IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.202 OF 2022

Kamran Faizal Kapadia ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Akash Kavade, for the Applicant.

Ms. Anamika Malhotra, A.P.P for the Respondent– State.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th MARCH 2022

P.C. :

1. This is the second anticipatory bail application preferred by the applicant. The first anticipatory bail application of the applicant was withdrawn, as the Court was not inclined to grant pre-arrest bail to the applicant. The same is recorded in the order dated 16th October 2019, passed in Anticipatory Bail Application No.2157 of 2019.

2. By this second anticipatory bail application, the applicant seeks pre-arrest bail in connection with C.R. No.500 of 2018, registered with the Goregaon Police Station, Mumbai, for the alleged offences punishable

under Sections 406, 409, 420 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that the applicant is neither the Director nor is concerned with the day-to-day affairs of the company i.e. Mumbai Global Land Investment Limited. He submits that the applicant's name is shown in the FIR only because of his father – Mohammad Faizal Abdul Gaffar Kapadia. He submits that merely because the applicant was sitting in his father's office, allegations have been made against him. He submits that even in the charge-sheet that was filed on 24th January 2020, the applicant has not been shown as an absconding accused nor any proclamation has been issued against the applicant, till date. He submits that post withdrawal of the applicant's first anticipatory bail application, co-accused - Mohamed Soeb Abdul Gaffar Kapadia and Abdul Samad Abdul Gaffar Kapadia were granted pre-arrest bail by this Court vide order dated 8th October 2021 passed in Anticipatory Bail Application No.2834 of 2019. Learned Counsel relied on the said order, which is on page 31 of the aforesaid application.

4. Learned APP opposes the application. Learned APP has tendered an affidavit of Mr. Sudhir Vasantrao Hirdekar, Police Inspector, attached to Goregaon Police Station, Mumbai. The same is taken on record. In the said affidavit in para 6, it is stated that a specific allegation has been made by the investors that the applicant used to sit in the office and was involved in the day-to-day affairs of the company and as such was a party to the crime in question; and, that the applicant used to explain the scheme to the investors and collect money on behalf of the company from the investors. It is further mentioned that the investors believed that the applicant was one of the Directors of the said company, and as such invested monies.

5. Perused the papers. According to the first informant – Sunil Dhotre, he came to across in a newspaper about a row house plotting project by the name, 'Le Chalet Golf Project/Le Chalet Phase – 3', sometime in the year 2015. He has stated that pursuant thereto, he booked a plot in the said project as per the project layout and paid a sum of Rs.11,000/- and the balance amount of Rs.1,00,000/- through EMI of Rs.2,000/- each. The first informant has further alleged that a MOU dated

19th May 2015 was executed by him with the said company with respect to the said plot and that as possession was not handed over to him, he realised that he was cheated for a sum of Rs.6,81,000/-. Accordingly, the first informant lodged an FIR.

6. As far as the applicant is conerned, it appears that the applicant was about 20 years of age, at the time when the alleged incident took place i.e. in 2015. Admittedly, the applicant is not the Director of the company. It appears that the applicant's father – Mohammad Faizal Abdul Gaffar Kapadia was the Director of the said company. The applicant's father was arrested and was subsequently released on bail. It appears that post withdrawal of the applicant's first anticipatory bail application, co-accused - Mohamed Soeb Abdul Gaffar Kapadia and Abdul Samad Abdul Gaffar Kapadia were granted pre-arrest bail by this Court vide order dated 8th October 2021,on the premise that they had resigned from the said company and that the said co-accused were not the Directors of the company and were not responsible for the affairs of the company. It was also observed that the records indicated that the Bank Account was operated by Mohammad Faizal Abdul Gaffar Kapadia, the Managing Director of the

Company. As far as the applicant is concerned, there is nothing on record to show that the applicant was operating the bank account or that he had received any money deposited by the complainant or other investors or there was any transfer of money in his account. Merely because the applicant was sitting in the office with his father, who was the Managing Director of the Company cannot be a reason to draw an inference that he had knowledge about what was happening in the company. It is also pertinent to note, that although the applicant's first anticipatory bail application was withdrawn in 2019, till date, no steps were taken by the police to get proclamation issued, as against the applicant nor the applicant has been shown as an absconding accused in the charge-sheet, despite being named in the FIR.

7. Considering the aforesaid, the application is allowed and the applicant is granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicant be enlarged on bail on executing P.R. Bond in the sum of Rs.25,000/- with one or two sureties in the like amount ;

(ii) The applicant shall report to the Investigating Officer of the concerned Police Station from 28th to 30th March 2022, between 10.00 a.m. to 11.00 a.m, and thereafter as and when called;

(iii) The applicant shall not contact the complainant, witnesses or any person concerned with the case.

(iv) The applicant shall inform his latest place of residence and mobile contact number and/or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the concerned Police Station;

(v) The applicant shall co-operate with the Investigating Agency.

8. The Application is allowed in the aforesaid terms and is accordingly disposed of.

9. It is made clear, that the observations made herein are *prima facie* and are confined to this application.

10. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.