IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO.1202 OF 2020

Ramesh Bholaram Gupta, Age 65 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.286 OF 2021

M/s.Rashi Peripherals Pvt.Ltd. Intervenor

In the matter between :

Ramesh Bholaram 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 bail under Section 439 of Code of Criminal Procedure in connection with CR No.454 of 2019 registered with Andheri Police Station for offences under Sections 406, 407, 408, 420, 465, 468, 471, 120-B of Indian Penal Code. The FIR was registered on 3rd August 2019. The investigation was transferred to Economic Offences Wing vide CR No.71 of 2019.

2. The case of prosecution as spelt out in the aforesaid FIR, 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 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 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.

3. Vinit Gupta was arrested on 23rd December 2019. Applicant was arrested on 23rd December 2019. Vimlesh Dwivedi was arrested on 22nd January 2020. Final Report Form indicate none of the Directors or officers from M/s.EXL India Pvt.Ltd or M/s.DNX Cargo India Ltd were arrested. Statements of witnesses were recorded. On completing investigation charge sheet was filed before the Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai against Vinit Gupta, Ramesh Gupta (applicant), Vimlesh Dwivedi, Directors and officers of M/s.DNX Cargo India Pvt.Ltd, Directors and officers of M/s.EXL India Pvt.Ltd.

4. The applicant preferred application for bail before the Court of Sessions. The said application was rejected by order dated 11th February 2020. The applicant preferred another application for bail before the Court of Metropolitan Magistrate. The said application was rejected by order dated 19th May 2020. The applicant preferred application for bail before Sessions Court which has been rejected by order dated 11th August 2020.

5. Prior to registration of aforesaid FIR viz CR No.454 of 2019, the complainant company had lodged FIR with Andheri Police Station vide CR No.591 of 2018 on 5th December 2018 for offences under Sections 406, 408, 420, 465, 467, 468, 470, 471 r/w 34 of Indian Penal Code. Investigation in respect to the said FIR was then transferred to EOW, Crime Branch vide CR No.3 of 2019. The said FIR was registered against Vinit Gupta and owners of M/s.SRC Express Pvt.Ltd Mr.Narayan Nigam and Rajesh Nigam. In this FIR it is alleged 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 Pansavi, 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.

6. Vinit Gupta preferred application for bail before the Court Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in connection with CR No.454 of 2019 (CR No.71/2019). The said application was allowed by order dated 6th July 2020. Vinit Gupta also preferred application for bail in connection with CR No.591 of 2018 (CR No.3/2019). The said application was allowed by order dated 17th May 2019. Vimlesh Dwivedi preferred application for bail in CR No.454 of 2019 (CR No.71/2019). The said application was

allowed by order dated 1st February 2020 passed by learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai.

7. Learned advocate for applicant submitted as under :

(a) The applicant is in custody from 23rd December 2019. The charge sheet is filed. Further detention of applicant is not necessary;

(b) The applicant's son Vinit Gupta was granted bail by the Court of Magistrate vide order dated 17th May 2019 in CR No.591 of 2018. Vinit Gupta was also granted bail by learned Magistrate in CR No.454 of 2019 vide order dated 6th July 2020;

(c) The complainant had registered two FIRs. The first FIR was registered vide CR No.591 of 2018 on 5th December 2018 with Andheri Police Station and the second FIR was registered vide CR No.454 of 2019 on 3rd August 2019 with same Police Station. Investigation in both FIRs was then transferred to Economic Offences Wing. It was not permissible in law to lodge second FIR in relation to same transactions;

(d) M/s.EXL India Pvt.Ltd. had filed a suit for recovery of dues against M/s.Rashi Peripherals Pvt. Ltd (complainant u/s 4 of Specific Reliefs Act viz Special C.S.Case No.464 of 2019 before the District Court at Thane. The second FIR was registered against Vinit Gupta and M/s.EXL India Pvt.Ltd. after the suit was filed by M/s.EXL India Pvt.Ltd..

(e) Although the applicant is in custody for more than one year, there was no cogent evidence before investigating authority to link the amount credited in to the account of applicant with alleged misappropriated amount;

(f) The second FIR was registered with identical allegations. Vinit Gupta was impleaded as an accused in the second FIR. The applicant is also impleaded in the second FIR. The second FIR was not maintainable in law. Reliance is placed on decision of Supreme Court in the case of **Anju Chaudhary Vs. State of Uttar Pradesh (2014-ALL MR (Cri)-5226)**.

(g) Vinit Gupta has been granted bail by learned Magistrate and surprisingly the application for bail preferred by the applicant was rejected by both the Courts below;

(h) The entire case is based on assumptions. It is assumed that cheques deposited and cash deposited into the accounts of applicant or his family account, is sourced from the complainant company. This assumption is without merit. There is nothing on record to indicate that the cash deposits were originated from the transport companies or the complainant. Not a single cheque is obtained to show that the funds were transferred to applicant's account. The applicant was working as Yarn Commission Agent with company, such as, Filatex, Alliance and others. The annual commission turn over runs in crores of rupees. It is not irregular for the applicant to acquire funds as reflected in his bank account and that of his dependents. The applicant's enterprise, investment, interest earnings, inheritance are very genuine source of income;

(i) The investigative agency omitted to determine the source of income of applicant;

(j) The applicant has been paying average Rs.1 lakh as his income tax in his yearly filings even before 2012. The investigative agency failed to obtain income tax records and financial records prior to 2012, which would reflect a steady income stream for the applicant out of his hard earned work. He has been issued relevant Sales Tax, VAT/GST registration for his business purposes and he runs legitimate enterprise;

(k) It is alleged that the amount of Rs.64 lakh was transferred to the account of co-accused Vimlesh Dwivedi from the account of transport companies. He has been granted bail even before charge sheet is filed. While granting bail to him it was observed that there is nothing to show that amount was transferred into the account of Vinit Gupta;

(l) The financial records, statements of accounts and other documents are already obtained by the Investigating Officer. Further detention of the applicant is not necessary. The accounts of applicant and his family members are frozen during investigation. Search at the residence of applicant was conducted. Records are obtained from banks;

(m) The primary beneficiary, according to the complainant, are transport companies viz M/s.EXL India Pvt.Ltd. and M/s.DNX

Cargo India Ltd. The investigating agency has not obtained any accounting records, bank and financial records of M/s.EXL India Pvt.Ltd. and M/s.DNX Cargo India Ltd;

(n) Vinit Gupta was not the head of department. He left the job as Accounts Assistant. He was at the bottom of the chain of command at Rashi Peripherals Pvt.Ltd's Accounts Department. Apart form Vinit Gupta, no other person is investigated from Rashi Peripherals Pvt.Ltd in connection with these allegations. Entry of all bills and logistics were done by Sunil Pareira after approval of Mukesh Rohila. The complainant used to sign cheques, release bills etc. There was proper chain of command up till CFO of complainant company. Mukesh Rohila approved of invoices issued by the transporter companies and complainant himself had the authority and signed the cheques for payment of transport companies on behalf of M/s.Rashi Peripherals Pvt.Ltd. The complainant Navin Agarwal was also involved in yearly audit of M/s.Rashi Peripherals Pvt.Ltd. Hence no question arises that applicant's son Vinit Gupta was ever able to approve invoices, issue cheques or conceal anything pursuant to the alleged invoices for six years;

(o) Due to possible involvement of high level employees of M/s.Rashi Peripherals Pvt.Ltd, Mr.Navin Agrawal (complainant-Accounts Manager), Himanshu Shah (CFO) and one of the employee Ganesh had preferred anticipatory bail application in CR No.591 of 2018 before the Sessions Court viz ABA No.761 of 2020 which was pending;

(p) The investigative agency had ample opportunity to interrogate the applicant. They have procured records. There is no transaction in account of Kiran Gupta since 2015 after she died. The interest accrued is disclosed in the tax filings of the applicant. The account of father of applicant was HUF account and the applicant being coparcener having no objection from heirs, was entitled to handle the account of HUF;

(q) Bail need not be denied to the applicant under apprehension that he would tamper with evidence. There is no evidence on record to justify apprehension;

(r) M/s.DNX Cargo India Pvt.Ltd and M/s.EXL India Pvt.Ltd as companies are at the centre stage of the allegations by Rashi Peripherals Pvt.Ltd.. However, it's Directors/Managers or other responsible individuals are not even named in the charge sheet. They are not arrested or investigated. Although there are clear allegations that the payments went into their accounts based on allegedly forged invoices issued by them, no records or seizure has even been conducted in this respect for the reasons best known to the investigating agency.

8. Learned APP submitted that the offence involved misappropriation of huge amount. The applicant had acted in connivance with the main accused Vinit Gupta. The applicant is father of Vinit Gupta. Huge amount was diverted by the co-accused Vinit Gupta, who was working with M/s.Rashi Peripherals Pvt.Ltd into the account of applicant and other family members. Although charge sheet is filed, further investigation in accordance with Section 173(8) of Code of Criminal Procedure, 1973 is in progress. Vinit

Gupta was working as Accounts Assistant with complainant company. He acted in connivance with the transport companies. Huge loss was caused to the complainant. During investigation details of banks were obtained in respect of applicant. After careful inspection of the bank accounts, it was found that the applicant is involved in commission of offence. He has conspired with his son Vinit Gupta and misappropriated amount fraudulently obtained and diverted huge funds for his own benefits. Bank account of the applicant was inspected and it was transpired that he received Rs.4 crores by way of cash and cheque deposit. The co-accused deposited huge cash which was further transferred, diverted in the name of relatives and companies. The father of applicant Bholaram Gupta, Smt.Kiran Gupta (wife), Prabha Gupta (daughter) had expired long back. The cash was deposited into their accounts to evade recovery of amount. The applicant used bank accounts of the said persons and accepted cheques of huge amount in their names from transport companies. Rs.1 crore by way of cash and cheques were deposited into the accounts of relatives. The applicant had purchased properties by utilizing the said amount. The investigating officer has filed affidavit opposing bail.

9. Learned Advocate appearing for the intervenor/complainant reiterated the submissions of learned APP. It is submitted that the applicant failed to furnish source of funds he has received. He conspired with the co-accused. Huge cash was deposited in the name of relatives during the period of offence although they had expired. The applicant has not co-operated with the investigation. He had received huge amount by cash and cheques. The applicant is father of prime accused Vinit Gupta. The complainant has preferred

application for cancellation of bail granted to Vinit Gupta by Lower Court. The applicant is not entitled to bail on the ground that his son Vinit Gupta is released on bail. The said orders deserves to be set aside as in spite of evidence against Vinit Gupta, bail was granted to him. It is submitted that the second FIR was registered on the basis of different transactions. There is no legal bar for registering such FIR. The applicant is not entitled for bail. A perusal of the charge sheet would show that though initially fraud was committed by son of applicant, connivance of the applicant is writ large. Crores of rupees have gone into the account of applicant and relatives which were operated by the applicant. Both the FIRs are relating to different causes of action. The second FIR is valid in law. Reliance is placed on this same decision referred to by learned counsel for applicant. Hence, application for bail may be rejected.

10. The applicant is arrested on 23rd December 2019. He is in custody for a period of fourteen months. The son of applicant Vinit Gupta has been granted bail by the Court of 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 applicant was arrested in the second

FIR. It appears that no charge sheet was filed in the first FIR. The applicant was initially remanded to Police custody and thereafter remanded to judicial custody. The charge sheet was filed against the applicant. 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 applicant is father of Vinit Gupta. The case of the prosecution is that the applicant is allegedly involved in diverting funds of misappropriated amounts to the bank accounts of applicant and his relatives. Thus, the applicant has not been attributed any role in the alleged fraudulent transactions with complainant company. Although it is alleged that huge amount is transferred into the bank account of applicant and other relatives, on assumptions, the applicant cannot be detained in custody for indefinite period. The applicant has been in custody for 14 months and further detention is not warranted. According to the prosecution, Vinit Gupta is prime accused. He 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. Reliance is placed on the decision of Supreme Court in case of **Anju Chaudhary Vs. State of Uttar Pradesh**

and others (supra). This Court is not dealing with the issue relating to quashing the proceedings on account of maintainability of second FIR, but the fact remains that Vinit Gupta has been impleaded as accused being employee of complainant company and having misappropriated huge funds in connivance with transport companies. 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 applicant had contended that complainant had amicably settled their dispute with SRC Express. The allegations in the said 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 co-accused in CR No.591 of 2018 (CR No.3/2019) were granted bail. The tranjsporters with whom accused Vinit Gupta had conspired are at larage. 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. Learned counsel for the applicant had urged that 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 and they were impleaded as accused in CR No.454 of 2019, which was registered on 3rd August 2019. It is contended that the invoices, lorry receipts, chalans etc or any other forged document is not part of the charge sheet. Undisputedly the applicant is not concerned with fabrication of said documents.

11. The applicant has contended that there is no transactions since 2015 in the account of Kiran Gupta (wife of applicant). Whatever interest is accrued on the amount is disclosed in the tax returns. As far as the account of Bholaram Gupta HUF is concerned, the said account is being operated by the applicant being coparcener. As far as account of Prabha Gupta (daughter of applicant) is concerned, it is a joint account held by Prabha Gupta and son of applicant. The accused Vinit Gupta was entitled to operate said account. Yearly filings of income tax had disclosed transactions in the said account. Nisha Gupta is the daughter-in-law of the applicant. She was married to Vinit Gupta in 2017. The bank accounts of the applicant are frozen at the request of EOW, Crime Branch. Learned Magistrate while granting bail to Vinit Gupta vide order dated 7th July 2020 has observed that Navin Agrawal had registered FIR No.591 of 2018 at Andheri Police Station which was investigated by EOW vide CR No.3 of 2019 and considering the contents of the said FIR and the FIR in CR No.454 of 2019 (CR No.71/2019), it is apparent that these are identical facts on which second FIR is registered, though some accused are different. He was granted bail in EOW Crime No.3/2019. While granting bail to accused Vimlesh Dwivedi in CR No.454 of 2019 (CR No.71/2019), learned Magistrate had observed that according to the prosecution the amount has come into the account of said accused from the account of other transport companies. Nothing has come on record to show that the amount has been transferred in the account of Vinit Gupta.

12. Vinit Gupta was granted bail vide order dated 17th May 2018 in CR No.591 of 2018 (CR No.3/1019). While granting bail 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. However, the bail application preferred by the applicant was rejected by the Courts below. Investigation is being conducted into the accounts of applicant and his family members.

13. Voluminous documents are recovered during the investigation. Charge sheet has been filed against applicant. Search was conducted at the residential premises of Vinit Gupta on 26th December 2019. Nothing incriminating was recovered. Search was conducted at residence of applicant 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 Vinit Gupta. 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. Apart from that, the said facts are already investigated and further custody of the applicant is not necessary. The offences are triable by Magistrate.

14. Hence, I pass following order :

ORDER

(i) Bail Application No.1202 of 2020 is allowed;

(ii) The applicant is directed to be released on bail in connection with C.R.No.71 of 2019 investigated by Economic offences Wing on executing P.R.Bond in the sum of Rs.50,000/- with one or more sureties in the like amount;

(iii) The applicant shall report concerned Police Station once in a month on first Saturday of the month between 11.00 a.m. to 1.00 p.m. for a period of six months and thereafter, once in three months on first Saturday of the month between 11.00 a.m. to 1.00 p.m. till further order;

(iv) Bail Application No.1202 of 2020 stands disposed of accordingly;

(v) Interim Application No.286 of 2021 stands disposed of.

(PRAKASH D. NAIK, J.)

MST