IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.754 OF 2021

Nisha Vinit Gupta, Age 31 years,
r/o.D-401, Neel Kamal Co-op. Hsg. Society Ltd;
Chincholi Phatak Road, Malad (West),
Mumbai (presently lodged in prison) Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO.2937 OF 2020

Navin Omprakash Agrawal Intervenor

In the matter between :

Nisha Vinit Gupta Applicant
versus
The State of Maharashtra Respondent

Ms.Mansha Khemka with Ms.Bhagyashree Upadhyay, Ms.Twinkle Khemka i/by Khemka & Ascociates for applicant.
Mr.Sushil Upadhyay with Mr.A.M.Saraogi for intervenor.
Mr.S.S.Pednekar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 8th April 2021

PC :

1. This is an application for pre-arrest bail in connection with CR No.591 of 2018 registered with Andheri Police Station for offences under Sections 406, 408, 420, 465, 467, 468, 470, 471, 34 of Indian Penal Code. The investigation was thereafter transferred to Economic Offences Wing vide CR No.3 of 2019.

2. The case of the prosecution is that complainant Navin Agrawal is working as Manager with Rashi Peripherals Pvt.Ltd. The company is involved in sale of computer spare parts. Orders are received from head office and various branches of company through e-mail by Godown Officer Sunil Pansari, Sushil Saraf and Godown Logistic Manager Yogesh Tiwari. Copy of order is forwarded to head office. Godown officer prepares bill. Person from transport agency prepares lorry chalan and provides details and signs the chalan. The information forwarded to account executive Vinit Gupta and Archana Pandey. Receipt of bill is sent to head office. Transport agency submit monthly lorry chalan (docket), bill invoices to head office. It is sent to Vinit Gupta for verification. He is supposed to verify and scrutinize documents and check its genuineness. Bills are then sent to Sales Manager Mukesh Rohila. He signs them and bills are sent to account department. SRC Express Cargo is transport agency. The owner of the said agency is Narayan Nigam and Rajesh Nigam. It was noticed that the value of transport had exceeded than sales. Discrepancies were noticed. Chalan submitted by SRC Express was false. Vinit Gupta and owners of SRC Express had acted in connivance and caused loss of Rs.3,12,18,456/- to complainant and misappropriated the said amount. This FIR was registered against respondent no.2 and owners of M/s.SRC Express Private Limited Mr.Narayan Nigam and Rajesh Nigam.

3. The second FIR was registered vide Cr No.454 of 2019 registered with Andheri Police Station for the offences under Sections 406, 407, 408, 420, 465, 456, 468, 471, 120-B of Indian Penal Code on 3rd August 2019. Investigation was thereafter transferred to Economic Offences Wing vide CR No.71 of 2019. The case of

prosecution in CR No.454 of 2019 (CR No.71/2019) is that the complainant is working as Accounts Manager with M/s.Rashi Peripherals Private Limited. The company is involved in import of spare parts of computer and it's sale in the country. The company has several offices in the country. It has warehouses. The corporate office of the company is situated at Andheri, Mumbai. The shipments of goods is carried out on instructions from the corporate office. For transporting goods of the company to various parts of country, the transport companies have executed contracts with the complainant company. As per the call of the complainant company the transporters pick up the goods from warehouse for delivery. The entry in respect to the delivery is made in four lorry receipts, which also carries the details of place where the goods are delivered, quantity of goods etc.. One copy of the lorry receipt is kept on record with warehouse officer and the other three lorry receipts are forwarded to respective parties. On delivery of goods the lorry receipt is accepted with acknowledgement by the concerned party. One lorry receipt is kept by the transporter and the last receipt is submitted to the company office with bill of transportation. After delivery of the goods by the transporter, the summary of details is provided to the corporate office through e-mail, which contains sales invoice number, lorry receipt number, number of packets, destination and some times the weight of the goods. The transporter submits monthly bills collectively. The invoices are forwarded to Purchase Department. The concerned officers scrutinizes the documents and follow the requisite procedure. Mr.Vinit Gupta (accused no.1) was working as Accounts Executive from September-2008. The job required him to scrutinize the transport of goods after they are delivered from warehouse. He was supposed to examine dockets, monthly bills and verify them. Thereafter he was supposed to submit bills to Accounts Department. He was also required to scrutinize whether the amount towards invoices tallies with the goods delivered. In September-2018 one of the Director of the complainant company noticed increase in the transport expenditure and noted that scrutiny has to be carried out in that regard. The company verified the transportation expenses and it was noticed that there is considerable difference in total transportation cost and total transportation cost debited to respective branches of complainant. Vinit Gupta was called upon to give explanation. Thereafter his attendance was irregular. Subsequently he left the job. It was noticed that there were discrepancies in the expenditure and hence invoices were verified. It was found that invoices submitted by transport companies viz M/s.EXL India Pvt.Ltd. and M/s.DNX Cargo India Limited were missing from file. Further enquiry was conducted and it was found that lorry receipts submitted with invoices were missing. On demand with the transport companies, M/s.DNX Cargo India Limited submitted some documents. M/s.EXL India Pvt.Ltd. did not co-operate with the enquiry. From the documents submitted by M/s.DNX Cargo India Ltd, it was revealed that employee of the complainant company Mr.Vinit Gupta (accused no.1) had acted in connivance with the aforesaid companies and by preparing false bills excess amount was paid to the said companies. Thereafter he diverted the amount into the accounts of persons acquainted with him, his relatives and some of the employees of company. Hence, the FIR was lodged against Vinit Gupta, Directors of M/s.EXL India Pvt.Ltd. and Directors of M/s.DNX Cargo India Ltd.. It was alleged that huge loss of Rs.9,01,64,249/- was caused to the complainant company.

4. The applicant preferred application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 11th August 2020.

5. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. She is the wife of accused Vinit Gupta (accused no.1). Two FIRs were registered in respect to the common transactions. The second FIR is identical. The husband of the applicant Vinit Gupta (accused no.1) was arrested in CR No.591 of 2018 on 20th March 2019. He was granted bail by the Court of learned Metropolitan Magistrate by order dated 17th May 2019. He was again arrested in CR No.454 of 2019 on 23rd December 2019. He was granted bail by the Court of learned Metropolitan Magistrate by order dated 6th July 2020. Custodial interrogation of the applicant is not necessary. The father-in-law of the applicant was arrested in second FIR on 23rd December 2019. He is in custody for substantial period of time. A notice/summons under Section 91 of Cr.P.C was issued to the applicant. She responded to the said notice vide letter dated 8th July 2020. The allegations against applicant is that certain money was transferred into her account through her husband which may be involved in commission of offence. During the investigation against her husband, the applicant and her parents upon request of the Investigating Officer, has co-operated with investigation. The bank account of the applicant is frozen by the Investigating Officer. The father of the applicant has deposited amount from his funds with the investigating agency. There is no material to indicate that the applicant is privy to professional working of her husband at the time of offence. The registration of second FIR is contrary to law. No charge sheet is filed

in the first FIR. Charge sheet has been filed against husband of applicant, father-in-law of the applicant in CR No.454 of 2019 (CR No.71/2019). While granting bail to Vinit Gupta (accused no.1) in the second FIR, the Court had observed that there are two FIRs against the accused pertaining to same facts and allegations. Charge sheet is filed and the Investigating Officer has not explained the ground for registration of second FIR and nothing came on record to show why subsequent FIR was registered on the same facts of the case. The applicant is not named in CR No.591 of 2018. There is no allegation against her in the second FIR registered vide CR No.454 of 2019. The applicant has not been assigned any role in the alleged transaction. The applicant got married to accused no.1 Vinit Gupta in 2017. Vinit Gupta had no authority to approve invoices. The authority was with Mukesh Rohila and other superiors within the Accounts Department. The complainant had settled with the transport company impleaded as accused in CR No.591 of 2018. No persons connected with the transport company impleaded as an accused in CR No.454 of 2019, has been arrested. The main accused has been granted bail. Vimlesh Dwivedi against whom it was alleged that funds worth Rs.64 lakhs were transferred, was arrested in CR No.454 of 2019 and he has been granted bail. The applicant has been filing her income tax returns since last ten years. There is no evidence to support the allegation that transactions worth Rs.2 crores had taken place in the account of applicant. Rs.42,42,000/- is not from transport company or Rashi Peripherals Pvt.Ltd. Rs.3,22,900/- was fixed deposit of accused no.1. Amount was transferred after maturity. Source of income is yarn commission. Rs.34,00,000/- is multiple fix deposit of accused no.1 prior to marriage. Amount transferred after maturity. Rs.5,20,000/- is salary of accused no.1.

6. Learned APP submitted that custodial interrogation of the applicant is necessary. The case relates to misappropriation of huge amount. There were transaction of Rs.2 crores from the account of applicant. She has not co-operated with investigation. The amounts are deposited by the transporter company in the account of applicant. The applicant has aided accused no.1 Vinit Gupta in diverting funds of the complainant company. False transport bills were prepared by accused no.1. Investigation is in progress. Huge amount is misappropriated. Learned APP relied upon affidavit-in-reply filed by the Investigating Officer. In the affidavit-in-reply it is stated that prime accused Vinit Gupta is husband of applicant. He was working as Accounts Executive with complainant company M/s.Rashi Peripherals Pvt.Ltd. His job was to accept orders in the godown and dispatch the goods as per order by entering invoice number, docket number etc. There are 7 to 8 transport companies. It was noticed that transport expenses exceeded the selling price and complainant conducted enquiry. Huge amount was misappropriated by the accused no.1 who is husband of applicant. He left the job. He was an employee working as Accountant Executive in Rashi Peripherals Pvt.Ltd and his job was to accept orders in the godown and dispatch the goods. SRC Express Cargo is a regular transport agency carrying goods of complainant company. In September-2018 it was found that transport expenses exceeded the selling price of the company and therefore complainant was investigating about the same with his staff. Accused no.1 was on leave from 12th September 2018 to 16th September 2018. Hence work was assigned to Devendra Saraf. On perusal of documents Mr.Saraf informed that docket number on chalan of SRC Express Cargo Pvt.Ltd and docket number entered by godown in-charge as per e-mail and bill did not

match for a period between 19th November 2014 to 9th October 2018. These documents were forged. During investigation it transpired that Rs.13,06,51,593/- were misappropriated by accused no.1 in connivance with Narayan Nigam and Rajesh Nigam. Rs.14 lakh were transferred from account of SRC Express to account of applicant. Rs.49,70,000/- was transferred from account of accused no.1 to account of applicant. Huge amounts have been transferred by applicant from her account to other accounts. No explanation is given. The applicant is beneficiary.

7. Learned advocate for intervenor has also opposed the application for anticipatory bail. It is submitted that huge amount is misappropriated by accused no.1. The applicant had aided and abetted him. The applicant could not explain her source of income. The amount was transferred from account of transporters to the account of applicant. The gravity of accusations has to be taken into consideration. The applicant has not co-operated with investigation. There were transactions of huge amounts into the accounts of applicant. Custodial interrogation of applicant is necessary. The applicant has acted in connivance with accused no.1. Learned Sessions Judge has rightly rejected the application for anticipatory bail. Investigation is in progress. The intervenor/complainant has preferred application for cancellation of bail granted to accused no.1 before this Court.

8. The applicant has also tendered affidavit-in-rejoinder. The applicant has contended that the allegations are false. The complainant Navin Agrawal was the Accounts Manager with complainant company. The husband of applicant was an Accounts Assistant. He was at the bottom of chain of command in the

Accounts Department of complainant company and did not possess authority to approve or pass any invoice. He had no authority to release payments to transport companies. The father of applicant had deposited Rs.30,19,741/- from his own funds. The applicant denies that Rs.55.60 lakhs were transferred from the account of Vinit Gupta (accused no.1) to applicant's account. The applicant had filed regular tax returns since last ten years. The allegations are vague. The allegation that accused no.1 had received Rs.50 crores is baseless. Charge sheet does not support said allegation.

9. The applicant is wife of accused no.1 Vinit Gupta. Accused no.1 was working with Rashi Peripherals Pvt.Ltd. The allegation against applicant is that amount has been transferred to her bank account at the instance of accused no.1 from his account and from the accounts of transport companies. The first FIR was registered vide CR No.591 of 2018 on 5th December 2018 with Andheri Police Station. The applicant has preferred this application apprehending arrest in the said FIR. The investigation was taken over by Economic Offences Wing vide CR No.3 of 2019. Apparently no report u/s 173 is filed in this FIR. On identical facts with addition of new transporters as accused, another FIR was registered vide CR No.454 of 2019 with the same Police Station which was subsequently investigated by EOW vide CR No.71 of 2019. The allegations in both the FIR are common.

10. Accused no.1 was arrested in CR No.591 of 2018 on 20th March 2019. He was produced before the Court for remand and remanded to custody. The accused no.1 preferred an application for bail before the Court of learned Additional Chief Metropolitan Magistrate being Bail Application No.80 of 2019. The accused no.1

was granted bail by the order dated 17th May 2019 on executing P.R.bond in the sum of Rs.5,00,000/- with solvent surety of like amount in addition to cash security of Rs.2,00,000/-. During pendency of investigation in CR No.591 of 2018, another FIR was registered vide CR No.454 of 2019 with Andheri Police Station for offences under Sections 406, 407, 408, 420, 465, 456, 468, 471, 120-B of Indian Penal Code on 3rd August 2019. The investigation was then transferred to EOW vide CR No.71 of 2019. The accused no.1 was again arrested on 23rd December 2019. He was granted bail on 6th July 2020.

11. While granting bail to accused no.1 in R No.591 of 2018, it was observed by learned Magistrate that in the present case other accused who had played major role in the offence have settled the matter with the informant and are released on bail. The accused is an employee and was probably acting on the orders of his superiors. The trial may take some time to achieve finality. No purpose will be served by keeping the accused incarcerated indefinitely.

12. The charge sheet filed in second FIR shows that voluminous documents are recovered during the investigation. Charge sheet has been filed against accused no.1, father of accused no.1 Ramesh Gupta. Search was conducted at the residential premises of accused no.1 on 26th December 2019. Nothing incriminating was recovered. Search was conducted at residence of Ramesh Gupta on 19th March 2020. Nothing was recovered. Statement of Suresh Bhojan was recorded on 25th February 2020. He is working with ICICI Bank. He handed over cheques issued by Vimlesh Dwivedi. Production panchanama was recorded on 29th February 2020. Suresh Ramprasad Agrawal stated that some amount was deposited in his

account and account of his daughter Nisha Vinit Gupta from M/s.DNX India Cargo Ltd at the instance of accused no.1. He handed over three cheques of Rs.9,86,238/-, Rs.5,11,941/- and Rs.15,21,562/-. He issued cheques in favour of Senior Inspector of Police, GB, CB. These details were recorded in production panchanama. Statement of Devendra Ghai was recorded on 28th December 2019. He is working with Jaipur Golden Transport as Deputy General Manager. M/s.EXL India Pvt Ltd is sister company of Jaipur Transport. He referred to contract executed with M/s.Rashi Peripherals Pvt.Ltd in 2012. Subsequently contracts were renewed. Vinit Gupta used to follow up with him regarding transportation. M/s.Rashi Peripherals Pvt Ltd had filed Civil Suit at Thane. The accused had deposited cash during the period of offence and transferred funds in the name of his relatives and companies.

13. The accused Ramesh Gupta (father-in-law of the applicant) is arrested on 23rd December 2019 in CR No.454 of 2019 (CR No.71/2019). He is in custody for a period of fourteen months. Vinit Gupta (accused no.1) has been granted bail by the Court of learned Magistrate in both cases. Those orders are under challenge before this Court at the instance of original complainant. The said applications were also heard along with this application for bail. The said applications are disposed of by separate orders. The FIR was registered on 5th December 2018 vide CR No.591 of 2018. The said FIR was registered against Vinit Gupta, Niranjan Nigam and Rajesh Nigam- proprietors of M/s.SRC Express. While investigation in respect to the said FIR was in progress, the second FIR was registered against Vinit Gupta, M/s.EXL India Pvt.Ltd. and M/s.DNX Cargo India Ltd vide CR No.454 of 2019 with Andheri Police Station which is investigating by EOW vide CR No.71 of 2019. The accused

Ramesh Gupta was arrested in the second FIR. It appears that no charge sheet was filed in the first FIR. The prosecution contends that further investigation in accordance with Section 173(8) of Cr.P.C is in progress. It is alleged that huge amount is involved in these transactions. Vinit Gupta is the prime accused. The case of the prosecution is that the accused Ramesh Gupta is allegedly involved in diverting funds of misappropriated amounts to the bank accounts of applicant and his relatives. Accused no.1 was working as an Accounts Executive. Considering the entire process involved in delivery of goods, issuance of lorry receipts, verification, submitting bills to concerned department and disbursing payment, it is difficult to accept that it can be engineered by single person. No investigation appears to have been carried out qua the role of higher officers working in complainant's company. It appears that even they were apprehending arrest and had approached the Court for anticipatory bail. The prosecution has not come out with the facts disclosing involvement of any other person. One of the contention of learned counsel for applicant is that two FIRs are registered in respect to same transactions. In the first FIR and the second FIR, the difference is of transport companies with whom the co-accused Vinit Gupta had allegedly conspired and connived in misappropriation of the funds. Vinit Gupta was arrested in first FIR and granted bail. He was again arrested in second FIR and granted bail. Genesis of both FIRs is same. The allegations in the FIR is that Vinit Gupta had conspired with said transporters. Ultimately the complainant had resolved their dispute with M/s.SRC Express. That may be the reason for not proceeding with the investigation in respect of said FIR. Apparently the arrested accused in CR No.591 of 2018 (CR No.3/2019) were granted bail. The transporters with whom accused Vinit Gupta had conspired are on bail. The second FIR was registered on 3rd August 2019. The investigation into both the FIRs was taken over by EOW, Crime Branch vide CR No.3/2019 and CR No.71/2019. Suit was filed by M/s.EXL India Pvt.Ltd.. on 29th July 2019 before the District Court, at Thane qua recovery of their dues. They were impleaded as accused in CR No.454 of 2019, which was registered on 3rd August 2019. Undisputedly the applicant is not concerned with fabrication of said documents.

14. Considering the facts as stated above, custodial interrogation of the applicant is not necessary. Hence, I pass following order :

ORDER

(i) Anticipatory Bail Application No.754 of 2021 is allowed;

(ii) In the event of arrest of applicant in connection with CR No.591 of 2018 registered with Andheri Police Station, Mumbai (investigated by Economic Offences Wing, Mumbai vide C.R.No.3 of 2019), the applicant be released on bail on furnishing P.R bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall attend the investigating officer as and when called for;

(iv) Anticipatory Bail Application is disposed of;

(v) Interim Application No.2937 of 2020 is disposed of accordingly.

(PRAKASH D. NAIK, J.)

MST