IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1945 OF 2018

Azaz Inamdar .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.P.M. Havnur a/w. Ms.Chitra Salunke i/b. M/s.Salunke & Co., Advocate for the Applicant.

Mr.R.M. Pethe, APP for the Respondent – State.

Mr.Ganesh Todkar, PSI, BKC Police Station, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : SEPTEMBER 25, 2018.

P.C. :

Applicant is apprehending arrest in connection with C.R.No.221 of 2018, registered with BKC Police Station, Mumbai, for the offences punishable under Sections 420, 468, 478 read with 120-B of Indian Penal Code ("IPC", for short).

2 According to the applicant, he is Overseas Education Consultant. He has been falsely implicated in this case. The prosecution case is that the Assistant Regional Security Officer from US Consulate, Mumbai addressed letter dated 10th August, 2018 to BKC Police Station. On the basis of which complaint was

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lodged. In the said letter forwarded by the said officer Ms.Brandon Shaw, it was alleged that on 10th August, 2018, one Mr.Rajbirsingh Rehan had appeared before Consulate Office for B1/B2 Tourist Visa Interview and he had provided Indian Passport, as proof of identity. He had applied for US Visa for business purpose and to substantiate the same, he had purported himself to be purchase Manager for Spectrum Offshore & Onshore Services Pvt. Ltd. in Vashi, Navi Mumbai. It was represented that he would be travelling to Baltimore, Maryland to obtain equipments. To support his contentions, he had produced certain documents as Purchase Manager of Spectrum Offshore & Onshore Company. During the interview, it was noticed by the Consulate Officers that said person was unable to answer specifics concerning his job, or his travel plans, which prompoted the Consulate Officer to refer the case for further review. Subsequently, the Consulate attempted to contact the office of Spectrum Offshore & Onshore Company to verify the claims of the said person with regard to the employment. However, the individual who answered the phone seemed to have been coached. It is further alleged that during the further interview said Rajbir Rehan confessed that he had never done any religious work during his 2007 US trip. In fact, he admitted to have been working in the U.S. whilst there. He further stated that his employment with Spectrum and all supporting documents pertaining to that were fraudulent and given by the applicant–accused, who was to be paid a sum of Rs.8,00,000/-, if visas would be issued. Hence, the Consulate forwarded letter. It was also alleged that based on the knowledge of the circumstances of this case, the officer who forwarded the information there was probable cause to believe that Rajbir Rehan conspired with persons known and unknown to obtain fraudulent documents, and, thereby committed offences under Sections 420, 468, 467, and 120-B of IPC. It was further stated that the U.S. Consulate requests support and information from BKC Police and Indian Government can provide in assisting in a timely investigation of this serious security matter affecting both the United States and India.

3 In pursuant to that FIR was registered and Rajbir Rehan has been arrested and he is in custody.

4 Applicant preferred an application for anticipatory bail before the Sessions Court, which was rejected on 28th August, 2018.

5 Learned counsel for the applicant submitted that the applicant is being falsely implicated in this case. The accused who has been arrested for submitting fraudulent documents is trying to escape his liability, and, has thereby implicated the applicant in the said crime alleging that the documents were handed over by the applicant. It is submitted that the applicant being Overseas Education Consultant, has completed his MBA from London and after completing his course, he came back to India in 2012. His job only calls for counseling the students, to do their admission process, visa counselling and to assist his clients to get visitors visa and business visa or any kind of visa services with nominal fees. The arrested accused approached him five months ago as he wanted to visit China, Hong Kong and Maccau for holidays. Applicant had processed his application for Visa and filled his pre-registration for Hong Kong and Maccau. For the arrival visa for which he has paid regular charges and not as alleged nor he promised to be paid in future once visa would have been issued, as alleged by the co-accused. After coming back, Rajbir informed the applicant that he wishes to travel to USA for business visit and he also informed that he had been to USA 9 years back for religious performance on behalf of Gurudwara and returned to India within stipulated time. It was a

simple case for the applicant to do the visa process, as he explained that he intends to go to USA for short period, for which his application form was processed. The applicant is not involved in the preparation of alleged documents and his job was only to fill the application form. Applicant is not at all the competent authority to verify the documents, as the applicant acts on the instructions of the clients, who wish to make their visa, and it is not in his hands if the applicant's visa is rejected. The applicant can, at the most, counsel as to what happens in the interview which is the general practice. It cannot be presumed or inferred that the applicant had prepared the fraudulent documents. The documents are always produced by the client who approaches the applicant for visa counselling etc. It is submitted that without conducting any investigation into the matter, the applicant is being sought to be arrested merely on the statement of the co-accused. Learned Sessions Judge has failed to take into consideration the said aspect while rejecting the application for anticipatory bail. Applicant has tendered the affidavit putting additional fact in support of his application. The said affidavit was tendered during the course of the hearing of this application. In the affidavit and in the submissions advanced by the counsel for the applicant, it was submitted that the arrested accused and

Tirth Patel are hand in gloves with each other and with an intention to shift the burden upon them and to escape from the prosecution and liability, the applicant is being made scapegoat by alleging that the documents were provided by the applicant. It is further stated that there is no evidence to establish that the applicant has prepared the said documents. The business premises of the applicant's was searched and nothing incriminating was found from the said place. It is further submitted that the applicant is willing to cooperate with the investigation by attending the investigating officer and extending all the requisite assistance in investigating the matter. Tirth Patel and the arrested accused had travelled together and they were friends, who had jointly tried to implicate the applicant. It is submitted that the entire matter relates to the documents and the custodial interrogation of the applicant is not necessary. Learned counsel relied upon two decisions of this Court in support of his submission delivered in Criminal Application No.605 of 1988 in the case of ***Shyam Bhatia Vs. State of Maharashtra*** and in Criminal Application No.2390 of 2004, delivered in the case of ***Rajiv Bajaj Vs. State of Maharashtra***. Learned counsel has also submitted that it is a settled principle of law that the statement of the co-accused cannot be relied upon and the applicant is presently implicated only on the basis of the statement of the arrested accused and there is no other cogent evidence to show his involvement in the crime.

6 Per contra, learned APP Mr.Pethe submitted that the investigation is in progress. There is sufficient evidence to show the complicity of the applicant in the crime. It is submitted that during the course of investigation, the arrested accused was interrogated and it was disclosed that the documents were given to the said accused by the applicant. It is further submitted that the statement of Tirth Patel was recorded during the course of investigation, and, even he has supported the prosecution case stating that the applicant is responsible for preparing the fraudulent documents which were handed over to them. He also pointed out that the statement of one Gaurav Singhal was recorded during the course of investigation. He is owner of Spectrum Offshore and Onshore Private Limited. He has confirmed that the documents which were relied upon by the accused relating to his employment with M/s.Spectrum Offshore and Onshore Service Private Limited, were not issued by the company and the said person was never employed with the said company. It is further submitted that the documents, which were

provided in relation to the Converges India Services Private Limited and the pay slip issued in the name of Tirth Patel admitting to be employee of the said concern are fabricated. It is further submitted that several other persons were also involved in obtaining counselling from the applicant. It is submitted that pursuant to the registration of the FIR, the applicant had made calls to the other witnesses who are required to be interrogated in the present case. It is submitted that investigation is in progress and investigation shows involvement of applicant.

7 I have perused the documents, which are part of the application and the investigation papers produced by the officer who is present in the Court. On going through the said documents, *prima facie* involvement of the applicant is made out. Tirth Patel is not the accused in this case. Apart from that although the statement of the co-accused is not admissible in evidence during interrogation he has disclosed involvement of applicant which is investigated and supported by other evidence. Investigation proceeds on interrogation of accused. Apart from that the statement of the other witnesses recorded during the investigation also points out towards the complicity of the applicant. The manner in which the documents are forged which

were produced before Consulate is a serious offence, which is required to be investigated for which custodial interrogation is necessary.

8 Taking into consideration the aforesaid circumstances, case for anticipatory bail cannot is not made out. Hence, anticipatory bail application no.1945 of 2018, is rejected.

(**PRAKASH D. NAIK, J.)**