IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2423 OF 2019

Mr. Prashant Daji Parab,
Aged 40 years, Occ. Service,
Residing at B-404, Mangalmurti CHS Ltd.,
Near Rupal Industrial Estate, Bhatwadi,
Ghatkopar (W), Mumbai-400 082. ...Applicant
vs.
The State of Maharashtra
(At the instance of Vile Parle Police,
Station, Mumbai) ...Respondent

WITH
INTERIM APPLICATION NO. 1011 OF 2019
IN
ANTICIPATORY BAIL APPLICATION NO. 2423 OF 2019

M/s. Gufic Biosciences Ltd. … Intervener

<u>In the matter between :</u>

Mr. Prashant Daji Parab,
Aged 40 years, Occ. Service,
Residing at B-404, Mangalmurti CHS Ltd.,
Near Rupal Industrial Estate, Bhatwadi,
Ghatkopar (W), Mumbai-400 082. ...Applicant
vs.
The State of Maharashtra
(At the instance of Vile Parle Police,
Station, Mumbai) ...Respondent

Mr.M.K. Kocharekar for applicant.
Mr.J.P. Yagnik, APP for State.
Mr.Girish Kulkarni i/b M/s. Datta H. Pawar for applicant-intervener in IA/1011/2019.

CORAM : N. J. JAMADAR, JJ.
Reserved for orders on : 21st August 2021.
Order pronounced on : 27th August 2021.

ORDER :

1. The applicant, who is arraigned in C.R. No. 204 of 2019, registered with Vile Parle Police Station, for the offences punishable under section

120-B, 408 and 420 of the Indian Penal Code, 1860 ('the Penal Code') has preferred this application for pre-arrest bail under section 438 of the Code of Criminal Procedure, 1973 ('the Code').

2. By an order dated 7th November 2019, this Court had granted interim relief primarily for the reason that in the application for anticipatory bail before the Court of Session, the applicant was granted interim protection.

3. The gravamen of indictment against the applicant is that the applicant was working as the Assistant Manager, Distribution, with M/s. Gufic Biosciences Limited ('M/s. Gufic'). The applicant along with the co-accused, who were also working as the employees of M/s. Gufic, on various posts, entered into a criminal conspiracy with the companies which were rendering transport and logistical services to M/s. Gufic and deceived the said company for a huge sum of Rs.33,36,245/- by causing wrongful gain to themselves and corresponding wrongful loss to the company. It was alleged that the applicant, in breach of the conditions of service, had started firms under the name and style M/s. Fast-Track Integrated Services Limited and Samarth Enterprises and amounts were credited to the account of those entities and the personal account of the applicant by the companies, which were rendering transport and logistical services to M/s. Gufic, as a part of the said criminal conspiracy to dupe

M/s. Gufic. It was further alleged that the applicant had approved the inflated rates of transportation charges and thereby caused wrongful loss to M/s. Gufic. When the fraud was allegedly unearthed, Mr.Pratap Shinde, who conducted an enquiry into the said matter, lodged report on 5th June 2019 on behalf of M/s. Gufic, for the offences punishable under section 120-B, 408 and 420 of the Penal Code.

4. Mr. Kocharekar, the learned counsel for the applicant advanced a two fold submission. First, it is not the case of the prosecution that any amount was misappropriated from the account of the employer M/s. Gufic. Reliance was sought to be placed on the Say (Exh.C in ABA No.924/2019) before the learned Sessions Judge, wherein it was observed that there was no material to indicate that any excess amount was extracted from M/s. Gufic by way of commission. Second, the applicant had no authority to approve the rate contract. Thus, the allegations against the applicant that he had approved the inflated transportation charges is *ex-facie* unsustainable, urged Mr. Kocharekar.

5. Attention of the Court was invited to the duty list of the applicant and the proceedings before the National Company Law Tribunal, Mumbai between M/s.Scorpion Express Private Limited and M/s. Gufic Biosciences Limited and the agreement executed by and between M/s. Gufic and the transporters. The thrust of the submission of Mr. Kocharekar was that

since no loss was caused to the employer-company, the charge against the applicant is groundless.

6. In opposition to this, Mr. Yagnik, the learned APP invited the attention of the Court to the appointment order of the applicant, which expressly restrained the applicant from directly or indirectly dealing with any business or occupation other than that of the company. In the case at hand, there is material to indicate that huge amounts were credited to the account of the applicant's firms : Samarth Enterprises and M/s. Fast-Track Integrated Services and his personal account. Moreover, the investigation has revealed that amounts were credited by the transporters in the accounts of the co-accused, which were, in turn, transferred to the account of the applicant and/or paid over to the applicant in cash. In the face of such material, according to Mr. Yagnik, the applicant does not deserve the relief of pre-arrest bail.

7. Mr. Girish Kulkarni, the learned counsel for the intervener-first informant resisted the prayers of the applicant by canvassing a submission that the firms of the applicant were carrying on no other business and they were shadow entities for crediting the wrongful gains from the transporters of M/s. Gufic. The amounts have been credited to the account of the applicant, his firms and co-accused, through banking channels. In such circumstances, the applicant does not deserve exercise

of discretion in his favour, submitted Mr. Kulkarni.

8. Mr. Kocharekar, the learned counsel for the applicant attempted to salvage the position by advancing a submission that, at best, there is material to show that the amounts were credited in the accounts of the applicant and firms floated by him. However, in the absence of any wrongful loss to the first informant-company, no offence can be said to have been made out.

9. I find it rather difficult to accede to the submission on behalf of the applicant. Indisputably, the applicant was working as Assistant Manager, Distribution, during the period 14th July 2015 to July 2018. There is material on record to indicate that the applicant had got a huge sum of Rs.66,83,445/- by way of commission from the transport and logistical service providers of M/s. Gufic. Those amounts were credited in the personal account as well as the accounts of the firms of the applicant. The submission that no wrongful loss was caused to the company looses sight of the fact that there was huge wrongful gain to the applicant. The investigation further revealed that the applicant was the principal character in the alleged conspiracy comprising of the employees of M/s. Gufic. There is material to show that amounts credited by the transporters in the account of the co-accused were, in turn, transmitted to the account of the applicant.

10. In the backdrop of the aforesaid material, though the anticipatory bail application of the co-accused-Mrs.Ashwini Prakash Gurav (ABA 2143 of 2019) has been allowed by this Court by order dated 6th August 2021, the applicant does not deserve pre-arrest bail. The role of the applicant is of grave nature and he appears to be the prime accused and principal beneficiary of fraud as huge amount has been credited in the accounts of the applicant. In the circumstances, custodial interrogation of the applicant seems to be warranted to facilitate further investigation and unearth the fraud in all its ramifications. Thus, I am not persuaded to exercise the discretion in favour of the applicant.

11. Hence, the following order :

O R D E R

(i) The application stands rejected.

(ii) Interim order dated 7th November 2019 stands cancelled.

(iii) In view of rejection of the application, the application for intervention, being Interim Application No. 1011 of 2019, also stands disposed of.

(N. J. JAMADAR, J.)

At this stage, Mr. Kocharekar, learned counsel for the applicant seeks continuation of the interim protection for a period of one week.

In view of the reasons assigned in the application and having regard to the totality of the circumstances of the case, the prayer for extension of interim protection, after rejection of the application, is not justifiable and hence the oral application stands rejected.

(N. J. JAMADAR, J.)