IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

[1] ANTICIPATORY BAIL APPLICATION NO.1665 OF 2021

Alpa Jatin Shah .... Applicant
Versus
The State of Maharashtra .... Respondent

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WITH
[2] ANTICIPATORY BAIL APPLICATION NO.1670 OF 2021

Manisha Jayesh Joshi .... Applicant
Versus
The State of Maharashtra .... Respondent

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WITH
[3] ANTICIPATORY BAIL APPLICATION NO.1674 OF 2021

Suresh Champalal Jain .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Devendra Chauhan, Advocate a/w. Filji Frederick, Sumit Bhodalkar i/b. FF & Associates, for the Applicants.
Mr. Niranjan Mundargi, Advocate a/w. Mithilesh Mishra, for the Intervenor.
Mr. Ameet A. Palkar, APP, for the State in ABA/1665/2021.
Smt. Anamika Malhotra, APP, for the State in ABA/1670/2021.
Smt. J.S. Lohokare, APP, for the State in ABA/1674/2021.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th JULY, 2021
[Through Video Conferencing]

P.C. :

1. All these applications are decided by this common order because they arise out of the same offence and same investigation. For the sake of convenience, the applicants are referred to by their names.

2. The applicants are seeking anticipatory bail in connection with C.R.No.320/2020 dated 19.9.2020 registered at Worli Police Station, Mumbai under sections 409, 477-A, 465, 467, 468, 471 read with 34 of the Indian Penal Code.

3. Heard Shri Devendra Chauhan, learned counsel for the applicants, Shri Niranjan Mundargi, learned counsel for the Intervenor, Shri Ameet Palkar, learned APP for the State in ABA/1665/2021, Smt. Anamika Malhotra, learned APP for the State in ABA/1670/2021 and Smt. J.S. Lohokare, learned APP for the State in ABA/1674/2021.

4. The FIR in this case is lodged by one Prashant Bhansali. He was working with M/s. Mehta Equities Limited (for short, 'the Company') since October, 2001 and since 2002 he was appointed as Director in the Company. The Company was registered with SEBI having registered office at Worli, Mumbai. It has its account with the HDFC Bank, Fort Branch, Mumbai. The Company was using this particular account for dealing with the clients. In the Company, the client himself or the sub-broker could transact in shares through trading account, d-mat account or both of these accounts. The Company was thus a broker registered with SEBI. For working with the company as sub-broker, that person had to register with Stock Exchange and only then he could act as a sub-broker with the Company. The Company was using LD Software developed by Apex Softsell Private Limited. All the entries were made through this software. The Company had given user ID and password to their employees and they could use them as per the powers conferred upon them by the Company. One of them was Vikram Kabra.

5. In June, 2020, the Company came to know that there was certain manipulation in the account of the Company and there was misappropriation of huge amounts from May, 2015 to December, 2019. The FIR gives a list of their clients and the misappropriated amount against their names. In the chart mentioned in the FIR it is mentioned that the misappropriated amount against the applicant Manisha Joshi was Rs.38,95,295/- and against Alpa Jain it was Rs.40,43,941/-. There was mention of other clients also. Their significance will be mentioned hereinafter. The FIR goes on to mention as to how the false credit entries were made by using names of some of these clients.

6. As far as the applicant–Suresh Jain is concerned, the allegations are that Vikram Kabra had repaid him Rs.11,33,316.26 by way of commission though he was not registered as a sub-broker with SEBI. The applicant Suresh is father of other two applicants. There are allegations that some amount was paid to Manisha, Alpa and others through cheques. The FIR goes on to mention that the company called

Vikram Kabra for explanation. He came to the Company on 6.7.2020 and accepted that he had cheated the Company with the help of these applicants. He represented that he would compensate for the loss suffered by the Company. The FIR mentions that the Company had suffered losses to the tune of Rs.3,57,08,037.57 and the Company had lost more than Rs.1,58,00,000/- because of this illegal trading due to difference in price of the shares at different times. On this basis, the FIR is lodged.

7. Learned counsel for the applicants submitted that the applicants had opened d-mat account with the company. Outer limit is fixed for such transactions in these accounts. Trading in those accounts would not amount to any criminal liability.

8. Learned counsel relied on the explanation given by Manisha and Alpa in this connection. He submitted that both Manisha and Alpa had permitted use of their trading accounts with the Company. This was done at the request of the Directors of the Company. It was told to these applicants that

the losses suffered in those transactions would be compensated by the Company itself. Though these two Applicants i.e. Manisha and Alpa were initially against this but, they allowed those accounts to be operated by the Company. On a few occasions they had to pay the trading losses though as per the representation made by the Company they were not supposed to compensate for those losses.

9. Learned counsel for the applicants submitted that thus both these applicants themselves are the victims and they are not the offenders.

10. As far as the applicant Suresh Jain is concerned, learned counsel for the applicant Suresh Jain submitted that the act alleged against the applicant Suresh would at the most amount to violation of the Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations, 1992, and in particular violation of Regulation No.26(xiv) for acting as unregistered sub-broker and accepting commission as a sub-broker. He submitted that violation of this particular regulation, at the highest, incurs penalty under Section 15HB

of SEBI Act, 1992 and, therefore, no separate offence is made out against him. He submitted that even as per the allegations, at the highest, the applicant Suresh is liable to pay penalty under that particular section under the Securities and Exchange Board of India Act, 1992. Therefore, his custodial interrogation is not necessary.

11. Learned APPs produced copies of the say of the investigating agency dated 19.7.2021 in respect of these applicants, which are taken on record and marked “X”, “X1” & “X2” respectively. According to the prosecution, the *modus operandi* was as follows :

. As mentioned earlier, the financial dealings and transactions were conducted through the Company’s account held with HDFC Bank, Fort Branch. By using User ID and Password, the main accused Vikram Kabra used to show false credit entries with the Company. Therefore, against those entries the Company used to release that amount for purchasing shares for the clients. For that purpose, D-mat accounts of the applicants Manisha and Alpa, their servants and other associates were used. When those shares were sold and the amount was received in the transaction of sale of those shares, the amounts were diverted to the bank accounts of all these clients of the Company. Thereafter those applicants used to withdraw those amounts and thus the Company was put to losses on the basis of false entries. That is how the offence was committed.

12. The police 'say' mentions that, during investigation, they had recorded statements of other account holders with the company, namely, Kamini Charpe, Bhavika Rathod, Rutika Kangne, Shobhana Soni, Kirit Shah, Shradha Ujal, Neha Kokku etc.. Learned APPs relied on their statements to oppose these applications.

13. Shri Niranjan Mundargi endorsed the arguments of learned APPs.

14. I have considered these submissions. The *modus operandi* of this particular offence is described by the learned APPs in their submissions. As far as the statements of the

aforementioned witnesses are concerned, they make interesting reading.

15. Kamini has stated that she was working with the applicant Manisha and she was knowing Vikram Kabra. She has categorically stated that she had not opened any D-mat account with the Company. She was not even aware of that account. She had only given a cancelled cheque and the bank passbook to the applicant Manisha to open an account in Manisha's own firm Campus Securities. Certain correspondence was made by the Company with this witness and her mother, but, since they were in English and she was not well versed with English she used to show those correspondence to the applicant Manisha and the applicant Manisha used to handle all the dealings.

16. The witness Bhavika has stated that the D-mat opening form with the company bears her signature and the documents are also hers. But she had never received any further communication in respect of that account. That particular account was exclusively handled by Vikram and the

applicant Manisha. Significantly, she has further stated that whenever some amount was received from the Company i.e. Mehta Equities in this witness's account held with another bank, she used to withdraw that amount and used to hand that over to the applicant Manisha.

17. The witness Rutika and Shobhana have stated that they were working as maids with the applicant Manisha. She had obtained their signature on certain documents and whenever they received amount in their account they used to withdraw that amount and used to hand it over to Manisha and Vikram.

18. The statement similar to Bhavika and Kamini is given by Shradha and Neha. They also used to hand over the amounts withdrawn from the bank after they had received the same from Mehta Equities.

19. The witness Kirit has stated that the applicant Alpa was residing in the same building and through her introduction he had opened trading account with Mehta

Equities, but, he had not transacted in that account. On one occasion, he had received certain amounts in his personal bank account from Mehta Equities. At that time, this witness had withdrawn that amount from ATM and had handed it over to an employee of Mehta Equities at the behest of the applicant Alpa.

20. All these statements clearly indicate deep involvement of both the applicants Manisha and Alpa. The *modus operandi* is more than clear. D-mat accounts of certain clients were used. These clients were not even aware of the transactions. Those accounts were simply misused by these accused. The money deposited in their accounts was withdrawn and was taken by the accused. At this stage, the investigating agency has sufficient material against Manisha and Alpa warranting their custodial interrogation to find out details of the transactions and to trace the money trail. Therefore, I am not inclined to allow their applications.

21. As far as the applicant Suresh Jain is concerned, there is considerable force in the submissions of learned

counsel for the applicant that accepting the brokerage without being registered with Stock Exchange will attract penalty under Section 15HB of the SEBI Act, 1992.

22. The applicant Suresh Jain is 71 years of age. Therefore, his custodial interrogation in this background may not be strictly necessary. The allegation against him is that he was paid brokerage amount of around Rs.11 Lakhs. It can also entail payment of penalty as far as he is concerned. His custodial interrogation is not necessary. Therefore, I am inclined to protect him only. Hence, the following order :

ORDER

(i) Anticipatory Bail Application Nos.1665/2021 & 1670/2021 in respect of the applicants Alpa and Manisha are rejected.

(ii) As far as Anticipatory Bail Application No.1674/2021 in respect of the applicant Suresh Jain is concerned, it is allowed. In the event of his arrest in connection with C.R.No.320/2020 registered with Worli

Police Station, Mumbai, the applicant is directed to be released on bail on his furnishing PR bond in the sum of Rs.1,00,000/- (Rupees One Lakh Only) with one or two sureties in the like amount.

(ii) Anticipatory Bail Applications stand disposed of accordingly.

(iii) At this stage, learned Counsel for the applicants Alpa and Manisha prays that the applicant Alpa and Manisha be protected by further period of two weeks from today. Considering the nature of allegations, the period of offence and necessity of their custody, I am not inclined to allow that prayer. Therefore, that prayer is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)