IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 1003 OF 2020

Avinash Krishna Kamat ....Applicant

V/s.

The State of Maharashtra ....Respondent

AND

Ms. Neha Sunke ...Original Complainant

* * * *

Mr. Rizwan Merchant a/w. Mr. Faisal Shaikh i/by. Rizwan Merchant & Associates, Advoacte for the applicant.

Mr. Madhusudan Pareek, Advocate for the Original Complainant/Intervenor.

Mrs. Prajakta Shinde, APP for State.

CORAM : SANDEEP K. SHINDE, J.

14 September, 2021.

P.C. :

1. Heard Mr. Merchant, learned Counsel for the applicant, Mr. Madhusudan Pareek for the complainant and Mrs. Shinde, Additional Public Prosecutor for the State.

2. The applicant is seeking his enlargement on bail in connection with Crime No.175/2019 registered with Rabale MIDC Police Station, for the offences punishable under Sections 420, 408, 409, 465, 468, 477(1) of the Indian Penal Code read with Section 66(d) of the Information Technology Act, 2000.

. Prosecution case in brief is;

3. Complainant is SCHCIL Services Limited. Neha Sanke, Manager, Finance Department filed the complaint on behalf of the Company. SHCIL Services Limited ("SSL" for short) is a registered Corporate Broker providing broking services to institutional and retail clients across the country. SSL offers services in both Cash and F&O segment of Bombay Stock Exchange (BSE) & National Stock Exchange (NSE) and Currency Derivatives segment of National Stock Exchange. Company accepts instructions for transactions i.e. buying and selling in shares on behalf of its clients. The transactions in shares are executed on the Stock Exchanges for the purpose of 'Pay-in' and 'Pay-out' of funds. SSL maintains accounts with AXIS Bank Limited. The Company had appointed and authorised applicant to operate the said Account. During the audit of the records, SSL found huge financial irregularities at the instance of the applicant, who had allegedly created false/forged entries in the system to

show receivables and payables to individuals or to BSE and/ or to NSE. Upon internal enquiry, applicant allegedly confirmed that, he transferred funds from the accounts of SSL to third party accounts who were not the clients of SSL during the period between 2016 to 2019. Complainant alleged applicant had by making false/forged entries release the fund to the extent of Rs.3.5 crores in twenty-two individual bank accounts from whom he collected the amount in cash after giving commission to those individual parties. As such, the applicant by forging the documents by manipulating the system misappropriated the funds of the Company to the extent of Rs.3.5 crore. This act of misappropriation was committed to make gain for himself and wrongful loss to the Company. On these set of allegations, the Crime in question came to be registered on 28th June, 2018.

4. Mr. Merchant, learned Counsel for the applicant submitted that the applicant has been incarcerated without trial since August, 2019. He submitted the trial is not likely to commence in the near future. The investigation is over and by imposing suitable conditions, the prosecution can secure applicant's presence for the trial. It is submitted that the entire case of the prosecution is founded on documentary evidence and the charge of it has already been taken and

therefore there is no possibility at all of tampering or hampering with the prosecution evidence. Mr. Merchant submitted, nothing is left out to be recovered and discovered at the instance of the applicant. Mr. Merchant submitted that the investigation is lopsided and bias. He submitted that, Manoj Kabra, the then Assistant Vice-President (AVP) and Chief Finance Officer (CFO) of SSL was instrumental in siphoning off the property of the Company through the applicant. Mr. Merchant submitted, as directed by Manoj Kabra, he had transferred the amount in the bank accounts of 23 individuals. He submitted that Manoj Kabra used to threaten the applicant that, he would loose his job, if he would not follow his command. Submission is that, in the compelling situation, applicant was left with no option but to follow the directions and command of Manoj Kabra, the CFO of the complainant-Company. Mr. Merchant submitted that, although in the departmental enquiry, the applicant disclosed this fact to the Enquiry Officer, Manoj Kabra was kept out of enquiry and even the Investigating Officer did not make any efforts to ascertain the role of Manoj Kabra in the alleged commission of misappropriation of Company's property. Mr. Merchant, further submitted that, Santosh Mahajan, Assistant Manager and Rajesh Verma were the officers authorised to operate the bank Accounts of the Company through user I.D. and password.

It is submitted that, neither the user ID's nor the passwords were known to the applicant. It is submitted that the prosecution has simply relied on the statement of Rajesh Verma, Santosh Mahajan and Suraj Kadam to believe and hold that the applicant was solely looking after the Pay-out in trade finance department of the Company. Mr. Merchant, submitted that Mahajan, Kadam and Rajesh Verma had the password of the bank accounts. It is admitted fact that the applicant was not allotted the password to operate the bank account. He submitted that, applicant has been framed in the case to shield Manoj Kabra. He submitted that the Accounts is subject to quarterly audit by independent auditors and therefore it is inconceivable to accept that alleged irregularity could not be noticed over a period of three years. It is further contended that, after each banking transaction, the mails were sent by the Bank to the Company giving details of every transaction. It is therefore argued that the mails received were either overlooked by the Company officials knowingly or otherwise but for such lapses on the part of officers of the Company, the applicant was not accountable. Bail is sought on these grounds.

5. On the other hand, application was opposed by the prosecution and the complainant. Mr. Shashikant Chandekar, Officer, Economic Offences Wing, vide his reply

dated 18th August, 2021 placed on record, material highlighting applicant's complicity. Alongwth the Affidavit, the statement of material witness recorded under Section 161 and 164 of the Criminal Procedure Code were placed on record. Mrs. Shinde, Additional Prosecutor has taken me through the statement of Alpesh Desai, recorded under Sections 161 and 164 of the Criminal Procedure Code. Alpesh would state that, at the instance of the applicant, he had introduced him to one Hemang Vora, his friend, who was having account with the AXIS Bank. He stated that time and again, applicant had drawn the cheques in the name of, Hemang Vora and Mausami Vora. These cheques were handed over for depositing in the account of Hemang Vora and his wife, whereafter the amount was withdrawn in cash and handed over to the wife of the applicant. Statements of Hemang Vora recorded under Section 164 shows that applicant had deposited in his Account (at Nallasopara Branch), 13 cheques amounting to Rs.45,05,800/- and 8 cheques in another Branch at Nallasopara amounting to Rs.19,68,350/-. Similarly, around 19 cheques were deposited in the account of Trishang Vora and Mausami Vora in all amounting to Rs.59,00,000/-. His statement further shows that, in all Rs.1,024,830/- were withdrawn and given to Alpesh Desai, who in turn gave this amount to wife of the applicant. Learned Prosecutor therefore submits that there is convincing/dependable evidence on record of the account holders in whose account, the applicant had transferred the funds of the Company. Learned Prosecutor has taken me through the statement of the Officers of the Company who would claim that, the applicant was the sole person authorised, to look out the 'Pay-out', in the trade finance department of the Company. Learned Prosecutor would also rely on the departmental enquiry wherein the applicant had admitted the charge of misappropriation of the Company's property /funds.

6. On these grounds, she would submit, at this stage, statement of witnesses may not be overlooked wherefrom applicant's complicity is clearly visible.

7. Mr. Madhusudan Pareek, learned Counsel for the complainant submitted that the key control of the, 'Clients Pay-in' and 'Pay-out', activity is the bank reconciliation. The applicant had processed illegal 'Pay-out' by preparing bogus files and uploaded the same on the Company's website. He manipulated and forged the bank reconciliation in order to mislead the concerned authorities including the auditors. He submitted that the applicant transferred the files in respect of the payments to customers of the Company which

used to be generated online from software and thereafter he loaded the said files on the website and he deleted those files.

8. I have perused the chargesheet. It cannot be disputed that the statements of the individual account holders in whose bank accounts, monies were credited, have stated that at the instance of the applicant, several cheques were deposited in their individual accounts through Alpesh Desai and Sonal Desai. The statements of these account holders suggest, the monies were withdrawn by them and given back to the applicant through Alpesh Desai and Sonal Desai. Obviously, these individual account holders were not the clients of the complainant Company. Yet the fact cannot be overlooked that Santosh Mahajan, Rajesh Verma and Suresh Kadam were given user ID's and passwords by the Company. Admittedly, the applicant was not given user ID or password by the Company to operate the bank account. Therefore, the persons to whom the user ID and password were supposed users for operating the bank accounts. Mr. Santosh Mahajan, Rajesh Verma and Sureh Kadam simply stated, that the applicant was authorised to use the user ID and password. That being so, at this stage, except the statements of Mahajan, Verma and Kadam, prima-facie, prosecution's evidence is not definite, as to user of ID's and password by the applicant, for operating Bank Account of

the Company. Additionally, it is admitted by the Company that all transactions were carried in the Corporate Bank account. Hence, for these transactions, there were no 'alerts', received from the AXIS Bank on any one's mobile or email. The complainant has admitted that the bank statement for the consolidated debit transactions done for the day were received by the Company on the next day on the Company's email ID. Prosecution has not verified these emails to ascertain who had log in the Company's Accounts for transactions. This vital fact has not been verified and investigated by the prosecution. The investigation into this fact was essential. Admittedly, the applicant was not allotted user ID and password by the Company to operate the Bank Account. Additionally, the Investigating Officer has also not recorded the statement of the Branch Manager. Moreover, although accounts of the company were audited quarterly, besides statutory audit, alleged irregularity was noticed and detected after three years.

9. Therefore, in absence of material on record indicating that the applicant was allotted user ID and password of the bank and for want of material to show that the applicant alone was operating the Account for 'Pay-Out' transaction, in my view, a case is made out for releasing the applicant on bail. Even otherwise, he is in custody since

August, 2019. He is a permanent resident of Mumbai and trial is not likely to commence in the near future. Hence, the following order :

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

(i) The applicant arrested in Crime No.175/2019 registered with Rabale MIDC Police Station, shall be released on bail on executing P.R. bond for the sum of Rs.1,00,000/- (Rs. One Lakhs only) with one or more sureties in the like sum.

(ii) The applicant shall report to the Investigating Officer once in a month and co-operate in the investigation.

(iii) The applicant shall furnish his permanent residential address and contact number to the Investigating Officer forthwith within a week of his release from jail.

(iv) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

10. The application is accordingly allowed and disposed off.

11. It is made clear that, observations made hereinabove, shall be construed as expression of opinion for the purpose of granting bail only and the same shall not, in any way, influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)