IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2496 OF 2018

1. Rajesh Kirtilal Shah
2. Jigneshbhai Kirtilal Shah … Applicants

Vs.
The State of Maharashtra ... Respondent

...

Mr. S.v. Marwadi I/by Mr. Akshay Pawar for the applicant.
Mr. S.R. Agarkar, APP for the Respondent-State.
Mr. Aabad Ponda for the intervenor.
Mr. V.H. Arekar, PSI, BKC Police Station is present.

...

CORAM : PRAKASH D. NAIK, J.
DATE : 7th DECEMBER, 2018.

P.C.

1. This is an application for anticipatory bail in connection with C.R. No. 298 of 2018 registered with Bandra Kurla Complex Police Station for the offence punishable under section 408 read with 34 of Indian Penal Code. First Information Report was registered on 27th October, 2018.

2. The case of the prosecution is that the complainant is carrying on the business in the name and styled as "Sanket Jogani Exports Pvt. Ltd.," having office at Bandra Kurla Complex, Bandra, Mumbai. He is dealing with the business of Diamond. Accused

Saumil Jogani and Rishab Thakkar were employed with the complainant. It was noticed that the accused Saumil Jogani had misappropriated the diamond in connivance with the co-accused Rishab Thakkar having valued at about 11 Crore. After realizing that the the said accused were involved in the said crime, the First Information Report was lodged on 27th October, 2018. During the course of investigation, the accused Saumil Jogani was arrested and was interrogated. The prosecution case is that the amount which was earned by the co-accused after selling the diamond which were misappropriated by the said accused to the tune of Rs.11 Crore was parted by him to the applicants towards betting transaction. Applicants preferred an application for anticipatory bail before the Sessions Court which was rejected by order dated 30th November, 2018.

3. Learned counsel for the applicant submitted that the applicant is not involved in the said crime. The case of the prosecution that the misappropriation of diamonds was allegedly committed by the employee of the complainant. The said employee is not related to the applicant. Assuming that the statement of the co-accused to be true it cannot be said that the applicant has played any role in commission of the crime. The prosecution is

trying to implicate the applicant as respondent of the stolen property. It is submitted that to constitute the said offence, it is necessary to establish that the accused had knowledge that the property was stolen property and in the absence of such evidence, the applicant cannot be subjected to custody. It is further submitted that taking the statement of co-accused as to amount was parted to the bookies, however, the applicants are not beneficiary of the said amount. The amount parted by the co-accused towards the transaction which were executed viz-a-viz betting, therefore the applicants cannot be arrested for the said offences. The prosecution has not at all established the requisite ingredients to constitute the offence under Section 411 of the Indian Penal Code. If the amount has been parted by the co-accused towards its liability to the bookies, it cannot be inferred that the applicant has played any role in the crime committed by co-accused. Said amount cannot be recovered from the applicants. It is submitted that applicants have no role to play in the misappropriation of diamonds. Learned counsel for the applicants also submitted that the conversation between the co-accused Saumil Jogani and others indicate that he is involved in betting transaction and parted the amount towards the same.

4. Learned APP submitted that huge amount is involved in the said crime. The amount of Rs.11 crore was earned by the co-accused by selling diamond to another person. It is submitted that the statement of Saumil Jogani was recorded during the course of investigation which clearly stated that the applicants are related to him and amount of Rs.10 crore was arranged and parted towards cricketing betting.

5. Learned counsel for the intervenor/complainant reiterated the submission advanced by learned APP. It is submitted that the applicants were aware that the co-accused Saumil Jogani is employee of the complainant and hence the source of huge amount ought to have been known to the applicants. It is therefore submitted that the knowledge that the said amount being stolen can be attributed to the applicants. It is further submitted that to recover huge amount of Rs.11 crore, the custodial interrogation of the applicants is necessary.

6. On perusal of the document it is apparent that co-accused Saumil Jogani was arrested on the complaint of the first informant. The said accused was involved in misappropriation of diamonds worth about Rs.11 Crorer from the company of the complainant in connivance with the co-accused. During the course

of investigation after the arrest of the said co-accused, he has furnished the details as to how the said amount was parted by him to the applicants towards the betting transaction. He has also stated that applicants are known to him. It is noted that the applicant was employee of the complainant. It is also apparent that the applicant/accused and the co-accused Saumil Jogani were acquainted with each other. The amount which was parted is huge amount. Approximately sum of about 11.05 crore was given towards betting transaction. *Prima-facie,* the evidence disclosed the involvement of the applicants. Looking to the fact that huge amount was parted towards betting transaction and the amount received by the applicants from the co-accused Saumil Jogani who was the employee of the complainant. There is substance in the submission advanced by the learned public prosecutor. In the circumstances, no case for grant of anticipatory bail is made out and hence application is rejected.

(PRAKASH D. NAIK, J.)