HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1299 OF 2019

Diwakar Verma @ Rabneshwar
Narayan Diwakar … Applicant
Versus
The State of Maharashtra … Respondent

Mr. Prakash Kumar with Mr. R. K. Singh I.b K. Juris, Advocates for the Applicant
Smt. A. A. Takalkar, APP for the State/Respondent.
Mr. Udhav r. Khade, API, Hinjewadi Police Station.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 11th July, 2019.

P. C. :-

1. The applicant is seeking anticipatory bail in connection with CR No. 449/19 registered with Hinjewadi Police Station under Sections 406 and 420 of the IPC. The FIR is lodged at the instance of one Shrikant Janolkar. The gist of FIR annexed to the present application does not depict a complete and correct story. Therefore, I had directed the APP to give complete statement of the first informant Shrikant Janolkar to the learned counsel for the applicant. This statement was

given to the learned counsel for the applicant. A copy of that statement is produced before me. It is taken on record.

2. It is the case of the first informant that he was in the business of software development and real estate marketing. He has citizenship of USA. In the year 2017, he came back to India and he wanted to start his independent business. For that purpose he visited various exhibitions in respect of real estate. In one of such exhibitions, he came across one stall of M/s Red Coupon company. There he met the present applicant. After initial talks, applicant, Gayatri Kamat and Amol came to his house. The applicant painted a rosy picture. He suggested that they could start their own business together as the applicant had sufficient experience in this field. The first informant believed him and started a common business by incorporating a company in the name of Nest-Hawk Properties Pvt. Ltd. And the brand name was given as Houceefy. At the time of registration of the company the applicant represented to him that instead of his name, his friend Gayatri's name should be included as a director. The first informant accepted his request. However, the bank statement was to be operated by first informant under his signature. The applicant had kept the authority to appoint employees with himself. In October

2018, Gayatri Kamat resigned from the company and again at the instance of the present applicant one Aarti Jaiswal was taken as director in her place. At this stage, the applicant took over the authority of operating the bank account. At the instance of the applicant the first informant was made to change his bank account and a new bank account was opened in IDFC bank at Wakad. At that time, the applicant provided his own telephone number and email address. Therefore, the applicant was easily accessing and using information in respect of that bank account. Subsequently, even Aarti resigned from the company and at the instance of present applicant one Puja Jha was appointed. Thereafter, the entire account was looked after by the applicant and Puja Jha. The first informant had invested around Rs. 60 Lakhs. From time to time the applicant used to obtain signatures of the first informant on the cheques and used to transfer large amounts. The amounts were withdrawn on the pretext of purchasing furniture, computers, printers, air conditioners and for making payments to the employees. In February 2019 when the first informant made further inquiries, he came to know that the applicant had withdrawn large amount either through cash withdrawals or through bank transfer and there was hardly any amount remaining in that bank account. The first informant came to know that the applicant was using the brand name of informant's company i.e. 'Houceefy' in another company started by the applicant. The applicant had given a fake invoice to the builder using the name of company as 'Houceefy'. The applicant had removed the employees' amounts by threatening them. It is alleged that the informant had suffered loss to the tune of Rs. Eighty lacs. On this basis FIR is lodged.

3. Heard Mr. Prakash Kumar and Mr. R. K. Singh, learned counsel for the applicants and Ms. Takalkar, learned APP for the State of Maharashtra.

4. Learned counsel for the applicant submitted that the transaction between the first informant and the applicant was purely a business transaction. There cannot be any cheating of one director by the other. They submitted that the applicant had not started any different company by the same name as that of the first informant's company. They submitted that the allegations that the brand name 'Houceefy' was used by the applicant unauthorisedly; is not true. They submitted that the transactions were made through bank account operated by the first informant as well as the applicant. Therefore, applicant cannot be said to have committed any offence.

5. As against this submissions, the learned APP pointed out that during investigation statements of various employees of the informant's company were recorded. One of the witnesses Kalpesh, who was the CA of the company has mentioned that when he examined the bank statement of the company, he found that the applicant had transferred various amounts from company's bank account. Those amounts were withdrawn by cheques or through cash withdrawals. The cheques were issued in the name of the employees, but the entries were not made. The records were not maintained properly. The tax returns were not filed. He has stated that the entire maintenance of the accounts was the responsibility of the present applicant. The statement of Puja Jha shows that in November 2018, the informant's company had opened a bank account at IDFC Bank, Wakad. In that account Rs. 10 Lakhs paid by the company's clients were deposited. From that amount Rs. 5-6 lacs were transferred in her own account at the instance of the present applicant and at his instance again some amount was transferred from her account in the name of the applicant's brother Bhaskar. Similarly, some amounts were transferred in the account of one Neha and some amounts were transferred in the account of present applicant himself. She has stated

that she had saved the company's transactions in her computer, but the applicant had removed that data and had deleted it.

6. Thus, statements of these two witnesses are sufficiently clear to show the complicity of the present applicant. The applicant after making false representation induced the first informant, to enter into a business venture and the first informant's money was misappropriated by him. This amounts to criminal breach of trust. The applicant has allegedly deleted important data. The matter requires investigation. Custodial interrogation of the present applicant is necessary.

7. In this view of the matter, no case for anticipatory bail is made out. Hence, the application is dismissed.

8. At this stage, the learned counsel for the applicant seeks one week time to surrender. Looking at the allegations and necessity of custodial interrogation, request is rejected.

(SARANG V. KOTWAL, J.)