IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.677 OF 2022

1. Anil Chokhara S/o. Babulal Chokhara
2. Sunil Chokhara S/o. Babulal Chokhara ...Applicants

Versus

The State of Maharashtra and Anr. ...Respondents

....

Mr. Pankaj D. Jain with Ms Tejashree R. Kamble i/b. M/s. P.D. Jain and Co. for the Applicant.
Ms Sharmila S. Kaushik, APP for Respondent -State.
Mr. Shivaji Deokar, API, Banking Unit-3, EOW, Mumbai, present.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 28th MARCH, 2022.

P.C.:-

1. By this application under Section 438 of the Cr.P.C., the Applicants have sought pre-arrest bail apprehending their arrest in C.R. No.365 of 2015 registered with D.B. Marg Police Station, Mumbai, which was subsequently registered as Crime No.93 of 2015 of Economic Offences Wing, Banking Unit-3 for offences punishable under Sections 120 B, 420, 465, 567, 468 and 471 of the IPC.

2. Heard Mr. Pankaj Jain, learned counsel for the Applicant and Ms Sharmila Kaushik, learned APP for Respondent-State. Perused the

records and considered the submissions advanced by the learned counsel for the respective parties.

3. The case of the prosecution in brief is that the Applicants and the other co-accused in conspiracy with each other opened bank accounts in five banks in order to make foreign remittance. It is alleged that the Applicants, who are the Directors of three companies viz., Yogeshwar Diamonds Pvt. Ltd., M/s. Shree Charbhuja Diamonds Pvt. Ltd. and M/s. Kanika Gems Pvt. Ltd. had illegally submitted forged bills of entry in order to remit abroad Indian currency approximately to the tune of Rs.304 crores in the form of import advance and post import remittances. It was alleged that signature of the Customs Officer and the CHA were also forged on the fake bills of entry.

4. Based on the said FIR registered with D.B. Marg Police Station, the Customs Authorities had arrested the Applicants under Remand Application No.28/RA/2015. The Applicants were released on bail vide order dated 04/06/2015 and 12/08/2015.

5. On the basis of the same FIR, the Applicant No.1 was arrested by ED for offences punishable under sections 3 and 4 of Prevention of Money Laundering (PML) Act, 2002. He has been released on bail by this Court by order dated 04/08/2017.

6. The Applicants were also arrested by CBI, EOW, Mumbai in crime registered as R.C.No.01/2016 for offences punishable under sections 420, 467, 468, 471 r/w. 120-B of the Indian Penal Code. This crime was also registered on the same set of facts. The Applicants have been released on bail in the said crime vide order dated 04/09/2018 and 14/09/2018.

7. By order dated 14/03/2022 this Court while granting interim bail had observed thus:-

> *6. The present Application is filed apprehending their arrest by EOW, Banking Unit-3, Mumbai in C.R. No.93/2015. The first information report in respect of the said offences was initially registered with D.B. Marg Police Station, Mumbai. It was transferred to EOW, Banking Unit-3, Mumbai in the year 2015. Since 2015 till this date, EOW, Mumbai did not find it necessary to apprehend the Applicants. Though the Applicant No.1 had surrendered, the Investigating Officer did not arrest him. It is stated that the different accounts of the Applicants were not within the knowledge of the Investigating Officer. If at all, the statement is to be accepted, it would only reflect that the investigation was not being carried out with due diligence. Furthermore, in the previous orders including the order passed by this*

Court in Bail Application No.1581/2017 which relates to the offence registered by ED, this Court had observed that prima facie, the Applicant No.1 is not involved in submitting forged bills of entry or other import documents or fraudulent remittance of the foreign exchange to the Hong Kong based company. It was held that there is no material to establish that the Applicant No.1 had knowledge that the amount deposited in the account of the company of which he was a proprietor or director, were proceeds of crime. In view of these observations, this Court had released the Applicant No.1 on bail.

8. As noted above, the Applicant is sought to be prosecuted in the present crime on the basis of same set of facts as in Crime No.ECIR/MB20-II/05/16/197 registered by ED, Mumbai for offences punishable under Section 3 r/w. Section 4 of the Prevention of Money Laundering Act, 2002 wherein while releasing these Applicants on bail this Court had observed that prima facie the Applicant No.1 is not involved in submitting forged bills of entry or other important documents. Moreover, though the case was transferred to EOW in the year 2015, the investigating officer did not take any steps to apprehend the Applicant and did not take him in the custody even though he had surrendered vide letter dated 20/06/2016. The Investigating Officer has not been able to

give any explanation for not proceeding with the investigation or taking steps to apprehend the Applicant. This fact itself prima facie indicates that there was no requirement of custodial interrogation.

9. Considering the above facts and circumstances, in my considered view this is a fit case for grant of pre-arrest bail. Hence, the application is allowed on the following terms and conditions:-

(a) In the event of arrest of the Applicants in C.R.No.93/2015 of Economic Offences Wing, Banking Unit-3, Mumbai, they shall be released bail on furnishing bail bonds in the sum of Rs.50,000/- each (Rupees Fifty Thousand each) with one or two sureties each to the like amount ;

(b) The Applicants shall report to the EOW as and when required by the Investigating Officer;

(c) The Applicants shall keep the Investigating Officer informed of their current address and mobile contact numbers, and/or change of residence or mobile details, if any, from time to time;

10. The application stands disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)