated documents. It is further submitted that custodial interrogation of the applicants is necessary. Huge amount is involved in the crime. Bogus companies were formed by the accused. Nominal persons were appointed as directors of the company. During the course of investigation, statements of several persons were recorded which indicate that they were appointed as directors of the company formed by the accused. It is further submitted that the FIR and other documents highlights as to how financial facility was obtained from the informant bank, applicants submitted bills which on verification are found to be false. It cannot be said that the dispute is of civil nature. The applicants could not explain as to how bills pertaining to the vehicles other than goods vehicles came to be submitted for discounting the bills. It is submitted that the applicants are involved in serious crime and hence the application may be rejected.

6. Learned counsel for intervenor reiterated the submissions of learned APP. In addition to that it is submitted that considering the substantial amount of money for which the informant bank and other financial institutions appear to have been duped off, it would be essential to ascertain the magnitude of the present offence, which requires custodial interrogation of the applicants. It is submitted that the offence is well orchestrated white collar criminal conspiracy committed by applicants through their company Ushar Agro

Company Limited, not only to cheat the complainant bank but several other financial institutions for an amount that would appear to be in excess of Rs.1,738 crores. The complex and sophisticated nature of the offence and the substantially large sum of monies involved, warrants detailed investigation and custodial interrogation to find out the truth. It is submitted that only on account of exhausting civil remedies qua National Company Law Tribunal and other forums, the applicants cannot be absolved of the criminal law. In the forensic audit conducted by the complainant bank, several discoveries were made which show the depth of the criminal conspiracy hatched by the applicants. The forensic audit revealed that although supplier and purchaser of Usher Agro had common directors, indicating that the majority of the buy/sell transactions that were shown by the company, were with confederates of the accused, and did not actually take place. The CRILIC report provided by Reserve Bank of India with details of borrower fraud of the said company of applicants would reveal at least 13 instances of banking fraud with various lenders. It is submitted that considering the magnitude of the offence, the manner in which false and fabricated documents were produced by the accused, the anticipatory bail may not be granted.

7. I have heard both the sides. I have also perused the documents on record. The investigating authority had recorded statements of various witnesses during the investigation. It is revealed that false and fabricated bills were submitted by the applicants' company to the informant bank. The statements also indicate that some nominal persons were also appointed as directors of the companies from whom bills were sought by the accused.

Huge amount of Rs.17.80 crores is involved in the crime. During course of investigation, statements of persons recorded by police indicate that they were appointed as Directors of company formed by applicants-accused. Accused submitted bogus bills showing purchases of goods transported by vehicles which turned out to be vehicles which were not meant for transportation of such goods. Apparently the manner in which the applicants have indulged in the said act does not entitle them the relief under Section 438 of Code of Criminal Procedure, 1973. Considering the submissions advanced by learned APP and the intervenor and in the light of magnitude of offence, custodial interrogation of the applicants is necessary. For all the aforesaid reasons and in the light of the facts narrated hereinabove, no case for grant of anticipatory bail is made out. Hence, Criminal Anticipatory Bail Application No.1935 of 2018 is rejected.

8. At this stage learned advocate for applicant made prayer for stay of the operation of this order. During pendency of the application, no interim protection was granted to the applicant and the order rejecting the application for anticipatory bail cannot be stayed. Hence, such prayer is rejected.

(PRAKASH D. NAIK, J.)

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