IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1934 OF 2019

Shirish Dattu Misal ...Applicant
V/s.
The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO.956 OF 2020
IN
ANTICIPATORY BAIL APPLICATION NO.1934 OF 2019

Rajesh Balkrushna Mahajan ...Intervener

In the matter between :

Shirish Dattu Misal ...Applicant
V/s.
The State of Maharashtra ...Respondent

Mr. Vikas Shivarkar, Advocate for Applicant.
Mr. Tapan Thatte a/w Mr. Shantanu Adkar for Intervener.
Mrs. M. H. Mhatre, APP for Respondent (State).

CORAM : A. S. GADKARI, J.
DATE : 21st AUGUST, 2021.

P.C. :

1. This is an Application under Section 438 of the Code of Criminal Procedure, 1973, for pre-arrest bail in C.R. No.82 of 2019, dated 16th February 2019, registered with Bundgarden Police Station, Pune, under Sections 406, 420 and 467 of the Indian Penal Code.

2. Heard Mr. Shivarkar, learned counsel appearing for the Applicant, Mr. Thatte, learned counsel appearing for the Intervener and Mrs. Mhatre, learned APP for the Respondent-State. Perused record.

3. By an Order dated 3rd September 2019, the Applicant was granted interim relief.

4. First Information Report dated 16th February 2019, is lodged by Mr. Rajesh B. Mahajan. It is the prosecution case that, the first informant is owner of Pegasus Event Management Company. The said company is having its branch at Dhole Patil Road, Pune. At the said branch, one Mr. Pradip D. Gaikwad (Accused No.1) was employed as a Manager. The said Mr. Pradip D. Gaikwad was entrusted with the work of managing accounts of the said company with Kotak Mahindra Bank, Axis Bank and ICICI Bank. The mobile number of Pradip D. Gaikwad (Accused No.1) was linked with the said accounts for transactions of the said company. As the mobile number of Pradip D. Gaikwad was linked with the said accounts, the informant was not receiving any messages of transactions of the said company in that behalf. In the month of June 2018, the informant verified accounts of his company for the purpose of GST and found certain suspicious transactions. Upon enquiry made with Pradip D. Gaikwad (Accused No.1), initially he dodged the queries. Upon verification, the informant found that, there were material discrepancies in the accounts.

Upon further enquiry and detailed inspection, it was revealed that, Pradip D. Gaikwad (Accused No.1) has formed company by name Holiday Tours and Travels and certain amounts of the company of the informant i.e. Pegasus Event Management Company were transferred in the said account of Holiday Tours and Travels. The informant realized that, Pradip D. Gaikwad (Accused No.1) has committed defalcation of Rs.1,40,00,000/- of Pegasus of Event Management Company. In this brief premise, the present crime is registered.

5. Mr. Shivarkar, learned counsel for the Applicant submitted that, the principal Accused is Pradip D. Gaikwad. That, the name of the Applicant is not reflected in the First Informant Report. He submitted that, the Applicant admits that, he has received an approximate amount of Rs.88,50,000/-, but it is through Mr. Vikas Sonkamble, who has given the said amount to the Applicant. That, there is no direct connection with money of informant's Company and amount received by the Applicant in his account.

He submitted that, at the instance of principal Accused-Pradip D. Gaikwad, the Applicant herein alongwith one Mr. Ranjan Munshi has transferred landed property in favour of Vijay B. Gaikwad i.e the brother of principal Accused-Pradip D. Gaikwad.

He submitted that, the Memorandum of Understanding (for short 'MOU') and Power-of-Attorney dated 26th December 2017, in that behalf have been duly executed and registered on 26th December 2017, before the competent authority. That, as the Applicant has given his landed property to the brother of the principal Accused towards settlement of the amount received by him from Pradip D. Gaikwad and/or Vikas Sonkamble, the Applicant is not answerable to anybody thereafter. He submitted that, after completion of investigation, Police have submitted charge-sheet and therefore, there is no need of custodial interrogation of the Applicant.

He, therefore, prayed that, the Applicant may be protected by pre-arrest bail.

6. Per contra, learned APP vehemently opposed the Application and submitted that, the amount which has been siphoned off by the principal Accused-Pradip D. Gaikwad from the company of informant namely Pegasus Event Management Company, was routed through the company of principal Accused-Pradip D. Gaikwad namely, Holiday Tours and Travels. The said company thereafter diverted, the said funds in various other companies, including the company of the Applicant namely Mahavir Constructions. She submitted that, there are three other companies namely Sai Enterprises, Rushi Creations and Vitthal

Enterprises, from which the said defalcated amount has been further routed through. She submitted that, the Applicant has played vital role in the present crime in diverting the defalcated amount by Pradip D. Gaikwad through his own accounts. She submitted that, the Police are yet to recover the said amount from the Applicant and the same is not possible without custodial interrogation of the Applicant. She, therefore, prayed that, the present Application may be dismissed.

7. Mr. Thatte, learned counsel for the Intervener, in addition to adopting the arguments advanced by the learned APP, submitted that, the documents which are at page Nos.314 and 335 i.e. Power-of-Attorney and MOU dated 26th December 2017, are sham documents, as it is apparent from its recital that, the said documents were executed without accepting any consideration. He pointed out that, the said documents were executed in favour of Vijay D. Gaikwad i.e. the brother of principal Accused-Pradip D. Gaikwad and not in favour of Pradip D. Gaikwad.

He submitted that, no consideration is given to the Applicant herein by the said Vijay D. Gaikwad. He submitted that, the contentions raised by the learned counsel for the Applicant in that behalf, therefore cannot be accepted as there is no express settlement between the Applicant and Pradip D. Gaikwad. He submitted that, execution of said two documents is a mere eye wash to the investigating agency, with a view to divert the line of investigation and nothing else. He submitted that, the amounts which were siphoned off by Pradip D. Gaikwad from the company of informant namely Pegasus Event Management Company have been used and utilized by the Applicant in purchasing various properties and the same has yet to be recovered from the Applicant.

He, therefore, prayed that, the present Application may be dismissed.

8. At the outset, it is to be noted here that, it is the settled position of law that, the First Information Report is not an encyclopedia of crime. The First Information Report only sets the criminal law into motion and investigation of it reveals the truth behind the crime.

As noted in the submission of learned counsel for the Applicant, the Applicant admits that, he has received an amount of Rs.88,50,000/-, but from Vikas Sonkamble. The investigating agency has not made Vikas Sonkamble as an accused in the present crime, as it prima facie appears from the record that, Vikas Sonkamble was not aware of the fact that, Pradip D. Gaikwad (Applicant No.1) has paid that amount to him, which were proceeds of the present crime.

9. As far as the Applicant is concerned, the creation of sham documents i.e. Memorandum of Understanding and Power-of-Attorney dated 26th December 2017, prima-facie, indicates that, with a view to

screen the evidence and to create defence in his favour in advance, he has created those documents. The documents of investigation of record indicates that, the amount which was siphoned off and defalcated by accused Pradip D. Gaikwad was routed through various companies and one of them are Mahavir Constructions of the Applicant; Sai Enterprises; Rushi Creations and Vitthal Enterprises. The Police report mentions that, from the account of Pegasus Company, Sai Enterprises received Rs.14,85,000/- and Rushi Creations has received Rs.19,65,000/-. Though, it is the defence of the Applicant that, he has received those amounts from Vikas Sonkamble without knowledge of the fact that, the said amounts were proceeds of crime, the report of investigation indicates that, the Applicant has knowingly received the amounts defalcated by Pradip D. Gaikwad as proceeds of crime. As noted earlier and the cost of repetition, it may be noted that, there was no reason for the Applicant to create the said two documents dated 26th December 2017, without accepting any consideration for transferring the property mentioned therein in favour of brother of principal Accused-Pradip D. Gaikwad. Even otherwise, and assuming for the sake of argument, it is transferred at the instance of Pradip D. Gaikwad, it is the said Pradip D. Gaikwad (co-accused), who has been benefited by it and not the informant herein. The submissions made by the learned counsel for the Applicant in that behalf are therefore not acceptable.

10. The Honourable Supreme Court in the case of Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 SCC 466 in Para 25 has observed as under:-

> *"Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."*

Undoubtedly, the present crime lodged against the applicant is an economic offence and requires to be dealt with it differently. There is sufficient material available on record to show the clear complicity of applicant in the present crime.

According to this Court, the present offence is an economic offence and the Applicant in connivance with principal accused Pradip D. Gaikwad has systematically siphoned off funds of Pegasus Event Management Company and subsequently defalcated it for his personal benefit. I also find substance in the submissions made by Mr. Thatte, the learned counsel for the Intervener about creation of sham documents by the Applicant as a mere eye wash to the investigation.

11. It is to be noted that, though the Police have submitted charge-sheet in the present matter but for want of custodial interrogation of the

Applicant various other aspects, which are related with the investigation of the present crime are yet to be investigated. After taking into consideration the gravity of offence, serious allegations against the Applicant and the intricacies which are involved in the investigation of the present crime, this Court is of the view that, the Applicant does not deserve to be protected by pre-arrest bail.

12. Application is accordingly dismissed.

(A. S. GADKARI, J.)