IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2182 OF 2019

Viswanathan Nair .... Applicant
v/s.
The State of Maharashtra .... Respondent

Mr. A.N. Pathan for the Applicant.
Mr. S.V. Gavand, APP for the State.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 07th DECEMBER, 2021.

P. C. :-

. This is an Application under Section 438 of Cr.P.C. filed by the aforesaid Applicant apprehending his arrest in C.R.No.I-169/2019 registered at Palghar Police Station for offences punishable under sections 406, 420 r/w. 34 of Indian Penal Code.

2. The aforesaid crime was registered pursuant to the first information report (FIR) lodged by Ijaj Ahmed Hussain Shaikh, a businessman from Calcutta. The complainant deals in electronic goods and he has a dealership of LG company. He had learnt that some electronic goods, which were damaged due to floods in Kerala, were to be auctioned. He visited TDC Logistics, a godown of LG Company to

inspect such electronic goods. He was informed that some damaged goods of Voltas Company were for sale. He was introduced to Jitendra Jain and Henik Bafna, the co-accused in the present crime. Said Jitendra Jain informed him that he was in possession of 5182 AC units which were for sale without auction. Said Jitendra Jain expressed his willingness to sell to the complainant the AC units worth Rs.4,70,00,000/- on commission of Rs.500/- per AC unit. Said Jitendra Jain told the complainant to deposit 10% of the value by RTGS.

3. The complainant transferred total Rs.66,07,000/- in the account of Jitendra Jain. Said Jitendra Jain and the co-accused – Henik Bafna did not supply the goods as promised & further refused to return the money deposited by the complainant. Hence, the complainant lodged the FIR against Jitendra Jain and Henik Bafna, pursuant to which C.R.No.I-169/2019 for offences under sections 406 and 420 came to be registered.

4. In the course of investigation, the co-accused – Jitendra Jain revealed that out of Rs.66,07,000/-, he had transferred Rs.34,00,000/- in favour of the Applicant. The Investigating Agency, upon verifying the said statement, arrayed the Applicant as an accused in the said crime.

Apprehending his arrest, the Applicant filed an Application for pre-arrest bail before learned Sessions Court, Palghar.

5. Learned Additional Sessions Judge dismissed the Application with prima facie observations that the Applicant was a master mind of the said crime and that the co-accused had acted only as per his plan. The learned Judge also took note of the fact that the Applicant was not traceable at Kerala when the police team had tried to trace him with the help of Kerala police. The learned Judge observed that the Investigating Officer with the help of Kerala police, were able to contact the advocate representing the Applicant and he had assured that the Applicant would remain present before the Cherunullur Police Station at Kerala but the Applicant did not abide by the said statement. The learned Judge also observed that the presence of the Applicant was required for custodial interrogation and hence, dismissed the Application for pre-arrest bail. The dismissal of pre-arrest bail has led to filing of the present Application.

6. Learned counsel for the Applicant submits that the money transferred by Jitendra Jain in Cinfratech Company relates to a distinct transaction. He explains that the money transferred by Jitendra Jain in

the account of Cinfratech Limited was the price of goods viz., dettol, lizol and fabric supplied by the Applicant. He submits that the Applicant has paid the said amount to various scrap dealers. He submits that the Applicant has absolutely no role in the present crime. He further submits that the Applicant has appeared before the Investigating Officer and co-operated with the Investigation. He, therefore, contends that the presence of the Applicant is not required for custodial interrogation.

7. Mr. S.V. Gavand, learned APP submits that the Applicant was absconding since registeration of the crime and even after dismissal of the Application for pre-arrest bail. He submits that the Applicant has received Rs.66,07,000/- from the co-accused. The Applicant has not co-operated with the investigation and has given evasive replies as regards the deposit of the money in the bank account of Cinfratech Limited, which has been admittedly withdrawn by him.

8. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

9. At the outset, it may be mentioned that in ***M/s. Supreme***

Bhiwandi Wada Manor Infrastructure Pvt. Ltd v/s. The State of Maharashtra and anr., AIROnline 2021 SC 397, the Apex Court has reiterated that :-

> *" 22.... This Court in Sushila Aggarwal v. State (NCT of Delhi) (2020) 5 SCC 1 has enunciated the considerations that must govern the grant of anticipatory bail in the following terms :*
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> *92.3... While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.*
>
> *92.4. Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it... "*

10. In the instant case, the records prima facie reveal that the co-accused – Jitendra Jain had induced the complainant in depositing in his account an amount of Rs.66,07,000/- with a promise to supply AC units of Voltas Company. Accordingly, the complainant transferred an amount of Rs.46,07,000/- from his account number 363201010280624

to the account number 102110100000596 by RTGS while an amount of Rs.20,00,000/- is stated to have been paid in cash. The material on record prima facie reveals that the co-accused had neither supplied the AC units nor refunded the amount deposited by the complainant.

11. The records indicate that Jitendra Jain had transferred Rs.29,00,000/- in account number 12950200005678 in the name of Cinfratech Limited. It is further stated that Jitendra Jain had also paid to the Applicant Rs.4,00,000/- in cash and deposited an amount of Rs.1,00,000/- in the account of his wife – Wincy Nair. The Applicant has thus received & withdrawn an amount of Rs.34,00,000/- deposited by Jitendra Jain.

12. It is sought to be contended that the Applicant had received an amount of Rs.16,00,000/- towards sale of clothes, Rs.9,00,000/- towards Dettol and Lizol and Rs.8,50,000/- towards sale of sound system. The Applicant has produced two certificates dated 04/01/2019 and 09/01/2019 issued by Ratnam & Co. and Matha Silk House. The certificate dated 04/01/2019 states that the Ratnam & Co. had received cash of Rs.22,50,000/- from Jitendra Jain, Siddharth Enterprises towards sale of goods such as dettol, lizol, etc. which were

damaged in floods whereas the 2nd Certificate dated 09/01/2019 issued by Matha Silk House indicates that fabric in the shop was damaged in the flood and was put in auction and that from the bid amount of Rs.10,50,000/-, an amount of Rs.1,00,000/- was given to Cinfratech Limited and an amount of Rs.9,50,000/- was given directly by Jitendra Jain.

13. These two certificates thus prima facie indicate that Jitendra Jain had paid the price of goods viz. Dettol, lizol and fabric to these two companies. These two certificates which were issued much after the transfer of money in the account of Cinfratech Limited, do not prima facie indicate that the Applicant had any other business transaction with Jitendra Jain or that he had paid the money to Jitendra Jain.

14. It is pertinent to note that out of the amount of Rs.66,07,000/-, the complainant had transferred an amount of Rs.25,00,000/- in the account of Jitendra Jain on 17/11/2018. Immediately, on 19/11/2018, Jitendra Jain transferred an amount of Rs.20,00,000/- in the account of Cinfratech Limited. Similarly, the complainant had transferred an amount of Rs.16,00,000/- in the account of Jitendra Jain on 21/11/2018 and Rs.5,07,000/- on 15/01/2019. On 22/11/2018, a day

after transfer of money by the Complainant, Jitendra Jain transferred an amount of Rs.5,00,000/- in the account of Cinfratech Limited and later on 15/12/2018, he transferred Rs.4,00,000/- and further said Jitendra Jain transferred Rs.1,00,000/- in the account of the wife of the Applicant on 15/12/2018 and in addition, paid Rs.4,00,000/- in cash. It is thus seen that part of the money which was deposited by the complainant in the account of Jitendra Jain was immediately transferred to the account of Cinfratech Limited.

15. The Applicant has withdrawn the said amount from the account of Cinfratech Limited. At one stage, learned counsel for the Applicant claimed that Cinfratech Limited is a Government undertaking of which the Applicant is a Chairman. When he was unable to explain how the money in respect of a private transaction could be deposited in an account of the Government undertaking and how the Applicant could withdraw the said amount, learned counsel for the Applicant claimed that Cinfratech is a registered society and that he is unable to give any further details for want of instructions. Learned APP has also submitted that the Applicant has not given any details in respect of Cinfratech Limited.

16. The material on record prima facie shows a close nexus between the Applicant and the co-assued – Jitendra Jain. At the stage of pre-arrest bail, it is not for this Court to enter into detailed analysis but it is for the Investigating Agency to investigate whether the Applicant had received the money or any part thereof which was transferred by the complainant in the account of Jitendra Jain. Whether Cinfratech Limited in whose account the money was transferred by Jitendra Jain is a genuine Company or sham, whether it is a firm or a proprietorship concern or a Government Undertaking and further to trace money trail and probe if there is a larger conspiracy and to book the actual perpetrator of crime.

17. Another aspect which needs to be noted is that though the Application was filed in the year 2019, the Applicant did not show any urgency in pursuing the relief. It appears that the pendency of the Application was used by the Applicant as an armour against arrest and tactic to delay the investigation. This is evident from the statement of the learned APP that though the charge sheet has been filed against the co-accused, the investigation against the Applicant has not made any progress due to his non availability and non co-operation. The conduct of the Applicant before this Court is no different. He chose to remain

absent till the time the matter was listed under the caption of 'dismissal'. After the Applicant had put in his appearance through his counsel, he was granted interim protection. However, it appears that all that he has done is marked his attendance before the investigating officer and nothing further. Considering the nature of accusations, material in support thereof and the conduct of the Applicant, in my considered view, this is not a fit case to exercise discretionary powers in favour of the Applicant.

18. Under the circumstances, and in view of discussion supra, the Anticipatory Bail Application is dismissed.

PREETI H JAYANI

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(SMT. ANUJA PRABHUDESSAI, J.)