IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2232 OF 2021

Rohan Ajit Bhalerao .... Applicant

versus

State of Maharashtra .... Respondent

…….

- Mr.Niranjan Mundargi i/b. Mr.Prasanna P. Patil, Advocate for Applicant.
- Smt. Veera Shinde, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 20th SEPTEMBER, 2021

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.336/2021 dated 19/08/2021 registered with Talegaon Dabhade Police Station, under sections 420, 467, 468, 471 of the Indian Penal Code.

2. The FIR is lodged by one Milind Pokharkar. He has stated that he had started various partnership firms with the Applicant since 2005. The relationship between these two was

cordial till 2017. The informant had kept his 7 cheques of his personal current account held with IDBI bank, Talegaon Dabhade branch, in the partnership firm's office. All these cheques were undated, unnamed and without signatures. They were kept in the firm's office in the year 2017. It is alleged in the FIR that on 21/04/2021 the Applicant put a figure of Rs.1,18,52,840/- on the cheque bearing No.351383. The name of the payee was mentioned as 'M/s. Mark Venture'. The date was put as 20/04/2021. Similarly, the cheque bearing No.351384 was also filled with the date 20/04/2021 for the amount of Rs.30,37,500/- and the payee name was mentioned as 'M/s. Kapila Enterprises'. The allegations of the informant are that both these cheques were not signed by him and the signature and other details appearing on those cheques are forged. The cheques were deposited in the informant's bank IDBI on 21/04/2021. The bank informed this to the first informant and asked for verification of the same. At that time, the informant had replied that he had not issued those cheques and that the informant intended to file a police complaint for the same. The informant had immediately forwarded reply of email to the bank mentioning all this. According to the first informant, he had retired from the partnership firm named as 'M/s. Mark Venture' in the year 2019 after completing accounts and that there was no liability pending against the informant. On these allegations the FIR was lodged.

3. Heard Mr.Niranjan Mundargi, learned counsel for the Applicant and Smt. Veera Shinde, learned APP for the State.

4. Mr.Mundargi submitted that the cheque dishonour memo mentions that the cheques were dishonoured because of insufficiency of funds. They were not dishonoured because of forged signature or because the informant had stopped payment of those cheques. According to Mr.Mundargi since the cheques were dishonoured, no financial loss was caused to the first informant. The Applicant has already given a statement that he did not have any other cheques of the first informant. He has given his handwriting and specimen signature and therefore his custodial interrogation is not necessary.

5. Mr.Mundargi submitted that the Applicant was partner with the first informant in the firms known as ‘M/s. Mark Infrastructure’, ‘M/s.Mark Realtors’ and ‘M/s. Mark Venture’. The informant had retired as a partner only from ‘M/s. Mark Venture’ and he continues to be partner in the other two partnership firms. He submitted that ‘M/s. Mark Infrastructure’ had taken loan from The Mahanagar Co-op. Bank Ltd. and at that time, the properties of ‘M/s. Mark Venture’ were mortgaged as collateral security. He submitted that ‘M/s. Mark Infrastructure’ had received a notice u/s 13(2) r/w 13(13) of SARFAESI Act 2002 on 01/10/2019, in which ‘M/s. Mark Venture’ was also shown as one of the addressee of the notice. Mr.Mundargi therefore submitted that in repayment of the loan as a part of his share, the informant had given the cheque bearing No.351383 in the name of ‘M/s. Mark Venture’. Similarly, there was financial transaction between ‘M/s. Kapila Enterprises’ and ‘M/s. Mark Infrastructure’. The first informant was a partner in ‘M/s. Mark Infrastructure’ and therefore as repayment of his share of

liability, he had issued the cheque bearing No.351384. There was nothing fraudulent about this transaction and about issuance of cheque. Therefore the Applicant is falsely implicated and his custody is not necessary. He submitted that proceedings u/s 138 of N.I. Act are already initiated against the informant concerning dishonour of these two cheques and as a counterblast, this FIR is lodged. He submitted that the presumption u/s 118 of N.I. Act applies in favour of the Applicant.

6. Learned APP on the other hand opposed this application. She submitted that the informant had retired from 'M/s. Mark Venture' in March 2019 with clear terms that there were no liabilities pending against him as far as that firm is concerned. She submitted that the informant had immediately replied to the bank that he had not issued those cheques which also shows that the cheques were deposited without his consent. The informant has already denied his signatures on the cheques.

7. I have considered these submissions. While it is true that the informant has not suffered monetary loss because the cheques were dishonoured, but the offence is serious. The offence of criminal breach of trust u/s 406 of IPC is also clearly made out. Section 467 of IPC is regarding forgery of valuable security. In this case there are allegations of forgery of two cheques. The amount put on these two cheques were big amounts. The first informant is facing proceeding u/s 138 of N.I. Act. If the signatures on the cheques are forged, this is a serious harassment to the informant.

8. As far as merits of the matter is concerned, the retirement deed executed between the partners was signed by both the parties on 07/03/2019. It was mentioned that any liabilities arising in the future will be that of the continuing partners i.e. those of the Applicant. The assets and liabilities of that partnership firm was belonged to the continuing partners. When the loan was given by Mahanagar Co-op. Bank Ltd., to 'M/s. Mark Infrastructure', the properties of 'M/s. Mark Venture',

were given as security. Only the continuing partner i.e. the Applicant was having liability and control over property of 'M/s. Mark Venture'.

9. Thus it was quite clear that the informant had no liability towards 'M/s. Mark Venture' when he retired. Therefore there was no reason for him to have issued a cheque in the name of 'M/s. Mark Venture', that too, in the year 2021, when he had retired from the said firm in the year 2019 itself. In case of both cheques, his bank had immediately informed the informant about the deposit of cheque and immediately within a short time, the informant had instructed the bank that since he had not issued those cheques; the bank should not honour those cheques. He had also expressed his intention to file police complaint. Thus it clearly shows that cheques were deposited by the Applicant without the informant's consent and therefore there is substance in the informant's case that his signatures on the cheques were forged. The proceedings u/s 138 of N.I. Act, filed against the Applicant in this particular case, will not make

any difference in the background of this fact, because there are clear allegations of forgery. In case of other cheque issued purportedly in the name of ‘M/s. Kapila Enterprises’ also there is no satisfactory explanation given as to why the informant would make payment of that liability of ‘M/s. Mark Infrastructure’. Again in this case, there are allegations of forgery of the cheque. The matter is serious. It requires custodial interrogation of the Applicant. No case for anticipatory bail is made out. The application is rejected.

(SARANG V. KOTWAL, J.)