IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 305 OF 2018

1. Dhyan Ramesh Ganatra
2. Dharam Ramesh Ganatra
3. Hiral Ramesh Ganatra … Applicants

Versus

The State of Maharashtra … Respondent

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Ms. Mallika A. Ingale, Advocate for the Applicants.
Ms. Anamika Malhotra, APP for the Respondent – State.
Mr. Namdev Jadhav, (P.I.) Borivali Police Station, Present.

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CORAM : PRAKASH D. NAIK, J.

DATE : 30th MARCH, 2021

PER COURT:

1. This is an application for anticipatory bail in C.R. No. 372 of 2017 registered with Borivali Police Station, Mumbai for offences under Sections 406, 408, 416, 418, 420, 381, 201, 503, 504 & 506 r/w Sections 34 & 120-B of Indian Penal Code (for short "IPC") and Section 43 (d)(e)(f)(g)(h) of the Information Technology Act, 2000.

2. The complainant had filed a private complaint and directions were issued by the Court under Section 156(3) of Cr.P.C. in pursuant to which First Information Report (for short 'FIR') was registered.

3. The case of the complainant is that she is the proprietor of M/s. Yogi Sports, dealing sports material. The applicant Nos. 1 & 2 were working in the shop. In 2010 it was decided to create the website for selling goods online. Password and login was provided to applicant Nos. 1 & 2. The applicant No.1 was authorized to conduct bank transactions into the account of complainant. In 2013 they tied up with Amazon company for selling goods. Complainant had received intimation about dishonour of cheques. On verification of the statement of account it was revealed that the amount of Yogi Sports was transferred to the account of applicant No.3. Goods were missing from the shop. It was further revealed that goods belonging to the complainant's company were being sold to others by the applicants and there was misappropriation of Rs.70,00,000/-.

4. The applicants had preferred an application for anticipatory bail before the Sessions Court which was rejected by order dated 15th January, 2018. Thereafter, the present application was preferred before this Court. Interim protection was granted to the applicants vide order dated 20th February, 2018. Thereafter, interim protection was continued from time to time.

5. Learned counsel for the applicants has submitted that there is no misappropriation of amount. The applicants are falsely

implicated in this case. The allegations in the FIR are baseless. All the allegations are explained. The applicants have cooperated with the investigation by tendering explanation. There is no misappropriation of amount. The transactions were executed with the consent of the complainant and her husband. Applicant Nos. 1 & 2 were requested to take care of the business of the complainant. Substantial period of time, the complainant and her husband were abroad. There were to deliberations between the complainant's husband and the applicants regarding execution of transactions. The complainant had not only authorized applicant No.2 for drawing cheques but also provided user name and password. The husband of the complainant used to control the business. Post dated cheques were issued to suppliers against the delivery of goods which were dishonoured. Since, 2013 the applicant Nos. 1 & 2 started using credit card of applicant No.3 as sufficient credit balance was not maintained in the bank of complainant to honour post dated cheques. The cheques were cleared with the aid of the credit card of applicant No.3. The credit card of the applicant No.3 was also used to pay monthly charges for the services rendered. The complainant's husband was aware about the usage of credit card of applicant No.3. All the transactions pertaining to services availed by complainant and goods purchased by them. DHL courier services were engaged for delivery of goods.

Parcel was delivered at the address of buyer mentioned in the consignment. The applicant Nos. 1 & 2 had realized that the complainant's husband had no intention to induct them as partners, hence, they registered another concern namely Krish Ventures in 2016. The question of giving assurances to compensate loss suffered by complainant does not arise. Applicant No.1 started D.D. Sports in 2017. The firms R. S. Commerce, C Sweet Ventures as well as Krish Kart Ventures were not owned by the applicants. The complainant's husband himself had instructed the purchaser to deposit the money into joint account of the applicants to save credit. After starting own business, the applicant No.1 had purchased goods from S &C and paid price by online transfer. The invoices referred to by complainant are not reflected in the ledger account maintained by the complainant. Bills were not reflected in the ledger account maintained by Sunrise Sports India Pvt. Ltd. The invoices were fabricated. The website www.yogisports.com domain was purchased in the name of applicant No.1. It was closed after December, 2016. Applicant No.1 opened Amazon account in the name of complainant's firm by providing bank account details of complainant for sale transactions. When the applicants started their own business, they opened another account with Amazon in the name of Krish Ventures and details of credit card were given. The amount was transferred from applicants saving account to complainant's account. Amount was credited to the complainant's account by swiping HDFC credit card of applicant No.3 and expenses incurred for complainants business. The total amount transferred was Rs. 34,67,267/-. The applicant is also relying upon the details of the transactions by swiping the HDFC credit card of applicant No.3. The applicants had also relied upon several E-mails received from complainant's C.A, complainant's husband and others. The matter relates to documents, custodial interrogation of the applicants is not necessary.

6. Learned APP submitted that there are serious allegations of misappropriation of amount. Statements were recorded during the course of investigation which indicates that the huge amount was misappropriated by the applicants. All the applicants had acted in connivance with each other. The goods belongings to the complainant's company were sold through Amazon to different persons. The said fact was verified by complainant by placing order for purchase of goods and on receipt of the goods. It was noticed that the articles belongings to the complainant's company were sold by the applicants. Learned APP pointed out statements of various witnesses recorded during the course of investigation. It is submitted that although the applicants had appeared before the Investigating officer they have not afforded genuine explanation. Their custodial

interrogation is necessary. It is further submitted that the applicants had floated their own company while they were working for complainant. Applicant No.1 had represented as partners of company to various persons as well as dealers of complainant. The applicants are selling online goods of complainant's company. The books of accounts are to be ascertained. Missing stocks of the complainant's company is to be verified. Password and website of the complainant's company are yet to be ascertained. Thorough investigation is required to be conducted.

7. I have perused the documents on record and the investigation papers. The prosecution is relying upon the statements of witnesses and the documents on record. As stated above the applicants had tried to explain the nature of transactions and claimed that there is no misappropriation of amount. The allegations are denied. I have perused the statement of witnesses. The applicants statements were recorded during interrogation. They have denied misappropriation of amount. The applicant Nos. 1 & 2 were purportedly working for the complainant's company since last several years. Statements of witnesses mentioned that the applicant No.1 used to sent the witness for delivery of goods. Initially he used to stick label/barcode of Yogi Sports on the goods. Thereafter, he started pasting the label and barcode of another company. Hence, he

suspected conduct of applicant No.1. He intimated the said fact to the accountant. The complainant made inquiry. When the applicant No.1 was called for inquiry he left the shop without informing anyone. It was alleged that, there was misappropriation of Rs.70,00,000/-. Statement of another witness indicate that the applicant No.1 used to deliver goods in the name of complainant's company by affixing label/barcode. Subsequently, he was pasting label of another company. There are several such statements indicating that the applicant No.1 was selling goods of the complainant's company to his customers. The applicant No.3 is sister of applicant Nos. 1 & 2. It appears that her account was utilized during transactions. She was not working with applicant Nos. 1 & 2 for complainant's company. Considering the role attributed to her she need not be subjected to custodial interrogation. The applicant Nos. 1 & 2 were working with the complainant's company for several years. Both are brothers. However, from the statements of the witnesses were recorded during the course of investigation as stated above, it appears that the applicant No.1 had played vital role in selling the goods of complainant's company. His custodial interrogation would be necessary. However, the applicant No.2 need not be subjected to custodial interrogation. Hence, I pass the following order:

ORDER

(i) Anticipatory Bail Application No. 305 of 2018 is partly allowed;

(ii) Application of applicant No.1. Dhyan Ramesh Ganatra is rejected.

(iii) Application preferred by applicant Nos.2 & 3 Dharam Ramesh Ganatra and Hiral Ramesh Ganatra is allowed.

(iv) In the event of arrest of the applicant Nos.2 & 3 Dharam Ramesh Ganatra and Hiral Ramesh Ganatra in connection with C.R. No. 372 of 2017 registered with Borivali Police Station, Mumbai, they shall released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(v) The applicant Nos. 2 & 3 shall attend the investigating officer as and when called for.

(vi) Anticipatory Bail Application stands disposed of accordingly.

8. At this stage it is submitted that the applicant No.1 was enjoying interim protection since 2018. Hence, interim protection may be extended by four weeks to enable the applicant No.1 to approach the Apex Court. In view of submission interim protection granted to applicant No.1 is extended by four weeks.

(PRAKASH D. NAIK, J.)