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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2670 OF 2021

DEEPESH NILKANTH SAWANT ....APPLICANT

V/s.

THE STATE OF MAHARASHTRA AND ANR .....RESPONDENTS

WITH
INTERIM APPLICATION NO. 2742 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 2670 OF 2021

HANAN FAHAD ANSARI DAUGHTER OF LATE MR. ABDUL REHMAN VANOO ....APPLICANT

IN THE MATTER BETWEEN

DEEPESH NILKANTH SAWANT ....APPLICANT

V/s.

THE STATE OF MAHARASHTRA AND ANR .....RESPONDENTS

Mr. Rajiv Patil, Senior Advocate i/b Prashant Patil for the applicant
Ms. A. A. Takalkar APP for the State
Mr. Aabad H. Ponda, Sr. Advocate i/b V. Shukla & Associates for intervener

CORAM : NITIN W. SAMBRE, J.

DATE: NOVEMBER 25, 2021.

P.C.:

1] Applicant is seeking pre-arrest bail in C.R. No. 388/2021 registered with Bangurnagar Police Station for offence punishable under Sections 420, 465, 467, 468, 470, 471 r/w 34 of the Indian Penal Code and C.R. No. 79/2021 registered with EOW, Unit VII Mumbai.

2] Case of the prosecution is, Abdul Rehman Vanoo, father of complainant formed a company by name 3S Integrated Facility Management Private Limited which is service provider in housekeeping, pest control, hospitality etc.

3] Complainant's mother Jubeda and father Abdul were directors and father was holding 14850 whereas mother was having 150 shares.

4] In 2018, mother's 150 shares were transferred to co-accused Dhananjay Shedge, an employee of said company who was taken as director.

5] Father of complainant Abdul resigned from the post of director on 01/08/2019 and another employee Avinash Pujari was nominated as director. Said Avinash was not holding any shares in the said company.

6] Applicant, advisor to the said company, gained confidence of deceased Abdul and as such, claimed to be in control of administrative and financial affairs.

7] Subsequently, after investing Rs. 13 Crores, deceased Abdul was issued 13 Lakhs shares and share allotment letter dated 10/02/2021 was issued in the name of deceased Abdul under the signature of directors Dhananjay Shedge and and Avinash Pujari. Abdul expired on 27/04/2021. As such, complainant, after completing last rituals requested for convening board meeting. The directors namely Dhananjay Shedge who informed the complainant that entire shares were sold by her deceased father Abdul to owner- directors viz. Dhananjay Shedge, Avinash Pujari etc. vide notarized share transfer agreement dated 25/01/2021.

8] It is claimed that said document contains signature of deceased Abdul, co-accused Dhananjay Shedge and Avinash Pujari whereas applicant Deepesh has signed the said document with an employee Mamta as a witness.

9] Share transfer agreement speaks of transfer of 14850 shares and also 13 Lakhs shares in favour of aforesaid two directors and share transfer agreement was uploaded on the site of Registrar of Companies.

10] In the aforesaid background, complaint came to be lodged by the daughter of deceased Abdul alleging that two directors Dhananjay and Avinash, in connivance with other accused persons who were employees of the company, under the directions of present applicant, practiced fraud, committed an offence of forgery and cheated the applicant by fraudulently transferring the shares held by her father. As such, offence in question.

11] Submissions of Mr. Rajiv Patil, learned senior counsel for the applicant are, applicant's involvement in the offence cannot be inferred as share transfer agreement dated 25/01/2021 a notarized. He claims that such document is produced at page 101, which is not signed by deceased Abdul. As such, there is no such transfer of shares. He would further claim that one of the co-accused who has signed such share transfer agreement in the capacity of witness is already protected from arrest by this Court. In addition to, Mr. Patil would urge that statement of co-accused cannot be and should not be considered against him so as to infer his involvement as he was simply advisor to the company and not an employee. According to him, whatever payments are received by the applicant from the company are in the form of salary/consultation charges and the applicant is willing to refund the same. Mr. Patil, apart from above would urge that there is no material to infer complicity of the applicant in the offence in question and that being so, application is liable to be allowed.

12] While countering aforesaid submissions, learned APP assisted by Shri. Aabad H. Ponda, learned senior counsel appearing for intervenor would urge that there is enough material on record to infer prima facie involvement of the applicant. My attention is invited to copy of share transfer agreement which is shown to be signed by deceased Abdul. It is further claimed that co-accused has named the applicant as mastermind under whose directions and supervision forged share transfer agreement was executed. It is further claimed that status of co-accused Mamta who is protected is that of witness to the agreement and employee of the company. As such, applicant cannot draw benefit of parity. As such, rejection is prayed.

13] Considered submissions.

14] Applicant was an advisor to the aforesaid company is not a fact in dispute as same can be inferred from record and his conduct of accepting the amount from the company towards his charges.

15] Investigation carried out till this date reflects that 1314850 shares worth Rs. 13,14,85,000/- are shown to be transferred in favour of directors Dhananjay Shedge and Avinash Pujari etc. Applicant, in the capacity of advisor was having very close proximity with deceased Abdul and was a trusted man. Investigation further revealed that in the office of applicant, meeting was held on 23/01/2021, and all the accused with common criminal intention taking undue advantage of ill-health of Abdul who was at the relevant time was suffering from Covid, forged share transfer agreement. From the company's account payment was shown to transferred to account of Dr. Abdul towards transfer of shares and as such, applicant appears to be instrumental in giving such advise to the co-accused for the transfer of shares. A board resolution was passed on 01/04/2021 thereby appointing co-accused Mamta & Duba as additional directors. Statement of co-accused Gaurav employee of the present applicant primarily demonstrates role played by the applicant in the commission of crime in the matter of common criminal intention. As such, the applicant by claiming that share transfer document at page 101 was not executed, has tried to misled this Court by setting up a false claim.

16] Apart from above, share transfer was shown by other directors, co-accused from deceased Abdul with the aid, advise, assistance and direction from the applicant. The consideration for transfer of share for individual benefit of the accused is from the account of company. The applicant has also received substantial amount which runs into lakhs of rupees as reflected from the material collected from the company which depicts his prima facie involvement in the crime in question. As such, direct evidence is available against the applicant of his prima facie involvement in the crime.

17] In the aforesaid background, no case for bail is made out. Application fails, stands rejected.

18] In view of disposal of anticipatory bail application, intervention application also stands disposed of.

19] Ad-interim protection granted earlier is extended for further period of two weeks.

[NITIN W. SAMBRE, J.]

Order corrected pursuant to speaking to minutes order dated 07/12/2021.