IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 46 OF 2021

Sanjay Kailasnarayan Agarwal and Anr. ..Applicants
V/s.
The State of Maharashtra and Anr. ..Respondents

Mr. S.V. Sadavarte for the Applicants.
Mr. A.R. Kapadnis, APP for the Respondent/State.
Mr. Vivek Arote for the intervenor.

CORAM : C.V. BHADANG, J.

RESERVED ON : 8 MARCH 2022
PRONOUNCED ON : 29 MARCH 2022

P.C.

1. The Applicants, apprehending their arrest, in connection with the investigation of Crime No. 279 of 2020 registered with Koregaon Park Police Station, Dist. Pune under Section 403, 406 and 420 read with Section 34 of IPC, are seeking anticipatory bail.

2. The Applicant No.1 is one of the partners of Limitless Hospitality LLP, a limited liability partnership ('LLP') incorporated under the Limited Liability Partnership Act, 2008 vide Agreement dated 20.05.2016 between the Applicant No.1 and the complainant Mukesh Mukundlal Moorjani and Rau

More. The LLP was constituted with the object of managing hotels/restaurants etc and for processing/packaging, trading and selling of food products and beverages. One of the partners Mr. Rau More had retired from the said firm.

3. The aforesaid crime is registered on the basis of the complaint dated 20.11.2020 lodged by the Respondent Mukesh Moorjani.

4. The gravamen of the allegations are that the Applicant No.1 Sanjay Agarwal along with the complainant Mukesh Moorjani and one Rau More had formed limited liability partnership (LLP) by name Limitless Hospitality LLP on 20.05.2016. The said LLP was operating hotels/restaurants by name (i) Bombay Bar Code (ii) Hukum Hotel (iii) Casamia Pizza Cafe (iv) Irish Beer Cafe which was converted into different partnership after four months. Rau More had retired from Limitless Hospitality LLP on 01.04.2017. According to the complainant, the investment for running the said establishment was done by him. The informant was staying in Dubai and would occasionally come to India. Therefore, these establishments were looked after by Applicant No.1 and prior to his retirement by Rau More. The informant also claims that the Bank accounts of LLP were operated by any two partners and in order to avoid any difficulty, he has singed certain cheques as he used to be away at Dubai.

5. Indisputably there is yet another partnership by name Limitless Beverly Hills Hotel which was constituted on 11.04.2017 by the Applicants. The complainant is not a partner in this LLP formed in the year 2017. The said partnership was operating a lodging hotel comprising of 56 rooms.

6. The informant claims that he was never paid any profits from out of Limitless Hospitality LLP. It is also claimed that during the period from 22.03.2016 to 03.04.2017, the Applicant No.1 had made payment of the employees of yet another establishment (Aman Associates) of the Applicant No.1 from NRO/NRE account of the informant. In short according to the informant, the Applicant No.1 Sanjay Agarwal without investing any amount in the business of LLP had siphoned of the profits and the same was diverted to Limitless Beverly Hills firm run by the present Applicants and thereby has committed misappropriation/cheating for an amount of Rs.1,60,17,620/-.

7. On the basis of the such complaint, the offence came to be registered which is under investigation.

8. The learned Sessions Judge has refused to grant pre-arrest bail to the Applicants by order dated 04.01.2021. The learned Sessions Judge has found that undoubtedly, the Applicant No.2 was not a partner in LLP of the year 2016 and although the dispute is of a civil nature, it has also criminal overtones. The

learned Sessions Judge has found that the detailed investigation is required for which the custodial interrogation of the Applicants is necessary.

9. I have heard the learned counsel for the parties. Perused record.

10. It is submitted by the learned counsel for the Applicants that the dispute is purely of a civil nature. The learned counsel has pointed out a notice dated 28.08.2019 issued by the Applicant No.1 for dissolution of the partnership and for settling of accounts. It is submitted that there is an arbitration clause and Arbitration Petition No.10 of 2020 has been filed and the dispute is referred for arbitration. He submitted that thus the dispute is essentially about the settlement of the partnership account amongst the partners. The learned counsel has also pointed out the notice reply dated 07.09.2019 wherein no allegations of any misappropriation/cheating or siphoning of the funds are made. The learned counsel pointed out that the notice in the arbitration petition was made returnable on 31.03.2020 and in the meantime the FIR came to be lodged on 20.11.2020. It is submitted that Applicant No.2 is not the partner of Limitless Hospitality LLP. It is submitted that the only allegation is that Point of Sale ('PoS')/skimmer at the counter of Hukum Hotel was that of Limitless Beverly Hills of the Applicants. Thus the payments received at Hukum Hotel used to be credited to the

firm of the Applicants. He submitted that even these transactions would be reflected in the bank account for which the custodial interrogation may not be necessary.

11. The learned counsel has placed reliance on the decision of the Supreme Court in *Velji Raghavji Patel v/s. The State of Maharashtra*[1] in order to submit that an owner of the property cannot held liable for misappropriation even where he is not the exclusive owner of such property.

12. The learned APP assisted by the learned counsel for the Respondent has submitted that the dispute is not limited to the settling of the accounts of the partnership. The learned APP has referred to the statement of Mr. Chetan Mahore, James Sunny, Ravindra Dhore, Darshan Karva and Rau More in order to submit that the Investigating Officer has collected material to show that the funds of the LLP were diverted/siphoned of in the business of the hotel of the Applicants. Applicant No.1 had also made repayment of financial assistance obtained by him from one Deepak Gulwani from such account. He therefore, submitted that the custodial interrogation of the Applicants is necessary for proper investigation of the matter.

13. I have considered the rival circumstances and the submissions made. It is not disputed that the Applicant No.2 is

1 AIR 1965 Supreme Court 1433

not a partner in Limitless Hospitality LLP between Applicant No.1, informant and Mr. Rau More, who has since retired. It is further, a mater of record that the LLP was operating the establishments namely Bombay Bar Code, Hukum Hotel, Casamia Pizza Cafe and Irish Beer Cafe. It is further a matter of record that there was another partnership by name Limitless Beverly Hills between the Applicants who are real brothers which was constituted on 11.04.2017 and which was operating a hotel comprising of 56 rooms in the same building where hotel Hukum was situated.

14. The allegations by the complainant may be broadly classified as under:

(i) That Applicant No.1 without making any investment in Limitless Hospitality LLP had induced the informant to make various payments/investments in the said partnership business and has also siphoned of / diverted various amount and thereby committing misappropriation/ cheating of the amount to the tune of Rs.1,60,17,620/-

(ii) PoS installed at Hukum Hotel was that of the lodging establishment (comprising of 56 rooms) operated by Limitless Beverly Hills of the Applicants. The the payment made at Hotel Hukum used to be diverted to the lodging establishment of Limitless Beverly Hills of the Applicants.

(iii) The Applicant No.1 was even collecting and carrying the cash collected at Hotel Hukum which has been misappropriated.

15. In this case, undisputably the matter has been referred to an Arbitrator as there is an arbitration clause in the partnership Deed of the LLP. Insofar as the *inter se* dispute between the partners of the said LLP is concerned, it can prima facie be seen that it is a dispute pertaining to settlement of the partnership account. Insofar as the transactions done at PoS are concerned, those would be evidence in the form of entries in the statement of accounts of the concerned bank.

16. The Supreme Court in the case of Velji Patel (supra) has held that a partner in a partnership has an undefined ownership along with other partners over all the assets of the partnership and if he chooses to use any of them for his own purposes, he may be accountable in a civil dispute to other partners, but he does not thereby commit any misappropriation. It is true that there is also an allegation that the Applicant No.1 was carrying the cash collected at Hukum Hotel. However the Investigating Officer was already recorded the statement of the aforesaid witnesses on all these aspects. In my considered view the dispute appears to be predominately of a civil nature. I would hasten to add that same sets of facts in a dispute can, in a given case, give rise to a civil as well as criminal liability. The question would depend upon the facts and circumstances of each case. Presently, I am only concerned with a plea for pre-arrest bail in the context of a necessity for the custodial interrogation. Having regard to the

overall circumstances and looking to the nature of the investigation already carried out, I do not find that the custodial interrogation is necessary. The Applicants are having interim protection. The Applicant No.2 is having interim protection from 29.01.2021 and Applicant No.1 is having interim protection from 24.03.2021. The offences are triable by a Magistrate.

17. In the result, the following order is passed:

i) In the event of their arrest, in connection with the investigation of Crime No. 279 of 2020 registered with Koregaon Park Police Station, Dist. Pune, the Applicant No.1 **Sanjay Kailasnarayan Agarwal** and Applicant No.2 **Manish Kailasnarayan Agarwal** be released on bail on executing a PR Bond in the sum of Rs.25,000/- each with one or two solvent sureties each in the like amount.

ii) The Applicants shall report to the Investigating Officer on 03.04.2022 and 04.04.2022 between 11.00 a.m. to 1.00 p.m. and as and when required by the Investigating Officer.

iii) The Applicants shall co-operate with the Investigating Agency and shall not tamper with the prosecution evidence/witnesses.

iv) It is made clear that observations herein are for the limited purpose of deciding the application for anticipatory bail and the learned Trial Court shall not be influenced by the same at the stage of trial.

v) The criminal application is disposed of in the aforesaid terms.

(C.V. BHADANG, J.)