IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2260 OF 2018
WITH
CRIMINAL APPLICATION NO.1385 OF 2018

Nikunj K. Vora .. Applicant
Vs.
Inspector of Police, Tardeo Police
Station, Mumbai & Anr. .. Respondent

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Mr.Sudeep Pasbola a/w. Mr.Bhavesh Thakur and Aneeta Kataria, Advocate for the Applicant.
Mr.Abad Ponda i/b.Mr.Karma Vivan, Advocate for the Intervener.
Mr.M.G. Patil, APP for the Respondent– State.
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CORAM : PRAKASH D. NAIK, J.

DATED : DECEMBER 22 , 2018.

P.C. :

This is an application for bail in connection with C.R.No.157 of 2018, registered with Tardeo Police Station, Mumbai for the offences punishable under Section 408 of Indian Penal Code ("IPC", for short). First Information Report ("FIR", for short) was registered on 10th July, 2018.

2 Applicant had preferred an application for anticipatory bail before the Sessions Court, which was rejected on 29th October, 2018.

3 Complaint was lodged by Sunil Anandpara alleging that he has started dealing with import export and incorporated the company in the name and style as “M/s.Tomato Trading LLP”. Since 2014, the complainant started exporting cashew. There are other partners in the business namely, Deepak Parekh, Arti Anadpara and Jayesh Anandpara. Applicant is the friend of the complainant. He was in the business of import export of material. He was carrying on business in the name and style as Himax Global Private Limited. He is conducting his business from the office situated at Tardeo, Mumbai. In 2012, the applicant–accused represented to the complainant that there is profit in the import export business and advised him to conduct such business. He also represented that he would make use of his experience and information about import export business and to look after the affairs of the company relating to import and export. The complainant was carrying on his business in the name of Tomato Trading LLP from his residential address on partnership basis, as stated above. He invested Rs.1 crores in the business. Applicant – accused used to look after the business. Initially the company conducted business of agricultural products from foreign countries. Subsequently, applicant started importing metal

products. Initially the business was running smoothly. The complainant was busy in share market business and assigned responsibilities to applicant. He was looking after all the transactions of complainant’s company. Since the complainant was abroad on several occasions, the applicant told him that he is in need of money for carrying out financial transactions in his business. He had informed the complainant to hand over the signed cheques in May 2017. The complainant issued signed blank cheques to the applicant in the name of its company M/s. Himax Global Private Limited. The complainant had gone abroad. After returning he was busy in share market business. In June 2017, the complainant was in need of money for share market business, and, hence, he demanded money from the applicant. However, the amount was not returned and it was represented by him that the amount is being released from the company to related business and he would return the amount immediately. Inspite of lapse of time, the amount was not returned. The applicant thereafter told the complainant that he had paid Rs.90/- lakhs to M/s.Jai Anand Food Industries by cheque in 2017 for purchasing cashew. However, the product is not delivered by the said company. The complainant thereafter made inquiries to the applicant on several occasion about the said amount. The applicant gave evasive reply. There was no transaction with M/s.Tomato Trading LLP with M/s.Jai Anand Food Industries and that they have not supplied any materials to complainant's company. It was realized that the applicant had obtained cheque of Rs.90 lakhs on the pretext of purchasing materials and had misappropriated the said amount. Hence, the FIR was registered.

4 Learned counsel for the applicant submitted that the matter relates to commercial transaction, and, there is no element of any offence. Applicant has not misappropriated the amount and had parted the said amount to the aforesaid company for purchasing of cashew nuts. The applicant has been falsely implicated in this case. Reliance is placed on the text of conversation between the parties. It is submitted that the amount was disbursed to the said company and in fact more amount was involved. However, the complainant has deliberately lodged the complaint in respect of the amount of Rs.90 lakhs. He submitted that the matter relates to the documents and custodial interrogation is not necessary.

5 Learned APP submitted that the applicant has misappropriated an amount of Rs.90 lakhs, which is apparent

from the evidence on record. There was no transaction of complainant company with M/s.Jai Anand Food Industries, to whom the amount was allegedly disbursed. The applicant has been taking contrary stand in the application for anticipatory bail. Learned counsel for the intervener also reiterated the submissions of learned APP. It is submitted that the complainant's company had no transaction with M/s.Jai Anand Food Industries. However, Rs.90 lakhs were remitted from the account of M/s.Tomato Trading LLP. It is further submitted that the applicant had contended right from inception while approving the application before the Sessions Court and even the present application for anticipatory bail, that he is no concerned with the said transactions and that he has been falsely implicated in this case. However, while arguing the present application, the applicant has taken a contrary stand. He also pointed out the letter issued by Oriental Bank of Commerce, wherein it is stated that the applicant has visited the Bank and by representing the cheque, amount was transferred to the account of M/s.Jai Anant Food Industries on 25th May, 2017. It is, therefore, submitted that the applicant has not come with clean hands and the relief under Section 438 of Cr.P.C., may not be granted.

6 I have perused the FIR and the other documents relied upon by both the parties. The initial contention of the applicant, which is evident from the pleadings in the application for anticipatory bail preferred before the Sessions Court as well as before this Court, is that the applicant is not concerned with remitting amount of Rs.90 lakhs. It was his case that it has been learnt that M/s.Tomato Trading LLP has remitted an amount of Rs.90 lakhs by RTGS to M/s.Jai Anand Food Industries on 25th May, 2017. Similar pleadings are also made in the application before this Court. However, it is now argued that the amount was remitted to the said company on account of business transactions, and, there is no misappropriation of the amount. The change of stand, probably on account of the letter issued by the Oriental Bank of Commerce to the police inspector, wherein it is stated that in case of most of the relevant documents, cheques etc., submitted to the Bank, the same were handed over by the applicant and one Rajan Deo. They don’t have the account of M/s.Jai Anand Food Industries, however, Rs.90 lakhs were remitted to M/s.Jai Anand Food Industries on 25th May, 2017, from the account of M/s.Tomato Trading LLP. All the cheques and relevant documents were signed by authorized signatory. The said letter indicates that the applicant was involved in remitting

the said amount and has taken the said amount. In this circumstance, the case requires investigation. Learned counsel for the applicant, however, submitted that merely on account of the pleadings, application cannot be rejected. However, it is noticed that the applicant has feigned ignorance with regards to the remittance of the said amount. The documents issued by the Bank as well as the statements recorded during investigation are contrary to the stand taken by the applicant. Be that as it may, in the light of evidence or record, the applicant is not entitled for anticipatory bail.

7 Hence, I pass the following order:

:: O R D E R ::

(i) Anticipatory Bail Application, is rejected;

(ii) Criminal Application No.1385 of 2018, is disposed of

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