IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2238 OF 2017

Ramesh s/o. Vitthal Bansod & Ors. ..Applicants
Versus
The State of Maharashtra and Anr. ..Respondents.

Mr. S.B. Talekar I/b M/s Talekar & Associtès for Applicants.
Mr. R.M. Pethe, APP for the State.
Dr. Arun Barthakur Special PP.

CORAM : PRAKASH D. NAIK, J.

DATE : 02 NOVEMBER 2018.

P.C:-

. This is an application for Anticipatory Bail in connection with C.R. No. 689 of 2017 registered with Juhu Police Station, Mumbai for offences punishable under Sections 170, 186, 189, 409, 416, 420, 441, 465, 466,467, 468, 504, 506, 120B of IPC. The first information report was registered on 7th November, 2017.

2. The applicants had preferred application for Anticipatory Bail before the Court of Sessions which was rejected vide Order dated 18th December, 2017.

3. The case of the prosecution is that by order dated 03.05.2017 followed by order dated 06.05.2017 the complainant was appointed as the Managing director of Vasantrao Naik Vimukta Va Bhatkya Jamati Vikas Mahamandal (Ltd) (hereinafter referred to as Corporation for the sake of brevity). Thereafter the General Administrative Department (GAD) issued order dated 21.06.2017 with regards to the said appointment. By order dated 22.06.2017 issued by Revenue and Forest Department, Mantralaya, the complainant was relieved, to enable him to join as Managing director of Corporation. The Additional charge of Managing director held by applicant No.1 had automatically come to an end. The complainant issued official circular on 22.06.2017 to all concerned informing that he had taken over the charge of the Managing director but applicant No.1 disobeyed both orders issued by the Government. The applicant No.1 acted as Managing director of Corporation by impersonation and in connivance with applicant No. 2 to 4 made endorsements, issued directions and conducted various transactions. During the period from 28.06.2017 to 12.07.2017 the applicant No.1 conspired with other applicants and by impersonating himself as Managing Director of Corporation misappropriated amount of Rs. 4,08,66,207/-. The amount was transferred illegally and withdrawn by bearer cheques. The details of

transactions are reflected in the FIR. The applicant no.1 acted as a Managing Director of said Corporation although he had no authority to do so. Despite the appointment of the complainant, the applicant No.1 restrained him from discharging his duties and impersonated himself as the person holding authority as Managing Director. The applicant No.1 who was earlier occupying the office had tried to act as a Managing Director and issued instructions to the concerned persons by impersonating himself as the Managing Director. All the amounts were transferred to various departments by acting in connivance with each other. Under the norms of NBCFDC loan scheme the Loans are to be sanctioned after appraising the eligibility of the beneficiaries and maximum loan of 85% of the project cost can be given to an individual and out of the balance 10% is to be given by the corporation and 5% is to be contributed by the beneficiary as his own share aggregating to 100% of the project cost.The beneficiary is aggrieved to pay government guarantee fee @0.50% on the amount of his own share of 5% and on 85% of the Loan given from NBCFDC fund and it is compulsory to deposit guarantee fee in the corporation for which a receipt is to be issued to the beneficiary and on these Loans interest is to be paid at the rate of 6% on NBCFDC amount and 4% on the amount given by the corporation. However without following these requirements in violation of rules the accused arbitrarily granted entire loan amount without collecting own share of beneficiary and disbursed 105% loan and failed to collect guarantee fee from beneficiaries resulting in substantial loss to Corporation. It is alleged that instead of granting loans from funds received from State Government under 25% margin money scheme converted the same and remitted funds to District offices and gave loans to the beneficiaries as NBCFDS loans. The FIR reflects several other allegations in respect to irregularities allegedly committed by applicants.

4. The learned Counsel for the applicants submitted that they have been falsely implicated in this case. The complaint lodged at the behest of the complainant who is biased against the applicants. There is delay in lodging the FIR. There is no misappropriation of amounts. At the most, it is the case of the prosecution that amount was transferred to different departments. The custodial interrogation of the applicants is not necessary. There is no explanation for lodging the FIR belatedly. The applicant No.1 was given additional charge of Managing Director of the Corporation, initially for a period of one year by order dated 28.10.2015 and thereafter additional charge of the post of Managing Director was entrusted to him with effect from 25.04.2017. The post of Managing Director of the Corporation is required to be filled in from

amongst the employees of the Corporation on the basis of seniority cum merit. The applicant No. 1 being the senior most among the higher class-I employees of the corporation was entitled to be appointed as Managing Director of the Corporation. The complainant had applied for the said post on 27th January, 2017 without there being an advertisement. The application submitted by the applicant No.1 was supported by recommendation letter of the concerned Minister. The applicant No.1 had taken objection for the appointment of complainant on the ground that the appointment was made without following procedure prescribed under the Government Resolution dated 17th December, 2016. The order appointing complainant was issued without consulting his parent Department i.e. Revenue Department as well as General Administration Department. The applicant No.1 had challenged the order dated 3rd May 2017 and 6th May, 2017. Accordingly, the complainant as Managing Director of the Corporation on deputation by filing Writ Petition No. 2166 of 2017 in this Court. Meanwhile, the Government of Maharashtra issued order appointing complainant as Managing Director of the Corporation on 21st June, 2017. Even the said order was challenged by the applicant No. 1 by way of an amendment to the Writ Petition. The said Petition was heard by the High Court from time to time and notices to respondents has been issued. The complainant had repeatedly issued letters on the letterhead of the Corporation. The said letters were issued from his residence. The complainant was annoyed as the applicant No.1 had challenged his appointment order. The complainant prevailed over the Government to issue an order dated 12.07.2017 suspending applicant No.1. The said order of suspension was challenged by the applicant No.1 in the High Court by filing Writ Petition in which interim stay was granted. The complainant was apprehending that he may not get cooperation from applicant Nos. 2 to 4 and others and therefore, he transferred several officers at a stroke by order dated 7th July, 2017. The applicants approached the Secretary as well as the concerned Minister and appraised him the situation. Since the minister expressed displeasure the complainant had cancelled the transfer orders. After the applicant No. 1 was suspended, he had handed over the charge. The applicant No.1 was working as Managing Director of the Corporation till 12.07.2017. The complainant did not come to the office of the Corporation till 12.07.2017 except for few minutes on 30.06.2017 took away the files regarding scam of funds of Corporation and complaint in that regard was lodged in Juhu Police Station. The files were relating to the scam of the Corporation funds in respect of Beed and Ahmednagar DCC Bank. The complainant issued a show cause notice to applicant

Nos. 2 and 3. Before they could submit their reply, the complainant suspended them. The applicant No.1 was pressurized to withdraw the Petition challenging his appointment. However, he did not succumb to the pressure. Thereafter, the FIR was registered on 07th November, 2017.

5. It is further submitted that the allegations of Criminal breach of trust, cheating, forgery etc. made against the applicants are imaginary, concocted and baseless. The applicants in discharge of their official duties have transferred funds from one bank to another as well as District offices of the Corporation for the purpose of payment of salaries, distribution of salaries and other office expenses. The amounts were released also for the payment of statutory deductions such as income tax, provident fund, professional tax, LIC loan deductions etc. as well as withdrawal of Rs. 1,50,000/- so as to meet day to day expenses such as payment of diesel expenses, refreshment, office tour advances, office stationeries etc. It is further submitted that there was no misappropriation of the amount. The applicant Nos. 2 and 3 had offered explanation to the show cause notice stating that no amount was spent for personal use. The complaint is lodged out of vengeance. The applicant No.1 has not disbursed any amount illegally. The amount

were transferred by some official to the district offices that too on the payment received by such district offices in discharge of the legal duties the district officer is responsible for disbursement of loan. The allegations are based on the documents of evidence which are already in the custody of the complainant. The amounts were transferred for various purposes in discharge of their duty for which applicants have given explanation. There is delay of about 5 months in lodging FIR. The FIR is lodged to settle score.

6. Learned Counsel relied upon several documents in support of the submissions. The applicant No. 3 has filed an affidavit to place on record certain documents such as copy of the order dated 29th May, 2014 giving additional charge of the post of the Managing Director to the applicant No.1 in the said Corporation issued by the Secretary Social Justice Department, Copy of order dated 8th July, 2015 giving regular charge of the post of Managing Director to the applicant No. 1 in the said Corporation for a period of one year, FIR No. 258/2017 registered at Cantonment Police Station, Aurangabad alleging commission of offences punishable under Section 354 IPC against the first informant, FIR No. 284/2017 registered against the first informant and others on 13th December, 2017 alleging misappropriation of fund at

Dhule City Police Station, Order dated 08.06.2018 repatriating first informant, Copy of the communication dated 27.08.2018 issued by the Under Secretary to the Government directing that the services of the complainant is terminated on the basis of complaint received against him, Copy of the petty cash book showing entries from 26.01.2017 to 17.07.2017 maintained by the Corporation. Copy of G.R. dated 14.05.2012, circular dated 06.05.2016, G.R. dated 26.07.2017, letter dated 06.10.2017 issued by the Corporation and letter dated 07.03.2018 addressed to Managing Director of the Corporation.

7. It is therefore submitted that the custodial interrogation of the applicants is not necessary and the Anticipatory Bail be granted to the applicants.

8. Per contra learned Special PP vehemently opposed the application. It is submitted that the first Information report gives details of irregularities, and the acts committed by the applicants. The evidence collected during the course of investigation clearly shows the complicity of the applicants in the crime. He relied upon several documents. The compilation of the documents is placed on record. It is submitted that the applicant No. 1 had impersonated himself to be a Managing Director

of the Corporation. Although, he had no authority to do so. Despite of the appointment of the complainant, the applicant No. 1 had occupied the chair of the Managing Director and had also issued directions within short span of time. Several amounts were transferred from one department to another department, loans were disbursed without following the procedure. All the applicants had acted in connivance with each other. The acts committed by applicant No. 2 to 4 are reflected in documents. It was also reported that there was disbursement of loan to the 16 members of the same family. The benefits were also provided to the private entities. There was no reason for the applicants to transfer the amounts, withdraw the amount, disburse loans etc. within short span of time. The amount was misappropriated. There is no order to show that the applicant No. 1 was a Managing Director of the Corporation during the subject period. Applicant No.1 as Managing Director had impersonated and had issued several directions. The appointment of complainant was not stayed by the Court. The applicant Nos. 1 to 3 were suspended. The inquiry conducted against them is also with regards to the misappropriation of funds. During this short span of time an amount of 4,08,66,201/- was being misappropriated. It is further submitted that the details of the manner in which the executed transactions are reflected in the written complaint forwarded on 17.10.2017. Learned Special PP relied upon several decisions in support of his arguments as follows :-

1. **Nimmagadda Prasad Vs. Central Bureau of Investigation**[1]

2. **Sudhir Vs. State of Maharashtra & Anr.**[2]

3. **State of Bihar and Anr Vs. Amit Kumar alias Bachcha Rai.**[3]

4. **Director of Enforcement and Anr. Vs. P.V. Prabhakar Rao.**[4]

5. **Adri Dharan Das Vs. State of W.B.**[5]

6. **State rep. By the C.B.I. Vs. Anil Sharma**[6]

7. **Ramesh Devrao Dhale Vs. State of Maharashtra (Cri. Application No. 7367 of 2017).**

9. Learned Advocate for the applicant pointed out the order passed by the learned Single Judge of Aurangabad Bench granting Anticipatory Bail to one of the accused in C.R. No. I/137/2016 registered with Kotwali police station, Ahmednagar. He also relied on the order passed by this Court in the case of **Augustine Jerome D'mello and anr Vs. The State of Maharashtra in ABA No. 31/2016** wherein the Court has taken into consideration the delay caused in lodging the FIR which could not be properly explained and Anticipatory bail was

1 (2013) 7 SCC 466
2 (2016) 1 SCC 146
3 (2017) 13 SCC 751
4 AIR 1997 SCC 3868
5 (2005) 4 SCC 303
6 (1997) 7 SCC 187

granted. Reliance also placed on the order passed by this Court in **Cri. Appeal No. 127/2018** wherein the Court took cognizance of the fact that the special PP in the said matter was being instructed by the informant. Learned Counsel for the applicant had submitted that in the present case also at one point of time the informant was noticed giving instructions to Special PP.

10. I have perused the documents on record. Both the sides were heard extensively. The First Information Report was lodged on 7th November, 2017. It is contended that FIR is lodged out of vengeance. The applicant No.1 had challenged the appointment of complainant by filing writ petition in this Court. The applicant No.1 did not succumb to pressure to withdraw petition. It is further contended that, issuing instructions and allotting the funds to the concerned Departments does not amount to the misappropriation of the amount. I have perused the First Information Report and several other documents placed on record by learned Special PP as well as learned Counsel for the applicant. The case of the prosecution is that the applicant No. 1 assuming himself to be Managing Director during short span of time had issued directions for diversification of funds to various departments. There is no document on record indicating that the complainant was appointed as Managing Director on the date of subject transactions. The

applicant No. 1 had an authority to issue such directions. The other applicants alleged to have acted in connivance with applicant No. 1. The suspension orders were issued against applicant Nos. 1 to 3. It is also alleged that the loans were disbursed without following proper procedure. During the course of investigation, it was also noticed that the bank statement of savings account No. 226201000005703 of the Indian Overseas Bank, Latur maintained by District office of Latur VJNT Corporation noted the amount of Rs. 1,70,00,000/- has been transferred by RTGS in favour of three private entities viz. No. (1) Prakash Garments, (2) Prakash Cap Depot and (3) Ashok Vidyut, in 34 transfers of Rs. 5,00,000/- each whereas, the loans were given for the purpose of goat rearing and milk production. It was revealed that instead of paying loans to the actual beneficiaries the amount of Rs. 1,70,00,000/- was paid by RTGS in favour of the three entities for different purposes. Ideally it should have been deposited in the account of beneficiaries. This aspect requires thorough investigation.

11. It is the prosecution case that although the complainant was appointed as Managing Director, the applicant No. 1 took himself as Managing Director and misused the post and executed transactions. It is alleged that he had prepared several documents, executed bank

transactions, change the e-mail ID password, issued directions with his signatures and on the basis of the instructions withdrawn the amount from the accounts of the Corporation by cheques and transferred the said amount through RTGS/NEFT to the respective accounts. It is also alleged that the applicant No. 1to 3 had misappropriated the amount. According to the prosecution case huge amount of Rs. 4,08,66,207/- being misappropriated. The accused had acted in connivance with each other and executed several documents on different dates and transfered the amounts. The investigation is in progress and this is not the stage to evaluate the entire evidence. It is also alleged that several other irregularities committed by the accused. The amount or Rs. 3 Lakhs was transferred to Latur distrtict and Nanded district, however, without disbursing the said amount to the persons were entitled for it and the same was transferred to Latur Office. It is pertinent to note that, Rs. 50 Lakhs were transferred to each of the district offices of Latur and Nanded aggregating to Rs. 1,00,00,000/- out of Seed Capital Scheme for disbursing loan under NBCFDC Scheme, New Delhi. Without granting loans to the beneficiaries at Nanded out of Rs. 50 Lakhs remitted to it, the accused directed to transfer this amount to Latur district offices and with this amount individual loans of Rs. 5 Lakhs each aggregating to Rs. 1,00,00,000/- were given to 20 beneficiaries of Latur by violating norms of NBCFDC Loan Scheme. Under these scheme the applicant No.1 and his associates gave individual loans to 16 members of the family of Nilkanth Pawar, 3 beneficiaries of Vaijnath Chavan and one beneficiary of Yamraj Dende, aggregating to 20 Loans. However, instead of crediting the amount to personal account of 20 beneficiaries the entire amounts were credited in three accounts of private parties. These entities were not eligible for any financial assistance from Corporation. The complainant had joined as Managing Director on 22.06.2017. The authority, if any, held by applicant No.1 had come to an end and he could not assumed himself as Managing Director of Corporation. The investigating machinery has collected evidence against applicants. Major role is played by applicant No.1 to 3. Learned Special P.P. pointed out documents viz order dated 16.02.2018 issued by Joint Secretary VJNT Department suspending applicant No.1, office note for transfer of Rs. 1,00,00,000/- by RTGS to Latur and Nanded by accused for disbursement of loan under Seed Capital Scheme, Bank Advice by RTGS to Latur and Nanded by accused for disbursement of loan under Seed Capital Scheme, List of twenty beneficiaries of Latur, Bank statement of savings account of Indian Overseas Bank showing amount of Rs. 5,00,000/- each transferred by RTGS in the names of three private entities aggregating to Rs.1,00,00,000/-, Letter dated

16.02.2016 addressed by R.D. Dhale, District Manager, Latur enclosing list of 29 beneficiaries from Latur for disbursement of Rs. 1,45,00,000/- under NBCFDC Scheme for 2010-11, Letter dated 25.04.2017 addressed by Regional Manager, Aurangabad enclosing list of 18 beneficiaries from Nanded for disbursement of loan under the scheme for 2012-13, Office Note dated 07.07.2017 for transfer of Rs. 20,00,000/- by RTGS to Nasik by accused for disbursement of loan under NBCFDC scheme. Thus, there is involvement of applicant Nos. 1 to 3. The applicant Nos. 2 and 3 were allegedly acting at the behest of applicant No. 1. As far as the applicant No. 4 is concerned, she is a lady. Considering the role attributed to her she need not be subjected to custody.

12. In the light of the aforesaid observations, no case for grant of Anticipatory Bail is made out for applicant Nos. 1 to 3 and their application deserves to be rejected.

ORDER

i) ABA qua applicant Nos. 1 to 3 stands rejected.

ii) In the event of arrest of applicant No. 4 in connection with C.R. No.689 of 2017 registered with Juhu Police Station. The applicant No. 4 be released on bail. The interim order dated 22nd

December, 2017 passed in this application qua applicant No. 4 stands confirmed.

iii) At this stage, learned Counsel for the applicants submitted that the interim protection was granted by this Court vide order dated 22nd December, 2017 and the same may be continued for period of four weeks. The applicants would like to take appropriate decision to approach the higher court. In view of request, interim protection granted earlier to the applicant Nos. 1 to 3 shall continued for four weeks.

iv) The application stands disposed of.

(PRAKSAH D. NAIK, J.)