IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.2520 OF 2018

Kotila Veetil Shankaran .. Applicant
Vs.
State of Maharashtra .. Respondent

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Dr.Nilesh Pawaskar i/b. Mr.Prashant Thombare a/w. Sangita Pawaskar & Khevana Dagli, Advocate for the Applicant.
Mr.A.R. Kapadnis, APP for the Respondent – State.
Mr.Arun S. Khapkar, API, Vanrai Police Station, Mumbai, present.

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CORAM : PRAKASH D. NAIK, J.

DATED : OCTOBER 30, 2018.

P.C. :

This is an application for bail in C.R.No.81 of 2016, registered with Vanrai Police Station, Mumbai, for the offences punishable under Sections 420 and 408 of Indian Penal Code (“IPC”, for short). FIR was registered on 19th March, 2016. Applicant was arrested on 31st July, 2018.

2 The case of the prosecution is that the complainant conducts business of providing security guards through its company viz. Alsecure & Protections Services (India). It is further alleged that the complainant had been paying service tax through

its account bearing no.AACPG9533 ASP 001. The affairs of the office were being conducted by staff, which were appointed by him. Accounts were scrutinized and settled by the applicant who was a Chartered Accountant and Tax Consultant. He was engaged as a Tax Consultant since 1995-96. He used to scrutinize the statement of account and used to point out infirmities, if any, in the said statement. Complainant was also being handed over cash amount of several accounts for depositing the same with the respective authorities. The company was paying service tax. The applicant had represented that he is also handling the service tax and is depositing the amount of the company in the respective department towards service tax. Complainant believed the representations and permitted the applicant to deposit the service tax. From time to time, the cheques were handed over to the applicant accused. Complainant used to write amounts on the cheque and the same were being handed over to the applicant accused under the belief that he would deposit the said amount in the office of service tax. It is alleged that in 2013, the complainant received a notice about non payment of service tax from the respective department. In the said notice, it was stated that the company has not paid service tax from October 2007 to September 2012 to the extent of Rs.4,34,06,132/- complainant realised that the amount which was handed over to the accused was not paid by him to the respective department towards the service tax. The details about the amount handed over to the applicant by cheque are furnished in the FIR. It is, therefore, alleged that the applicant accused had misappropriated an amount of Rs.99,28,872/-. The said amount was entrusted to the applicant accused and instead of depositing the same in the concerned department of the service tax, the said amount was misappropriated by the accused.

3 Prior to lodging of the FIR, complainant had filed a suit in the civil Court for recovery of the said amount. The said Civil Suit was filed in the year 2014. First Information Report was thereafter lodged on 19th March, 2016.

4 Learned counsel for the applicant submits that prior to lodging of the FIR, complainant had filed a civil suit for recovery of the said amount. It is submitted that the applicant has filed his written statement denying the pleadings of the complainant in the said suit. It is submitted that the said suit is pending and in pursuant to that FIR was registered on 19th March, 2016. Investigation is completed and charge – sheet has been filed. It is submitted that the applicant has taken a defence

in the civil suit that in the year 2010, the department of service tax personnel had raided the office of the plaintiff / complainant for the subsequent financial year 2008-09. The department seized documents of plaintiff / complainant relating to alleged tax evasion amounting to approximately 4.5 crores, as claimed by the department and the service tax payable at Rs.4.50 crores was settled at Rs.1.50 crores. The completion of the assessment prolonged upto February to March 2011. During the said period, the plaintiff handed over to the applicant a total sum of Rs.65 lakhs towards professional fees and expenses for handling the issue of service tax. The complainant had also issued threats and executed document under coercion. He was threatened that the complaint would be made to the Institute of Chartered Accountant of India. Sensing the situation and under the duress, the applicant had signed the documents. The applicant was warned that the complaint should not be filed with any authority. It is, therefore, submitted that the amount which was paid to the applicant was towards his professional fees/charges. It is submitted that the complainant had filed a Suit before the civil Court, which is pending and the defence of the applicant would be tested in evidence by Civil Court. Pending the said civil Suit, complainant chose to lodge the FIR alleging offence of cheating and breach of trust. There is no evidence to establish the said charges. It is submitted that in any case the applicant is arrested. He is in custody. Investigation is completed and the charge – sheet is filed. Further custody of the applicant is not necessary. It is therefore prayed that the applicant be granted bail.

5 Learned APP submitted that the case of misappropriation has been clearly established during the course of investigation. Learned APP submitted that the applicant had not filed any complaint with regards to the defence taken by him in the suit. He has not lodged any complaint to the police authorities the complainant. Hence, the defence is afterthought. It is submitted that the letter dated 26th December, 2013, written by the applicant, admits his liability and he had agreed to return the said amount. Learned counsel for the applicant, however, submitted that the genuineness of the letter dated 26th December, 2013 is the subject mater of the suit which is pending before the appropriate Court. Learned APP further submitted that within a short time, cheques handed over to the applicant were depositing into his account by applicant. It is submitted that civil proceedings and criminal proceedings are distinct in nature. The applicant has committed misappropriation of amount, which is

evident from the documents on record.

6 I have perused the documents on record. The case of the complainant is that the applicant was engaged as a Chartered Accountant and Tax Consultant since last several years. Amount was allegedly handed over to him from 2013 onwards. It is alleged that the cheques were handed over to the applicant, which he was supposed to deposit with the service tax department and instead of that, he has deposited the said cheques into his account and misappropriated the amount.

7 Thus, according to the complainant, the cheques were blank, which were deposited by the applicant in his account in the year 2013 onwards. Thus, the complainant would have realised that the amount has gone into the account of the applicant at the earlier point of time and could have objected for the same. However, the suit is filed on 25th July,2014. Applicant defended the pleadings in the suit by filing written statement. It is also pertinent to note that although the amount was handed over in 2013, FIR was lodged on 19th March, 2016. Application for anticipatory bail was rejected by the Sessions Court, and, subsequently, application before this Court has been withdrawn.

However, the applicant has thereafter taken into custody after his arrest and in pursuant to that the investigation is conducted by the police. All the documents are already collected and they form the part of the charge–sheet. He is in custody from the date of arrest. Charge-sheet is filed. Taking into consideration the aforesaid aspects, further detention of the applicant is not necessary. Hence, case for bail is made out.

8 Hence, I pass the following order:

:: ORDER ::

(i) Bail Application No.2520 of 2018, is allowed;

(ii) Applicant is directed to be released on bail in connection with C.R.No.81 of 2016, registered with Vanrai Police Station, Mumbai, on his furnishing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall attend Vanrai Police Station, Mumbai, every month on first Saturday of the month between 10:00 a.m. to 12:00 noon, till further order;

(iv) Applicant shall not tamper the evidence and also attend the trial Court regularly during the date of hearing, unless exempted by the Court for some reasons;

(v) Applicant shall not leave India without prior permission of the trial Court;

(vi) Applicant shall furnish cash security of rs.25,000/-, in lieu of surety for a period of six weeks;

(vii) Bail Application No.2520 of 2018, stands disposed of.

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