PMB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.143 OF 2018

Kirit Bhagwandas Gadhiya .. Applicant
vs.
The State of Maharashtra and anr. .. Respondents

Mr. S.P. Kadam I/b. Mr. Akhilesh Singh and M.M. Dubey for Applicant.
Mr. Ajay Patil, APP for the State.
Ms. Dhanashri Shinde I/b. Mr. S.B. Dhotre for Respondent No.2.
Mr. Kirit B. Gadhiya-Applicant present.
Mr. Bhavesh Mathuria-Respondent No.2 present

CORAM : M.S.KARNIK, J.
DATE : SEPTEMBER 27, 2021

P.C.

The Applicant is apprehending arrest in C.R. No.569 of 2017 dated 08.12.2017 under Sections 420, 465, 467, 468, 471, 120B of the Indian Penal Code originally registered with Kandivali Police Station, Mumbai and now being investigated by EOW, Banking Unit-2, Mumbai having renumbered C.R. No.97 of 2017.

2. By an order dated 23.01.2018, this Court had granted the interim protection to the Applicant. Pursuant to the interim protection granted, the investigating agency carried on with the investigation. The specimen signature of the Applicant was

obtained and hand-writing expert has given his opinion. The opinion does not record that the signature on the bank documents, which forms the basis of the loan obtained, are that of the Applicant.

3. The Application appeared on board from time to time. On the last occasion, there was a suggestion from both the parties that considering the cordial relations the parties once enjoyed, an attempt can be made to settle the dispute. Briefly stated, it is the case of the Applicant that complainants viz. Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar had invested a substantial sum in the travel company which belongs to the Applicant and dues payable to the complainants are now to the extent of Rs.1,35,00,000/- (Rupees One Crore Thirty Five Lakhs only). The complainants were appointed as Additional Directors of the Company on 01.09.2012 to safeguard their investment. The complainants resigned from the Board of Directors, which resignation came to be accepted in the meeting of the Board of Directors held on 03.11.2014. The resignations came to be forwarded to the Registrar of the Companies in the year 2015 and the parties agree that the complainants are no more Additional Directors of the Company since then.

4. During the course of the hearing, the parties agreed to arrive at a settlement and amicably resolve their disputes. The management of the Company is being looked after by the

Applicant-Kirit Bhagwandas Gadhiya. An affidavit which is duly affirmed on 18.09.2021 is tendered in this Court along with the schedule “A” which provides for a mode of schedule of repayment. The Applicant is present in the Court and assures this Court that he will strictly abide by the terms of the affidavit. The affidavit reads thus :-

> “I, Kirit Bhagwandas Gadhiya, aged about 61 years, Residing at B/603, Vicky Classic, Mahavir Nagar, Kandivali (West), Mumbai-400067, do hereby states on solemn affirmation as under.
>
> 1. I say that the Complainant viz. Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar had invested and there is now due & payable a sum of Rs.1,35,00,000/- (One Crore Thirty Five Lakhs Only) in Company known as M/s. Shreekrishna Travels Solution Pvt. Ltd. situated at Kandivali (W), Mumbai and accordingly they had been appointed as Additional Directors of the Company on 1.9.2012 to safe guard their investment and in the year 2014 they had also sent me resignation and we had accepted the same in the meeting of Board of Directors dated 3.11.2014, the resignation with the Registrar of the Companies was forwarded in the year, 2015 and they are no more additional directors of the Company.
>
> 2. I say that I am holding more than 99% stake in the company and also into complete management of the company. Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar were only the Additional Directors of the company and were never into management or decision making of the company, also they never attended any Board Meetings, nor are they liable to pay any dues of the company such as loan which was obtained by the company from Indusind Bank. Their names appears as guarantors for the said loan but according to them they have never stood as guarantors from Indusind Bank, So I Kirit Gadhiya am liable to pay the dues on behalf of the company Shree Krishna Travels Solutions Pvt. Ltd. in stipulated time. I confirm that Mr. Bhavesh Mathuria & Ms. Vaishali Kaklotar are in no way liable for any liabilities or any other

dues of the company also they are not liable to pay any dues/loan amount taken from IndusInd Bank it shall be cleared by me.

3. I say that though they were the Additional Directors of the company they have never participated in any events of the company nor are they liable to pay any dues and liabilities of the company such as the loan that was obtained by the company from the Indusind Bank. I say that the due amount of Rs.1,35,00,000/- (One Crore Thirty Five Lakhs Only) which is payable to Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar shall be paid by me as per Schedule “A” annexed with this affidavit. The said payment shall be made by me and I undertake before this Hon’ble Court to make payment as per the schedule attached here to and shall not commit any default on the same.

4. I say that I have no such malafide intentions to cheat Mr. Bhavesh Mathuri or Ms. Vaishali Kaklotar and I bonafidely will pay the same. I further say and submit that the Indusind Bank has filed their claim in DRT-2, Mumbai and the same is pending for its disposal; however, I confirm that Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar are not liable for any dues to Indusind Bank in respect of OA filed by the Indusind Bank before the DRT-2 Mumbai.

5. I say that the signatures of Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar on loan documents have been made by bankers and not by me. I say that I have been named as the accused due to misunderstanding and misconception.

6. I say that after lodging the FIR against me, the Investigation Officer has frozen my account No.053905500253 with ICICI Bank, Kandivali branch, Mumbai standing in the name and styled M/s. Shree Krishna Travels and Tours and account no.100020827332 with IndusInd Bank, Kandivali (W) branch, Mumbai and account no.03970100020529 with Bank of Baroda, Mahavir Nagar branch, Mumbai standing in the name Rasiklal Mathuradas Kanabar. I say that I can immediately make payment of Rs.10,00,000/- to Mr. Bhavesh Mathuria and Ms. Vaishali Kaklotar to allow me to operate

the aforesaid account which are freeze by the EOW, Crime Branch, Mumbai. I further say that I am handing over Demand Draft of Rs.2,00,000/- along with this Affidavit of Undertaking and Rs.8,00,000/- immediately on defreezing of above accounts by this Hon'ble Court and balance amount of Rs.1,25,00,000/- (One Crore Twenty-Five Lakhs only) I shall pay as per Schedule 'A' Annexed to this undertaking.

7. I say that whatever has been stated by me in the aforesaid paras are true to the best of my knowledge and I believe the same to be true."

5. In terms of the understanding reached and in part compliance of the settlement, the Demand Draft in the sum of Rs.2,00,000/- is handed over by learned counsel for the Applicant to learned counsel for Respondent No.2-complainant. The same is accepted. The Applicant undertakes to abide by the statements made in the affidavit filed in this Court and even the learned counsel for the the complainant-Mr. Bhavesh Mathuria who is personally present in the Court today, on instructions says that he is satisfied with this arrangement.

6. In this view of the matter, considering that the parties have arrived at an understanding as recorded herein above; further considering that the parties shared a cordial relationship pursuant to which the complainant invested monies in the Company of the Applicant; and also having regard to the fact that since 23.01.2018, the Applicant has been granted the interim protection and he has co-operated with the investigation, in my opinion, the custodial interrogation of the Applicant is not required in the present case.

7. Hence, the following order :-

<u>O R D E R</u>

(i) The interim order dated 23.01.2018 is confirmed.

(ii) In the event of arrest of the Applicant in CR No.569 of 2017 registered with Kandivali Police Station, Mumbai and now being investigated by EOW, Crime Branch, Banking Unit-2, Mumbai having renumbered C.R. No.97 of 2017, the Applicant shall be released on bail on his furnishing PR bond of Rs.50,000/- with one or two solvent local sureties in the like amount.

(iii) The bank accounts mentioned in paragraph 6 of the affidavit to stand defreezed with a view to enable the Applicant to effect compliance of the undertakings recorded in paragraph 6 of the affidavit.

(iv) The Applicant to strictly abide by the statements made in the affidavit.

8. The Anticipatory Bail Application is disposed of.

(M.S.KARNIK, J.)