IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1669 OF 2021

Bhavesh Atul Modi .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Santosh M. Deshpande for Applicant.
Smt. Anamika Malhotra, APP for State/Respondent.
Mr. Avinash M. Reddy for Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 19th JULY, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. 32 of 2021 registered at Amboli Police Station, on 07/02/2021, under sections 408 and 420 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Santosh Deshpande, learned counsel for the applicant, Smt. Anamika Malhotra, learned APP for the State and Shri. Avinash Reddy, learned counsel for the Intervenor.

3. The First Information Report (for short 'F.I.R.) is lodged by one Sanjay Dubey. He has stated that, he and his friend Harish Parmar had started a company by the name 'City Credit Management, LLP Trading as single debt'. The company was in the business as financial advisors and consultancy. The informant's associate Harish had formed another company by the name 'Yes Loans'. In both these companies the present applicant was appointed as financial advisor. The job entrusted to the present applicant was to act as a middle man between the customer and concerned bank from which that customer had obtained loan. The job involved entering into negotiations to arrive at some acceptable amount for repaying the loan. For this procedure, the customer was supposed to deposit the amount, which was decided, in the account of the company held with ICICI bank. According to their arrangement the money was to be finally deposited in the concerned bank of the customer for obtaining final loan settlement letter. For that purpose, the applicant used to show that amount in his personal account. This arrangement was going on for procedural convenience. The informant trusted the applicant.

During the course of business, the informant received complaints from many of their customers making grievance that, they had not received final loan settlement letters, inspite of making payments. When the informant inquired with the applicant, he did not give satisfactory answers. Further inquiries revealed that the applicant had used Rs.52,25,359/- transferred to his account between the period from March 2020 to October 2020. He had not deposited that amount in the respective banks. There are further allegations in respect of Yes Loans company also. He had similarly utilized Rs.12,68,100/- of that company for his own benefit. On this basis the F.I.R. was lodged.

4. Learned counsel for the applicant submitted that, there is delay in lodging F.I.R. The alleged transactions are between March 2020 to October 2020 and the F.I.R. is lodged on 07/02/2021. He submitted that, there is valid defence available with the applicant as he had paid most of this amount to one Ketan Shah on the directions of the Directors of company themselves. He submitted that, there is no cash withdrawal as alleged by the

investigating agency. He submitted that, sections 408 and 420 of IPC are triable by the Magistrate and none of these sections is attracted in the facts of this case. The case is based on documentary evidence. There is nothing to be recovered from the applicant and, therefore, custodial interrogation of the applicant is not necessary. He submitted that, the company has evaded taxes and the applicant is made a scapegoat.

5. Learned APP opposed this application. She submitted that the statement of one Paras Gada shows that the applicant himself had accepted his guilt by giving his statement to the company. Learned APP, on instruction of the investigating officer, stated that, there were withdrawal of cash from the applicant's account which is around Rs.12 lakhs. This amount has remained unaccounted for. She further submitted that the fact remains that the customer's money has not reached the respective banks and loan settlement letters were not given to the customers, who had paid the amount of settlement.

6. I have considered these submissions. As far as contention regarding delay in lodging of F.I.R. is concerned, the company came to know about this fraud only after the customers started making grievance. Therefore, at the time when the fraud was actually played, the company would not have known about the acts committed by the applicant. In this case, the amounts of the customers were deposited in the applicant's personal account. It was used by him. Those amounts were not paid to the respective banks though the applicant knew that the money was to be deposited in the banks on behalf of the customers. The customers were induced into parting with their money, but settlement letters were not given to them. The applicant himself was entrusted with the job of conducting negotiation between the bank and the customers. Therefore, applicant's role is more than obvious. Since the customers have lost their money, it is necessary for the investigating agency to have an opportunity of custodial interrogation of the applicant. The money which is lost has to be found and the money trail has to be traced. For all this purpose, custodial interrogation of the applicant is necessary. If there is any

evasion of taxes by the informant's company that is an independent issue which the respective authorities can tackle. By shifting blame on the applicant it is not going to benefit the company. In this view of the matter, custodial interrogation of the applicant is necessary. The applicant has not made out a case for anticipatory bail.

7. The application is rejected.

8. At this stage, learned counsel for the applicant prayed for stay of this order for a period of two weeks. However, considering that the fraud has come to the light after considerable time, immediate custodial interrogation of the applicant is necessary. Therefore, I am not granting stay to this order. The prayer is rejected.

(SARANG V. KOTWAL, J.)