IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2607 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019

Gopakumar Puthan Kattor ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 2577 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019

Sajit Venugopal ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 2578 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019

Ajith Venugopal ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 2579 OF 2019
WITH
INTERIM APPLICATION NO. 1 OF 2019

Kunnimal Venugopal ...Applicant
Versus
The State of Maharashtra ...Respondent

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Mr. Ashwin Thool i/b Akshay Mehta a/w Aniruddh A. Takalkar, Advocate for the Applicant in all ABA’s.
Mr. Dhananjay N. Shete i/b Hamid D. Mulla, Advocate for intervenor in All ABA’s.

Mr. S. H. Yadav, APP for the State-Respondent in ABA No. 2607 of 2019.
Mr. H. J. Dedhia, APP for the State-Respondent in ABA No. 2577 of 2019, ABA No. 2578 of 2019 and ABA No. 2579 of 2019.
Mr. J. A. Shaikh, (P.I.) L.C.B.Raigad, present.
Mr. S. H. Sherate, (H.C.) L.C.B.Raigad, present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 3rd December, 2019

PC :

1. The applicants in all these applications are family members. They are apprehending arrest in connection with C.R. No.132 of 2019 registered with Khalapur Police Station for offences punishable under Sections 406, 408, 418, 420, 467, 468, 471 and 120-B of Indian Penal Code ("IPC" for short).

2. The First Information Report ("FIR" for short) was lodged on 14th May 2019. The complainant is acquainted with American Citizen Paul Duglas Waters. The complainant was purchasing Material from him. Paul Waters was interested in conducting business in Asia. Complainant persuaded him to do so in India. Mr. Waters started company M/s. Oil Tool International Services Pvt Ltd at Khalapur Dist. Raigad Presently complainant is appointed as director of the said company. The company was involved in business of manufacturing machinery required for excavation of natural Oil and gas. Kunnimal Venugoal was having experience in such business and

known to Mr. waters at Dubai was asked whether he would join him. He agreed. His son Ajith Venugopal was givenownership of 15.02% and he was inducted as partner. Since Mr. Waters was residing in America, to conduct affairs of company Sajith Venugopal, Ajith Venugopal and Kunnimal Venugopal were appointed as directors of company. As per understanding between Mr. Waters and Ajith Venugopal it was decided that Ajith Venugopal would conduct business with consent, supervision and directions of Mr. Waters. The company, equipments, articles, accounts were under control of Ajit Venugopal, Sajith Venugopal and Kunnimal Venugopal. They were looking after production of company. Mr. Waters was in America and he was procuring orders for company. The same was imported from foreign companies. There was no investment by accused. In spite of that they were appointed as directors of company. The entire expenditure for establishing company was made by Mr. Waters. Mr. Waters undergone bypass surgery. For two years from 2013 to 2015, he could not come to India. The accused took amount for expenditure. In 2015 he came to India. Through chartered accountants he conducted market valuation of company. He was informed that he is not director of company and his share has been reduced from 84.98% to 22%. Ajith, Sajith and Kunnimal prepared fake minutes of AGM allegedly held on 4/10/2013 and OGM dated

28th November, 2013 and submitted documents to Registrar and reduced share of Mr. Waters. In connivance they sold share at lesser rate to Gopkumar. Mr. Waters was removed from company. Mr. Waters filed petition before NCLT. On 3rd October, 2017 order was passed in favour of Mr. Waters. It was directed that company may be handed over to Mr. Waters. The accused preferred appeal which was also decided in favour of Mr. Waters. Auditor was appointed. They submitted report on 31st December, 2018. The accused utilised the funds of company by showing it towards experts by bill of their own companies and misappropriated 10,22,98,346/-.

3. The applicants had preferred an applications for anticipatory bail before the Sessions Court which were rejected.

4. Learned counsel for the applicants in all these applications contended that dispute is purely of civil nature. There is no element of any forgery or breach of trust. It is submitted that the FIR has been lodged belatedly after exhausting the previous complaints before police as well as the proceeding before NCLT. The dispute between the directors is for control of company. The company was suffering from financial distress. Mr. Paul Waters was called upon to pay his dues and bring investment the company. He failed to redress the request of directors. The directors were compelled to infuse funds

in the company through third party investor. All the meetings, notices and minutes were sent to Mr. Waters and uploaded on MCA Website. Mr. Waters neither paid his dues nor attended any meetings of a director of company and stopped supplying goods to his company. The applicants rely on acknowledgment/proof of deliveries of notices. The applicants Ajith Kunnimal and Sajith decided to look for investors who were willing to invest in the company to ensure proper functioning of the company. It was decided to increase authorized share capital of company It was decided to hold extra ordinary General meeting to held on 28th November, 2013. Mr. Waters was informed about proposal to raise funds by rights issue of equity shares. Mr. Gopkumar (applicant) was allotted unauthorized equity shares of Rs. 1,81,61,580/-. Mr. Waters was informed. Mr. Waters was vacated from directorship on 30th January, 2014. He submitted that the NCLAT had taken into consideration, the contention of both the sides and had directed appointment of the auditor. In pursuant to that the auditor had submitted the report with regards to the functioning of the companies and the role played by the applicants. The NCLT and NCLAT had passed orders directing the applicants to handover the company to Mr. Paul Waters and also directed him to refund the amount stipulated therein to the applicants. In pursuant to the said orders the applicant has handed over the company which is fortified by the documents which has been annexed to the application. Learned Counsel also pointed out that there is nothing on record to indicate that the applicants had forged signature of Mr. Waters or has signed on his behalf. It is also pointed that during the course of investigation the applicants had handed over all the requisite documents to the investigating officer which is apparent from the letter annexed to this application. Learned counsel also drew my attention to the letters issued by the police station stating that the enquiry revealed that the dispute is of civil nature. The final forensic report of company by ZADN & Associates refers to transaction with parties which are related and no relation with nature of business showing amount of Rs. 10,22,98,346/- towards experts. The said observations are not correct. The amount was expenditure incurred by company over course of four years. The audit report has to be considered with order of NCLT that reversed infusion of funds by Gopkumar, Anil Venugopal. In the light of NCLT order Mr. Waters is under obligation to pay Ajith, Rs. 4,33,73,752/- Mr. Kunnimal Rs. 25,50,000/- and Mr. Gopkumar Rs. 9,86,00,000/-. It is submitted that despite legal obligation to pay and the fact that there police stations had exonerated applicants of criminal misconduct, the FIR was lodged.

5. Learned APP submitted that the accused had indulged into irregularities which is apparent from the findings of NCLAT. He drew my attention to the issues framed by NCLAT and its finding. It is submitted that initially only two persons were appointed as directors. The company was founded by Mr. Waters. The accused took advantage of ill health of Mr. Waters. They conducted false AGM. False documents were prepared. The report of auditors indicate that the amount shown towards expenses is not genuine. The said company belong to the applicants. The accused had misappropriate huge amounts. The custodial interrogation of the applicants is necessary to find out the siphoning of the amount. Learned APP Mr. Yadav submitted that information was sought from applicants by letters dated 21st May, 2019 and 24th May, 2019 with regards to transactions with other companies. The applicants have not cooperated with investigation.

6. Learned Advocate Mr. Dhananjay N. Shete for intervenor reiterated the submissions of learned APP. In addition he submitted that the proceedings before NCLT and NCLAT may not be equated with the criminal prosecution. The FIR clearly indicates commission of offences. The conduct of the applicant is required to be seen. The dishonest intention of the accused is subject matter of the criminal proceedings. The accused had misappropriated huge amount as

referred to in FIR. The report of the auditor, the averment in complaint and the documents which are part of the investigation clearly establishes the offence of forgery and criminal breach of trust and cheating by the accused and hence their custodial interrogation is necessary.

7. Heard both sides at length. The advocate for applicant has also tendered compilation of documents. The complainant has filed intervention application. The FIR was lodged on 14th May 2019. The proceeding before the NCLAT were initiated in 2015 and the order was passed by the said authority on 18th September, 2017. The appeal was preferred by the accused before NCLAT was disposed by order dated 9th March, 2018. The FIR was registered thereafter. In pursuant to lodging of complaint with commissioner of Police letter dated 23rd June 2016 was sent to Mr. Waters. In the said letter it was stated that statement of opponent is recorded. As per the documents placed before the inspector of police, it is revealed that there are three different disputes pending for hearing and result against Company Law Board situated at Mumbai and Delhi regarding his complaint. Hence, *prima facie* the dispute and complaints are looking like a civil dispute. He was requested to approach Company Law Board where disputes are pending. Therefore, complaint filed at Khalapur Police Station as a Civil matter and enquiry is closed.

Letter dated 21st November, 2016 was issued by EOW Unit-I Navi Mumbai to Mr. Waters with regards to his complaint against the applicants stating that in pursuance to complaint enquiry was made with Sajith Venugopal, world wide express couriers, Yashwant Adnane and recorded their statements and supplementary statements in detail. Complainant had filed Company Petition No.44 of 2015 before Company Law Board Mumbai Bench which is pending trial. Similarly, some complaint have been filed by opponent on behalf of M/s. Oil Tools International Services Pvt. Ltd. before different authorities which are also pending. On perusal of the documents, statements & supplementary statements it is revealed that the *prima facie* the dispute and complaints are in the nature of civil disputes. Thereafter, letter dated 14th December, 2016 was forwarded by senior inspector of police to Dy. Commissioner of police Vashi, stating that enquiry with regards to complaint of Mr. Waters has been conducted and proceedings are pending before Company Law Board and dispute is of civil nature.

8. The complainant filed petitioner before National Company Law Tribunal viz. TCP No. 44/397-398/2015 under Sections 397 & 398 of the Companies Act. The first petitioner in that petition is ACE Oil field Supply INC a company of USA. Petitioner No.2 was Mr. Paul Waters. It was contended that Mr. Waters is director in Oil tools

international services Pvt. Ltd. The applicants said company and others including the respondents. Order dated 18th September, 2017 passed in the said petition refers to points framed for consideration. The petitioners had contended in the said proceedings that no notice was issued to them about board meeting. The Tribunal observed that assuming that intimation has gone to petitioner through calendar of events, it nowhere reflects that board meeting was scheduled to be held on 4th October, 2013. Hence calendar of events cannot be said to be notice. The Tribunal issued directions in the said petition vide order dated 18th September, 2017. The directions in nutshell were that, P1 (Petitioner No.1 in the said Petition) being a majority shareholder, P1 through P2 shall take over the management of the company on restoration of P-2 as director of the company and with liberty to the petitioners to appoint more members as directors of R1 (Respondent in petition) company within 15 days from the date of the order. Forensic audit is to be conducted from 1st April 2013 till date to find out as to whether funds came to R1 company as stated by the respondents or not? To conduct the audit by M/s. Shah and Gutka who were appointed. The petitioners were directed to provide exit to R2 to R4 on fair valuation taking 31st March, 2017 as cut-off date. The valuation of the shares shall be conducted by the same auditor after forensic report has been given by them. It was further directed that after ascertainment of infusion of funds from R5, loans given by shareholders, utilization of the same and company funds and siphoning of the funds if any from 31st March 2013 till date, R-1 company, as per the report given by the auditor, shall refund the funds actually infused by R-5 either in the form of share capital or in the form of loans within a three months from the date of valuation of share value and after preparation of forensic audit report. If such payment is not made within three months as stated above the petitioner shall pay interest @ 10% over the amount payable. The Learned counsel for the applicant contends that audit was conducted and the auditor has not stated that applicants have siphoned or misappropriated funds. I have also perused the orders passed by appellate authority. The appeal was preferred by Ajith Venugopal and Sajith Venugopal and Kunnimal Venugopal. In Paragraph 22 of the said order it is mentioned that on hearing both the parties at length, the authority has come to conclusion that whenever any meeting is held, either board meeting or general meeting, duty is cast upon the persons holding meeting to send the respective notice with Agenda items as prescribed under the Company Act. Since no such notice has been received by 2nd and 3rd respondent, sending a calendar of events cannot be called as service of a notice upon the 2nd and 3rd respondent and calendar is only a plan for the year giving indication to facilitate the planning by the parties to available as and when the notice is received when the details of actual meeting have been actual finalized. The appellate authority in paragraph 28 of order dated 9th March 2018 observed that in view of directions of NCLT, the original petitioners can ascertain from records infusion of funds by original respondents no.5 towards loan and share capital. It would be reasonable and win win situation for both sides of the petitioners are directed to ascertain from records the infusion and utilization and if satisfied immediately way back the funds infused by respondents. Learned Counsel had also brought to my notice that the infusion of the amounts by the applicants in the companies which is the part of the audit report conducted pursuant to the direction issued by NCLT. Statement relating to movement of funds for the period 1st April 2013 to 31st March, 2017 which is part of Audit Report mentions that there was net in flow by Ajith Venugopal as Directors loan in the sum of Rs. 4,33,73,752/-. Net inflow by Kunnimal in the sum of Rs. 25,80,000/-. Net inflow by Gopakumar is the sum of Rs. 9,86,00,000/-. the Report also refers to statement relating to nature of business and total amount paid by party. There is reference of various companies. It is also stated that it is important to take notice whether expenditure justifies volume of work. The applicants have relied upon independent audit report. I have perused summons under Section 91 of Cr.pc dated 22 May 2019 issued to Sajith Venugapal directing him to produce the information of companies mentioned therein. The seizure Panchnama dated 23rd May 2019 information was also sought about Bank accounts, Bank details, vouchers filed of Oil tools company and applicants company, Balance sheet, Memorandum of association, Bills of Machinery, etc. which is recorded in pursuant to the aforesaid summons indicates that several documents in the nature of filed of which description is given and loaded in eight boxes were seized by police. This is done in pursuant to registration of FIR. The Investigating Officer had further sought information which were handed over by the applicant to the investigating officer. The matter relates to documents. By letter dated 19th April, 2019 company has been handed over to Mr. Paul Waters. The possession letter mentions that representative of ACE Oil field supply have taken personal custody of documents, factory premises, machinery, raw material and finished goods and all stock and documents viz Accounting Vouchers including sales and purchase bills of all financial years till date, Taxes paid Challan and acknowledgment of returns of all financial years, files related to accounts, Excise, Customs and Statutory records, documents related to ITRD and stores department, documents related to quality control.

9. Thus, the proceeding were initiated before NCLT and directions were issued to the parties. The company has been handed over to the complainant. It is also apparent that the requisite documents called by the investigating machinery has been handed over to the complainant. The enquiry was conducted by Police earlier. The documents are already in custody of Police. The investigation in relation to allegations in FIR would proceed but in the light of above facts, applicants need not be subjected to custody. Considering all the circumstances as stated above the custodial interrogation of the applicants is not necessary. Hence case for grant of anticipatory Bail is made out.

10. Hence, I pass following order.

O R D E R

i) Anticipatory Bail Application Nos. 2607 of 2019, 2577 of 2019, 2578 of 2019 and 2579 of 2019 are allowed;

ii) In the event of arrest of applicants in C.R. No. 132 of 2019 registered with Khalapur Police Station, the applicants be released on bail on their furnishing P. R. Bond in the sum of Rs.50,000/-, each with one or more sureties in the like amount;

iii) The applicants shall report the L.C.B. Raigad on 9th to 11th December, 2019 between 10:00 a.m. to 1.00 p.m. and thereafter as and when called for.

iv) Anticipatory Bail Application Nos. 2607 of 2019, 2577 of 2019, 2578 of 2019 and 2579 of 2019 as well as Interim Applications stand disposed of accordingly.

(PRAKASH D. NAIK, J.)