IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANT. BAIL APPLICATION NO.1719 OF 2019
WITH
INTERVENTION APPLICATION NO.942 OF 2021

Mohammed A. Mazhar
@ Iqbal Shaikh ... Applicant
Vs
The State of Maharashtra ... Respondents
...

Dr. Samarth S. Karmarkar with Ms. Kalyani Virkar i/by Karmarkar & Associates for the Applicant.

Mr. Ajay Patil , APP for the Respondent-State.

Mr. M.A.Khan with H.I.Sirguroh for the Intervenor.

CORAM : SANDEEP K. SHINDE J.
DATE : 12th AUGUST, 2021.

P.C. :

Heard.

2 Applicant seeks pre-arrest bail in connection with the Crime No.234 of 2019 registered with Amboli Police Station for the offences punishable under Sections 406, 408 and 420 of the Indian Penal Code, 1860. The Complainant is

Rajasthan Aushadhalaya Pvt. Ltd.. This company manufactures and distributes ayurvedic products. Applicant was working as Chief Accountant in this Company. He left the company in September, 2018. It appears, the applicant had started parallel business of distributing products of Rajasthan Aushadhalaya in the trade name, ‘M/s. Thea Distributors’. After applicant left the complainant’s company, upon scrutiny, accounts of the company revealed that the applicant in collusion with sales manager (co-accused) diverted the products of Rajasthan Aushadhalaya and sold it in the open market in the name of M/s. Thea Distributors and the sale consideration was credited and received in the account of M/s. Thea Distributors. Approximately, 23 Lakhs were received by M/s. Thea Distributors by illegally diverting the products of Rajasthan Aushadhalaya. It is alleged that the applicant in collusion with sales manager, misappropriated the property of the complainant company. Co-accused has been arrested and released on bail .

3 The learned counsel for the applicant would submit that he has been falsely implicated in the case, since he declined to overwrite the books of accounts of the complainant-company and divulged true and correct, facts to GST authority in the enquiry initiated against the complainant-company. The learned counsel would submit that before leaving the company, Rajasthan Aushadhalaya had executed a franchise agreement with MR. Vimal Patel, proprietor of M/s. Thea Distributors. The learned counsel would submit that amount received in the bank account of M/s. Thea Distributors, was a commission received, on sale in accordance with the Franchise Agreement. Applicant, therefore, denies that amount of Rs.23 Lakhs were received by, M/s. Thea Distributors was towards a sale consideration against the products of the complainant-company allegedly diverted by him.

4 Be that as it may, when this application was heard by the learned Sessions Court, the applicant categorically disowned his connection with M/s. Thea Distributors. He contended that he was an employee of Thea Distributors at Ahmedabad. This argument has been noted in paragraph three of the order passed by the learned Additional Sessions Judge. Be that as it may, before this Court, applicant submitted that he owns and manages M/s. Thea Distributors at Ahmedabad. Today, across the bar, it is submitted that applicant operates bank account of M/s. Thea Distributors. In view of such inconsistent, stand taken by the applicant, it may be observed that the applicant has not approached this Court with clean hands. That the jurisdiction under Section 439 of the Code of Criminal Procedure, 1973 is discretionary and, therefore, one, who seeks pre-arrest bail is expected to place true and correct facts before the Court, but applicant has not done that. Even otherwise, franchise agreement relied on by the applicant to substantiate receipt of Rs.23 Lakhs was

towards commission, it may be stated that this agreement appears to have manufactured in defence. This Franchise Agreement has been executed on 1st February, 2018 on non-judicial stamp-paper of Rs.100/- dated 2nd November, 2018; signed on 1st February, 2018. Besides, Franchise Agreement does not bear the signature of Mr. Vimal Patel (Franchise). In fact, Mr. Vimal Patel in his statement disowned franchise agreement.

5 In consideration of the facts stated above, in my view, applicant has not approached this Court with true and correct facts. Rather, applicant has misleaded the Court by relying on, franchise agreement. For these reasons, I am not inclined to grant pre-arrest bail to the applicant.

6 Application is rejected. Intervention application therein stands disposed of.

7 All interim order stand vacated.

8 It is made clear that observations made here-in-above be construed as expression of opinion for the purpose of bail only and the same shall not in any way influence the trial in other proceedings.

(SANDEEP K. SHINDE, J.)