IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.2235 OF 2021

Hari Dudhani .. Applicant

Versus

The State of Maharashtra .. Respondent

WITH

INTERIM APPLICATION NO.1871 OF 2021

Mr.Vishal Anil Dhomse .. Intervenor

In the Matter Between :-

Hari Dudhani .. Applicant

Versus

The State of Maharashtra .. Respondent

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Mr.Tapan Thatte with Mr.Amar Paril, Mr.Arvind Aswani and Mr.Shantanu Adkar for the Applicant.

Mr.Rajeev Patil, Senior Advocate with Mr.Kiran Varma and Ms.Sonal Parab i/b Rajeev Sawant & Associates 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 is arraigned as an accused in C.R.No.454 of 2021 registered with Wakad Police Station, Pimpri Chinchwad, Pune and came to be arrested on 24/05/2021. 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.1871 of 2021.

2. I have heard Mr.Tapan Thatte, learned counsel appearing for the applicant, Mr.Rajeev Patil, learned senior counsel appearing for the intervenor and Mr.Kapadnis, learned APP for the State.

3. The allegations in the subject C.R. are in connection with the management of 'Way 2 Health Diagnostic Pvt. Ltd.'. Briefly the allegations in the complaint can be encapsulated as under :-

(a) That the applicant and the Director of the company Dr.Manish Tardeja were managing the affairs of the company, without any lawful authority;

(b) The applicant uploaded the documents with ROC, without any lawful authority;

(c) The applicant and others recorded false minutes of the AGM of the company;

(d) The applicant and others fraudulently altered the shareholding pattern of the company

4. The submission of the learned counsel in support of the applicant is that C.R.No.225 of 2020 came to be registered with NRI Sagari Police Station on 06/09/2020, invoking Sections 406, 420, 465, 467, 468, 471 read with Section 34 of IPC against the present applicant alongwith other accused persons. In the said C.R., the applicant moved an application for anticipatory bail before the Sessions Court at Thane. The prosecution filed its report and the Sessions Court at Thane was pleased to allow his anticipatory bail application. But, immediately thereafter, the present C.R. came to be registered with Wakad Police Station and the submission of the learned counsel is to the effect that the first C.R. registered with NRI Sagari Police Station itself discloses the existence of larger controversy against the applicant and the other accused persons and the second C.R. is based on the same acts, which are alleged to have been committed in pursuance of larger controversy.

5. Learned counsel for the applicant has vehemently argued that in wake of the earlier C.R. (C.R.No.225 of 2020

registered with NRI Sagari Police Station) being registered, the present C.R. is not maintainable and based on the settled legal position where the acts are committed in course of same transaction, multiple FIRs cannot be registered and the accused shall not be subjected to repeated investigation. Without going into the maintainability of the present C.R., I prefer to look into the nature of accusations faced by the applicant and as to whether he has made out a case for being released on bail.

6. The C.R. in which the applicant seeks his release on bail allege that the complainant is acquainted with one Dr.Manish Tardeja since last 18 years and in the year 2014, 'Way 2 Health Diagnostic Company Private Limited' was floated, in which Dr.Tardeja, his wife alongwith the complainant and other persons were appointed as Directors. It is alleged that Dr.Tardeja 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 the applicant, who is the friend of Dr.Tardeja 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 e-mail ID of 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 the applicant has no right to upload the same, but in collusion with Dr.Tardeja and his wife, he has uploaded the documents. The allegation is that though the applicant was not holding any post in the company nor having any financial transaction with the company, he alongwith his wife and relative Nidhi Manik is mentioned as shareholders 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 the applicant. 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 the applicant in connivance with Dr.Tardeja has varied the shareholdings of the shareholders for which the complainant has never consented. From the ROC documents, it was reflected that shares of Rs.59,40,000/- were given to the applicant, 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 Dr.Tardeja, his wife Rachna Tardeja and the applicant 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 the applicant has cheated the Government by uploading the false and bogus documents in the website of 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.

7. On hearing the complainant through learned senior counsel Mr.Rajeev Chavan, few facts emerge on record. The complainant and Dr.Tardeja 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.'. The applicant was associated with the company, once upon a time, as a Chartered Account 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 the applicant 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 Officer. Further submission on part of the applicant is that the professional fee was due to the applicant 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 of the company, a resolution was passed to allot 5,94,000 shares of Rs.10/- each amounting to Rs.59,40,000/- in favour of the four persons, which included the applicant, 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."

8. The crux of the complaint is to the effect that the documents of shareholding were uploaded by the applicant 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 with the signature of Dr.Tardeja, who undisputedly continue to be the Director of the company and merely because the e-mail ID of the applicant 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 the applicant, who admittedly is not a Director. The document of

Annual Return is duly uploaded by the Director of the company i.e. Dr.Tardeja.

9. 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 Dr.Tardeja. Learned APP is not able to point out which is the document or the information which is uploaded under the signature of the applicant. Thus, the allegation that wrong information has been uploaded with the ROC by the applicant, who has no connection with the company, *prima facie* does not appear to be correct.

10. 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.

11. Co-accused, Dr.Rachna M. Tardeja, wife of Dr.Manish Tardeja, 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, has 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.

12 As far as the present applicant is concerned, the accusation levelled against him is that some shares were allotted to him, without following the due procedure. Admittedly, it is the decision of the Board of Directors and the applicant is mere beneficiary and he cannot be made to face the said charge, which is being looked into by the NCLT. As far

as the documents belonging to the company being uploaded on the website of ROC is concerned, it is only the e-mail ID of the applicant is used, but all the doucments are signed by the authorised person of the company being the Director i.e. accused No.1, Dr.Tardeja. Any wrongful loss has not been attributed to the present applicant by the complainant and as such, further incarceration of the applicant is unwarranted as the complainant himself has failed to substantiate his allegation and the learned APP is unable to show what are the documents, which are uploaded by the applicant on the website of ROC. The applicant is, therefore, entitled to be released on bail. Hence, the following order.

: **ORDER** :

(a) The application is allowed.

(b) Applicant – Hari Dudhani 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.1871 of 2021 is also disposed of.

(SMT. BHARATI DANGRE, J.)