IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.

CRIMINAL APPLICATION (ABA) NO. 710 OF 2020
(Balmukund s/o Dawarkadas Fafat and others ..vs.. State of Maharashtra, through PS Amgaon)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. R.L. Khapre, Senior Counsel assisted by Mr. A.S. Shukla, Counsel for the applicants,
Mr. N.R. Rode, Addl.P.P. for the non-applicant/State.

CORAM : ROHIT B. DEO, J.
DATED : 02-02-2021

The applicants are apprehending arrest in Crime 298/2020 registered with Amgaon Police Station, District Gondia for offences punishable under Sections 406, 420, 465, 467, 468 and 471 read with Section 34 of the Indian Penal Code.

2. The crime is registered on the basis of report dated 03-11-2020 lodged by Mr. Deepak Kunjilal Maheshwari.

3. The gist of the report is that Mr. Deepak Kunjilal Maheshwari and three others named in the report are the shareholders of Khandesh Extraction Limited.

4. The applicants are the Directors of the said company since one and half years preceding the report.

5. The company closed down in 2011, is the

statement in the report.

6. It is then stated that land owned by the company was sold to Arihant Associates and Rs.7,12,90,000/- (Rupees Seven Crores Twelve Lakhs Ninety Thousand) was received as consideration.

7. The relevant allegation is that after the consideration amount was deposited in the account of the company, the applicants issued cheques in favour of Mr. Ramlal Patil, Mr. Ghanshyam Patil, Mr. Ramkrishna Patil and Mrs. Shantabai Vispute, who are fictitious persons. In essence, the allegation is of siphoning of funds of the company.

8. The rest of the report makes reference to certain payments made to the former employees of the company and it is alleged that the payments were made although nothing is due and payable. Reference is then made to certain payments made to business concerns and brokers. However, the report primarily focuses on the alleged opening of accounts in the names of fictitious persons, to which allegation a reference is made supra.

9. I have perused the material in the case diary, and having done so, *prima facie*, I am of the considered view that a civil dispute which stems from internecine rivalry is projected as a crime, possibly to gain a leverage.

10. A reference to some material in the case diary, which indicates the cherry-picking which is done by the complainant Mr. Deepak Kunjilal Maheshwari, is inevitable.

11. The applicants have assumed charge of the company, and this is an admitted position, recently. Notably, Mr. Deepak Kunjilal Maheshwari claims in the report that he is representing himself and Mr. Kishor Bhaiyya, Mr. Abhay Kothari and Mr. Ashish Bhutada. The paternal uncle of Mr. Abhay Kothari is co-accused Mohan Kothari, who for reasons inexplicably, is shown to be beyond the long arms of the Investigating Officer. Material in the case diary reveals and the learned Additional Public Prosecutor Mr. N.R. Rode fairly does not dispute, that it is Mr. Mohan Kothari who is responsible for opening the accounts through which the alleged siphoning was done.

12. More importantly, the names of Mr. Ramlal Patil, Mr. Ghanshyam Patil, Mr. Ramkrishna Patil and Mrs. Shantabai Vispute, who according to Mr. Deepak Kunjilal Maheshwari are fictitious persons, are reflected in the audit reports of the company since 2010-11 and sizable amount is shown payable to them. Interestingly, the father of the complainant Mr. Kunjilal Maheshwari was then in-charge of the company and has signed the audit report. If according to the prosecution, *prima facie,* the

account holders are fictitious, the Directors who were in-charge since 2010-11 ought to have been investigated since irrefutably, the names of the account holders are shown as creditors of the company since 2010-11.

13. The other person, who has signed on the audit reports, is the uncle of the complainant and his name is Mr. Rajendrakumar Maheshwari. The seminal question is that if the names are fictitious, how and why the names appear in the audit reports as creditors in which audit reports are duly signed by the father and paternal uncle of the complainant Mr. Deepak Maheshwari.

15. Mr. R.L. Khapre, learned Senior Counsel has invited my attention to the certain resolutions passed by the Board of Directors in the meeting held on 19-5-2019. One resolution makes a reference to the alleged failure of Mr. Kunjilal Maheshwari and Mr. Rajendrakumar Maheshwari i.e. the father and paternal uncle of the complainant Mr. Deepak Maheshwari respectively, to hand over the record of the company. It is further resolved that since many liabilities are shown in the books of accounts of the company, co-accused Mohanlal Kothari, who expressed willingness to settle the accounts, would be authorised to settle the accounts. The resolution authorises applicant Balmukund to enter into an agreement with Mr. Mohanlal Kothari and as a fact, such an agreement was executed on 18-5-2019.

16. Considering the material in the case diary holistically, a case is made out for exercise of discretion.

17. I am of the considered view, that custodial interrogation is not necessary.

18. The allegations pertain to record, and which record with the Credit Co-operative Society ought to have been seized and if not seized, can easily be seized.

19. Even *de hors* the said aspect, it is not as if the applicants have criminal antecedents or that they are likely to be a flight risk. The applicants have attended the police station and have expressed readiness to further cooperate with the Investigating Officer, as and when summoned.

20. *Prima facie*, the report appears to be a fall out of some business rivalry.

21. The interim protection granted vide order dated 14-11-2020 is made absolute.

JUDGE

adgokar