

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2152 OF 2021**

Dr.Manish N. Tardeja	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

**WITH
INTERIM APPLICATION NO.1626 OF 2021**

Mr.Vishal Anil Dhomse	..	Intervenor
<u>In the Matter Between :-</u>		
Dr.Manish N. Tardeja	..	Applicant
Versus		
The State of Maharashtra	..	Respondent

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Mr.Premalal Krishnan with Mr.Preston Dias and Mr.Sameer Reshamwala i/b Pan India Legal Services LLP for the Applicant.

Mr.Ameya Dange for the Intervenor.

Mr.A.R.Kapadnis, APP for the State.

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CORAM : BHARATI DANGRE, J.

RESERVED ON	: 13th AUGUST, 2021
PRONOUNCED ON	: 26th AUGUST, 2021

ORDER :-

1. The applicant, a Doctor by profession, seeks his release on bail in connection with C.R.No.454 of 2021 registered with Wakad Police Station, Pimpri Chinchwad, Pune on 25/05/2021, in the wake of his arrest on the very same day and since then he is incarcerated. The subject C.R. invokes the offences punishable under Sections 406, 420, 467, 468, 471 and 120-B of the Indian Penal Code (for short, “**IPC**”) and came to be registered on a complaint filed by one Vishal Anil Dhomse, who has filed an application for intervention vide I.A.No.1626 of 2021.

2. I have heard Mr. Premlal Krishnan, learned counsel appearing for the applicant, Mr.Ameya Dange, learned counsel appearing for the intervenor and Mr.Kapadnis, learned APP for the State.

3. The crime which implicates the present applicant has a history, according to the learned counsel for the applicant and it is argued that in order to revenge the loss sustained in the partnership business, he has been falsely implicated. Prior to this, there are different CRs, which are registered by the same complainant and his associates and the details of which are encapsulated as under :

Sr.No.	FIR	Sections and Police Station	Complainant
1.	225 of 2020 dated 06/09/2020	406, 420, 465, 467, 468, 471 read with 34 of IPC at NRI Coastal Road P.S.Navi Mumbai	For alleged Misappropriation of firms property, Allegedly taking loan by forging signatures
2.	162 of 2020 dated 26/09/2020	452, 354, 504, 506 and 509 of IPC at CBD Belapur P.S., Navi Mumbai	Filed by mother of Vishal Dhomse to counter FIR 161 of 2020 filed by the applicant
3.	727 of 2020 dated 04/12/2020	406, 420, 465, 467, 468, 471 read with 34 of IPC at Pimpri Police Station, Pune	Identical facts of FIR No.225 of 2020 for allegedly causing devaluation of CIBIL credit rating.
4.	130 of 2021 dated 18/02/2021	415, 417 and 420 read with 34 of IPC at Pimpri Police Station, Pune	By one Director of Ruby Ailcare Services in which the de-facto Complainant is also a Director- For allegedly selling diagnostic machines for Rs.5 lacs to complainant, though machines are hypothecated.

5.	454 of 2021 dated 25/05/2021 (Present C.R.)	406, 420, 467, 468, 471 and 120-B of IPC at Wakad Police Station. Pimpri- Chinchwad, Pune	For allegedly manipulating the ROC records of the Company Way 2 Health Diagnostics Pvt. Ltd. in the year 2017
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4. The C.R. in which the applicant seeks his release on bail allege that the complainant is acquainted with the applicant since last 18 years and in the year 2014, 'Way 2 Health Diagnostic Company Private Limited' was floated in which the applicant, his wife alongwith the complainant and other persons were appointed as Directors. It is alleged that the applicant was handling day-to-day affairs of the said company and he was responsible for all bank related transactions. On 25/08/2017, the complainant stood retired from the company, but continue to hold shares in the company alongwith his wife since the final account with the said company was not settled and was pending.

It is alleged by the complainant that in the month of April 2021, he met with one of the retired Directors of the said company, namely, Dr.Siddharth Pishettiwar. When he confronted the complainant with the documents uploaded by

the company with the Registrar of Companies ("**ROC**"), the complainant got a feeling that the documents are not appropriate. On careful perusal of the documents, it was revealed to him that the said documents are false and fraudulent. He noticed that Hari Dudhani, who is the friend of the applicant and his wife and who was not the Director or Chartered Accountant of the company, had taken control of the transactions and by wrongly and illegally providing his personal mobile number and email ID for the company, he has been uploading the documents on the website of ROC in an unauthorised manner. On careful perusal of the documents, the complainant learnt that they are very important documents and Hari Dudhani has no right to upload the same, but in collusion with the present applicant and his wife, he has uploaded the documents. The allegation is that though Hari Dudhani was not holding any post in the company nor having any financial transaction with company, he alongwith his wife and relative Nidhi Manik is mentioned as shareholder of the company.

Further allegation is that in the Annual General Meeting ("**AGM**") of the company held on 30/09/2017, when the complainant was not the Director and not present for the said

meeting, a bogus resolution was passed and the shares came to be allotted to Mr.Hari Dudhani. The allegation is that from 27/09/2017 to 02/10/2017, the complainant was not in India and despite this, his presence is marked in the proceedings of the company and the documents are uploaded on-line where it is reflected that he has consented to the said transaction. It is also alleged that Hari Dudhani in connivance with the applicant has varied the shareholdings of the shareholders for which the complainant has never consented. From the ROC documents, it was reflected that the shares of Rs.59,40,000/- were given to Hari Dudhani, Asha Multani, Nidhi Manik and Manya Dudhani, but no amount has come from these persons on account of purchase of shares. This is alleged to have caused irreparable loss to the company. It is further alleged that after making the said persons shareholders of the company, they obtained personal loan in the name of the company, thereby increasing the liability of the company. It is therefore alleged that the applicant, his wife Rachna Tardeja and Hari Dudhani have cheated the company for their own financial benefits.

The allegation is also levelled to the effect that the authroised Auditor of the company, namely, Mr.N.P.Rajput had

given consent for the illegal work and Hari Dudhani has cheated the Government by uploading the false and bogus documents in the ROC. It is alleged that the complainant and his wife, did not receive an amount of Rs.1 crore due to them on account of these financial misdeeds attributed to the accused persons. This allegation led to the FIR in the Wakad Police Station, Pimpri Chinchwad, Pune.

5. On hearing the complainant through learned counsel Mr.Dange, few facts emerge on record. The complainant and the applicant alongwith few other doctors were in business ventures, being run in the names of 'Way 2 Health Diagnostic Centre' and 'Way 2 Health Pvt. Ltd.'. Hari Dudhani was associated with the company, once upon a time, as a Chartered Accounts and has rendered his professional services to the company, however, refused to act as an authorised officer, but he assisted the company for filing the returns, TDS returns, uploading the documents on website of ROC etc.. The amount came to be transferred to the account of Hari Dudhani and through him, the amount was deposited in Government exchequer. It is the submission of the learned counsel for the applicant that a copy of the detailed statement showing inward and outward remittance of money from the said company is

submitted to the Investigating Office. Further submission on part of the applicant is that the professional fee was due to Hari Dudhani and the payment accrued to a level where all the shareholders decided to settle his dues by issuing him shares and the dues payable to him are reflected in the balance-sheet of the company for the period 2016-2017 filed with the Income Tax Authorities and the ROC. In the meeting held on 24/03/2017, the company passed a resolution to allot 5,94,000 shares of Rs.10/- each amounting to Rs.59,40,000/- in favour of the four persons, which included Hari Dudhani, Asha Multani, Nidhi Manik and Manya Dudhani. The copy of the resolution passed in AGM dated 24/03/2017 is placed on record, which reads as under :-

“RESOLVED THAT pursuant to Section 62(3) of the Companies Act, 2013 and subsequent to the receipt of the consent received from following persons for conversion of Current/Outstanding Liabilities into equity shares, the Company do and hereby issue/allot 5,94,000 (nos.) Equity Shares of Rs.10/- each at par amounting to Rs.59,40,000 of the Company to following persons :

Sr.No.	Name of Allottee	Number of shares allotted	Total amount paid including premium, if any
1	Mr.Hari Dudani	2,92,700	29,27,000
2	Ms.Asha Multani	1,23,750	12,37,500
3	Ms.Nidhi Manik	1,23,750	12,37,500
4	Ms.Manya Dudani	53,800	5,38,000
	Total	5,94,000	59,40,000

RESOLVED FURTHER THAT any one of the Directors of the Company be and is hereby authorised to file the prescribed return of allotment with the Registrar of Companies.”

6. The crux of the complaint is to the effect that the documents of shareholding were uploaded by Hari Dudani and these documents are alleged to be bogus. When the learned APP was asked to produce the documents, he placed on record a document which is form of “Annual Return” (Form No.MGT-7) filed as compliance to sub-section (1) of Section 92 of the Companies Act, 2013 and sub-rule (1) of Rule 11 of the Companies (Management and Administration) Rules, 2014. Pertinent to note that by virtue of Section 92 of the Companies Act, 2013, it is mandatory for every company to prepare a return in the prescribed form containing the particulars as they stood on the close of the financial year regarding various details, including shares, debentures and other securities and its shareholding pattern, its members alongwith the changes, if any, its promoters, Directors, key managerial personnel alongwith changes therein, meeting of the members, remuneration of directors etc.. The said return shall be signed by a director and the company secretary, or where there is no company secretary, by a company secretary in practice. By virtue of sub-section (3) of Section 92, it is imperative for

every company to place copy of the annual return on the website of the company, if any, and the web-link of such annual return shall be disclosed in the Board's report.

In furtherance of the said provision, the annual return is filed by 'Way 2 Health Diagnostics'. Pertinent to note that the e-mail ID of the company is given as z.aabcw5192@dudani.org. The type of the company is described as 'Private Company' and the category of the company is described as 'Company limited by shares'. The annual return in the prescribed format contains the necessary details of the share capital, including the Equity share capital and Preference share capital, shareholding, details of Shares/Debentures, Turnover of the company and the shareholding pattern. The details of the promoters, members, debenture holders as well as the details of the directors, key managerial personnel are also indicated. The complainant himself is shown as a Director holding 27,500 equity shares. The attendance of the directors in various meetings reflecting the frequency of conduct of the meeting is also included.

The said Annual Return placed on record by the learned APP, is signed on 15/04/2017 and there is a declaration at the end of the Return that the Director signing the declaration is

authorised by the Board of Directors of the company to sign this form and declare that all the requirements of the Companies Act, 2013 and the rules made thereunder have been complied with. At the end of the declaration, the following endorsement is to be found :-

“To be digitally signed by

Director

Manish
Nandlal
Tardeja

DIN of the director

02236627

To be digitally signed by

AKANKSHA
SUNNY
BILANEY

●

Company Secretary

●

Company Secretary
in practice

Membership number

32588

Certificate of practice number 11975”

The said document is thus uploaded by the signature of the applicant, who undisputedly continue to be the Director of the company and merely because the e-mail ID of Hari Dudhani has been mentioned as the e-mail ID of the company in column No.1(c) does not indicate that the document is uploaded by Hari Dudhani, who admittedly is not a Director. The document of Annual Return is duly uploaded by the Director of the company i.e. the applicant.

7. Learned APP was asked to produce the document or the information which is alleged to be fraudulently uploaded on the website of the ROC, but he is unable to produce the said document as his answer is, all original documents are with the NCLT where the proceedings qua the company are pending. Whatever documents the learned APP has placed on record, which are uploaded on the website of the ROC are the various forms prescribed under the Companies Act like Return of Allotment (Form No.PAS-3), Information to the Registrar by the company for appointment of auditor (Form No.ADT-1), form for filing financial statement and other documents with the Registrar (Form No.AOC-4), which are all digitally signed by the applicant. Learned APP is not able to point out which is the document or the information which is uploaded under the signature of Hari Dudhani. Thus, the allegation that wrong information has been uploaded with the ROC by Hari Dudhani, who has no connection with the company, *prima facie* does not appear to be correct.

8. It is pertinent to note that 'Way 2 Health Diagnostic Company Private Limited' has filed petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (for short, "**IBC**") before the NCLT, Mumbai Bench and the said petition is

admitted and there is a moratorium imposed under Section 14 of IBC by an order dated by 20/12/2019.

9. Pertinent to note that the complainant has already lodged an FIR with the NRI Coastal Road Police Station alleging that the applicant had obtained loan from various banks, including PNB in the name of the company between 2014-2018 without the complainant being made aware about the said transaction and his signatures were forged for the purpose of obtaining loan. In the said CR, the applicant was arrested and he has been released on bail on 24/05/2021. Before he could walk out on bail, the subject CR was registered on 25/05/2021 and the allegation is that this CR is a concerted effort to see that the applicant do not avail the benefit of the order passed by the learned Magistrate in the CR registered with NRI Police Station.

10. Co-accused, Dr.Rachna M. Tardeja, wife of the applicant, had approached this Court seeking protection in the event of her arrest in the present CR vide Anticipatory Bail Application No. 1415 of 2021 and this Court on 28/06/2021, had admitted her to protection by recording that the grievance about the allotment of shares and affairs of the company not being in order is a matter which can be decided by NCLT rather than by

any investigating agency.

By recording that there was no specific allegation against Dr. Rachna Tardeja as she did not participate in the day-to-day affairs of the company, she was admitted to pre arrest bail.

11. As far as the present applicant is concerned, the allegations levelled against him are about fraudulently allotting shares by passing the false and bogus resolution, fabricating documents and uploadng them on the ROC. Since the prosecution failed to point out as to which documents are uploaded on the website of ROC, the allegations taken at its face value, are not substantiated. As far as the shareholding is concerned, the learned Single Judge of this Court, while deciding bail application of Dr. Rachna Tardeja has observed that it is a matter to be decided by NCLT.

12. In wake of these circumstances, further incarceration of the applicant becomes unnecessary since the complainant himself has not substantiated his allegation and merely because he makes the allegations, which are not verified by the investigating agency by collecting any document to that effect, shall not justify the detention of the applicant, without any rhyme or reason. He is, therefore, entitled to be released on bail, subject to the stipulation that he will render all his

assistance in the investigation and assist the Investigating Officer in bringing the true facts qua the company established by him to surface. Hence the following order.

: ORDER :

- (a) The application is allowed.
- (b) Applicant - Dr.Manish N. Tardeja shall be released on bail in C.R.No.454 of 2021 registered with Wakad Police Station, Pimpri Chinchwad, Pune on furnishing P.R. bond to the extent of Rs.50,000/- with one or two sureties of the like amount.
- (c) The applicant shall make himself available as and when required by the Investigating Officer.
- (d) The applicant shall not leave India without prior permission of the Court, which is competent to frame the charge against him.
- (e) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and shall not tamper with the prosecution evidence.

13. In view of the disposal of the Bail Application, Interim Application No.1626 of 2021 is also disposed of.

(SMT. BHARATI DANGRE, J.)