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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.252 OF 2018

1. Sanjay Satish Kumar Sinha,
2. Smt. Namita Sanjay Sinha ..Applicants.

V/s.

The State of Maharashtra & Anr. ..Respondents.

Mr.Subhash Jha with Mr.Hare Krishna Mishra i/b. Law Global & Associates for the applicants.

Ms.S.S.Kaushik, APP for the respondent-State.

Mr.Subhodh Desai with Mr. Santosh Bhide i/b. Bhide Associates for respondent No.2.

Ms.Pallavi Kulkarni, API, Banmking-1, E.O.W., Mumbai.

CORAM : NITIN W. SAMBRE, J.

DATE : FEBRUARY 20, 2019

P.C.:-

Heard learned counsel for the applicants and learned APP for the State.

2. M/s.Leeway Logistics Limited is a registered company of which the applicants are Managing Director and Director respectively. Applicants are seeking pre-arrest bail in crime

No.60/2017 for offence punishable under sections 420, 465, 467, 468, 471 and 120B of the Indian Penal Code registered with Economic Offences Wing, Banking Unit-I, Crime Branch, Mumbai.

3. The prosecution case is, in the business of providing logistics support, the said company decided to purchase forklifts manufactured by Godrej, for which applicants approached the complainant ICICI Bank and sought instrument loan. The ICICI Bank, having satisfied, and its directors having completed all the required formalities sanctioned loan to the tune of Rs.4,61,85,253/- which at the request of the applicants was disbursed in favour of one M/s. Kamal Sales Corporation. Instead of purchasing the forklifts, part of the said amount was shown to be diverted to the account of the applicants and relatives. As such, the offence in question.

4. Mr.Jha, learned counsel for the applicants strenuously urged that the process of sanction of instrument loan, was in fact meant for overcoming the financial requirement. As advised by the Chartered Accountant of M/s.Leeway Logistics, applicants have signed the application for sanction of the loan. The disbursement of the same in favour of M/s.Kamal Enterprises, not a approved

distributor on the list of the ICICI Bank was a fact known to complainant. The disbursement of the loan was in connivance with the officials of the ICICI Bank and the exact amount of loan which has come to the account of either M/s.Leeway Logistics or the applicants needs to be appreciated. According to him, of the amount of Rs.4,61,85,253/-, what has come to the account of the applicants or the company is only Rs.1.12 crores. As against the aforesaid amount of Rs.1.12 crores, the applicants have already deposited an amount of Rs.1 crore with the complainant ICICI Bank and the balance amount of Rs.1.30 crores in the Court. Learned counsel would then urge that the criminal intention of the applicants, in the aforesaid backdrop, cannot be inferred to be that of commission of an offence.

5. In addition, Mr.Jha relied upon the nature of business, turnover of Rs.800 crores so as to claim that the company and the applicants are having strong financial roots and market goodwill. According to him, the applicants so as to meet business liability, availed loan after completing all the formalities. As such, claim that a case for pre-arrest bail is made out.

6. In addition, submissions are, the investigating agency is

unable to demonstrate as to where the balance amount other than Rs.1.4 crores has gone, so as to infer non involvement of the applicants in the crime in question.

7. Learned APP would rely upon the statements of witnesses, bank officials record of the flow of the loan amount so as to oppose the claim and submit that the investigation in the matter is going on. Learned APP submits that the offence in question is having economic colour and has to be viewed seriously. A further submission is, there are three antecedents against the applicants of involvement in similar type of offences. The details of which are as under :-

Sr. No.	Police station name	C.R. no.	Amount
1	Banking 1, E.O.W., Mumbai	23/18, u/s. 420, 465, 467, 468, 471, 120(b) IPC	18,47,00,000/-
2	Marine Drive police station, Mumbai.	58/17, u/s. 420, 465, 467, 468, 471, 120(b) IPC	2,76,03,108
3	Chandan Nagar police station,Pune	18/16, u/s.406 420,34 IPC	-----------

8. Considered rival submissions.

9. The fact that the applicants are office bearers /

Managing Director, Director of M/s.Leeway Logistics can be inferred from the investigating papers. It can also be noticed that the proposal for sanction of loan of Rs.4.618 crores was supported by the documents from the applicants for purchase of forklifts. In support of the demand of loan of Rs.4.618 crores along with the loan proposal, a quotation was submitted from M/s.Kamal Sales Corporation, New Delhi towards the estimated costs of said forklifts. After sanction of the loan, the amount appears to have been disbursed. From the aforesaid conduct of the applicants, it can be inferred that the application for instrument loan, sanction and disbursement thereof was at the request of the applicant. Kamal Sales, New Delhi is a company on paper and from M/s.Kamal Sales Corporation the amount was diverted to the applicants and his relatives is also well within the knowledge of the applicants. It is also required to be appreciated that, of the loan amount of Rs.4.618 crores, the applicants agreed to have received Rs.1.12 crores and disputed the balance liability.

11. Though by depositing an amount of about Rs.2.30 crores, the applicants have tried to establish their *bona fides,* however, the fact that the loan in question was sanctioned and

disbursed at the behest of the applicants cannot be overlooked. Instead of purchasing the forklifts for which the loan was disbursed, the amount appears to have been routed through the M/s.Kamal Sales Corporation to the account of the applicants and his relatives as can be noticed from the investigation papers

12. Apart from above, from the contents of the statements of the witnesses viz. the individuals in whose name the bank account of said M/s.Kamal Sales Corporation was operated, the statements of the bank officials as are brought on record, at this stage of investigation are sufficient to infer the *prima facie* involvement of the applicants in the crime in question.

13. Though a submission is made as regards the investigation on the issue of the flow of amount other than Rs.1.12 crores, which was received by the present applicants and also on other issues of investigation, in my opinion, at this state of the application, it will be pre-mature to go into the said details as the matter is still under investigation.

14. There are three other similar offences registered against the applicants.

15. Considering the fact that the offence is having colour of

economic one, is required to be viewed seriously.

16. That being so, no case for grant of pre-arrest bail is made out. The application fails and stands rejected.

17. At this stage, Mr.Jha, learned counsel for the applicants submits that the applicants were on ad-interim bail since February 9, 2018 for last more than one year and the applicants intend to take a chance before the Apex Court, as such the order be extended for a period of four weeks.

18. Learned APP assisted by learned counsel for the complainant opposed the prayer and submitted that the conditions incorporated in the earlier order was not complied with.

19. APP submits that the investigation is at an crucial stage wherein the custodial interrogation is very much required and also there are criminal antecedents.

20. Be that as it may, in the facts and circumstances of the case, ad-interim protection ordered by this Court is continued for a period of three weeks from today.

(NITIN W. SAMBRE, J.)