IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1561 OF 2022

Neena Balwant Marathe .. Applicant

Versus

The State of Maharashtra .. Respondent

…

Mr. Rizwan Merchant with Sagar Shete and Sultan Khan for the applicant.
M.Viral Babar for the intervenor.
Mrs.Anamika Malhotra, APP for the State.
API Shri Shailesh Gaikwad, EOW, Pune City.

CORAM: BHARATI DANGRE, J.
DATED : 18th JULY, 2022

P.C:-

1 The present application is filed in form of second application, making a request for conferring on the applicant, to protection from arrest; the first one being rejected by an order passed on 6/8/2021.

The applicant is arraigned as an accused in C.R.No.0064/2021 registered with Kothrud police station, which invoke Section 406, 420 read with Section 34 of the IPC and the relevant sections of MPID Act.

2 The investigating machinery was set into motion since it surfaced that Pravin Marathe Jewellers (PMJ), a private limited company, which was run through various Directors, including the present applicant, each having 23% stake had accepted deposits, but failed to repay the returns as promised. The complaint alleged that the estimate of the amount which was siphoned by their Directors of the PMJ was to the tune of Rs.7,75,81,920/- from the year 2013-14 to 2019-20.

3 While the applicant approached this Court by filing ABA No.1673/2021 along with co-accused Manjiri Marathe and Pranav Marathe, the applications came to be rejected, by recording the role ascribed to the applicant in the complaint, and on the basis of the papers of investigation placed before me, from which it was deduced, that the applicant was an active participant in the business of the Company as well as the firm, and therefore, she could not have pleaded innocence. The applicant along with co-accused Manjiri was shown to be a Director of the company and the payments received by them in the financial year was specifically referred to. The applicant receive huge remuneration and it was so reflected in the balance sheet as on 31/3/2017.

4 Recording a *prima facie* case to the effect that the PMJ and M/s.Marathe Jewellers fall within the ambit of 'financial establishment' as defined in Section 2(d) of the MPID Act, and the amount accepted was by way of 'deposit' by referring to Section 3 of the MPID Act, which may include promoter, partner,

Director, Manager, or an employee who is responsible for management of, or conduct of the business to be fastened with criminal liability, the act attributed to the applicant was found to be falling within the purview of Section 3.

5 The application being rejected on 6/8/2021, the applicant chose to remain inaccessible to the Investigating Agency and on 13/6/2022, has instituted the second application.

Perusal of the application would reveal that again, there is a reiteration of the stand that the applicant is innocent and none of the documents/receipts annexed with the statements or any cheque issued to the witnesses/investors bear signature of the applicant. It is also sought to be projected that the police custody of the son of the applicant was obtained by the Investigating Officer and all necessary documents have been seized and nothing is required to be recovered from the present applicant. It is also one of the ground in the application, that to show her bonafide she is ready and willing to deposit reasonable amount with the Special Court at Pune without prejudice to her rights and since the case is based on documentary evidence, the charge-sheet being filed, the documents are already recovered, it do not warrant custodial interrogation of the applicant, who is aged 62 years.

6 On the previous date of hearing, the learned counsel Mr.Rizwan Merchant specifically made a submission, that the

applicant was served with summons by the Officer and her statement was recorded. The copy of the summons dated 13/4/2022 addressed to the applicant at Flat no.8, Rupali Society, Erandwane, Pune was placed on record and it was submitted that her statement was accordingly recorded on 19/4/2022, on the ground floor situate in Rupali Society.

The learned APP was asked to ascertain the said position.

Similarly, Mr.Merchant was also asked to throw light on the legal position of maintainability of the successive Bail Applications and in response, Mr.Merchant has placed on record an order passed by the Apex Court on 28/1/2021 in case of *G.R. Ananda Babu Vs. State of Tamil Nadu (SLP (Cri.) 213/2021)*

7 Dealing with the first contention, the learned APP state that the Investigating Officer is frantically searching the applicant, but she is not found to be residing on the given address. Further, she would submit that the summons were issued to the applicant by the Flying Squad, CID Pune in respect of the complaint No.05/2022, in which the present applicant is the complainant and therefore, the inquiry was sought to be completed, by recording her statement. The learned APP state that her statement was recorded as she was present outside the premises on the summons being served upon her son.

The learned APP has also placed on record the statement of the owner of the flat no.8, Rupali Society, which was taken on lease by Pranav Marathe for a period of 36 months and which is the residential address of the applicant. The statement of one Gayatri Dev, the owner of the said flat recorded on 16/7/2021 reveal that on 30/4/2022, the owner has returned the Fixed Deposit to Pranav Marathe and the flat has been surrendered to him. His statement is also recorded to the effect that time and again, police used to visit for inquiry and his aged parents and the persons in the neighborhood were often interrogated and therefore, he issued the notice on 7/3/2022 to Pranay Marathe to vacate the flat and from 30/4/2022, he has obtained the possession.

It is thus apparent that the applicant is not residing on the given address.

8 As far as the maintainability of the second bail application in the wake of the first one being already rejected, it can be discerned that in case of *G.R.Ananda Babu Vs State of Tamil Nadu (supra)*, the Hon'ble Apex Court has clearly held that the successive Anticipatory Bail Applications ought not to be entertained and particularly, when it is indicated from the case diary and the particular accused is absconding and not co-operating with the investigation.

It is specifically recorded that "the specious reason of change in circumstance" cannot be invoked for successive ABAs, once it is rejected by a speaking order and that too, by the same Judge.

9 In the wake of the aforesaid authoritative pronouncement, when the 2nd bail application is perused, in the backdrop of the submission, of the learned counsel Mr.Merchant, to the effect that her son Pranav was released on bail by this Court on 15/3/2022, subject to the condition of he depositing Rs.15 lakhs before the Court, I must appreciate the argument.

When the order releasing Pranav on bail is perused, it would reflect the limited role attributed to him, as I have recorded in my order dated 6/8/2021 that Pranav was accused of being an employee of PMJ and he had barely attained majority when he joined the business in the year 2018. When the reconstitution Deed allowed him to enter him as a partner, he was aged 24 years. As far as Pranav is concerned, the order of the Court reveal that he is the beneficiary of the amount of Rs.14,88,722/- and the second interim report of the auditor, reflected him to be the beneficiary of Rs. 28,99,617/-.

Considering the aforesaid liability, since an assurance was given that Rs.15 lakhs would be deposited within two months and remaining amount after his release, he came to be released on bail.

10 I am not able to persuade myself to extend parity to the applicant, since the applicant has played a major role, she

being the director and also recipient of salary. Further, the statement of the witnesses have also referred to the transactions which were made by them on account of the active participation of the applicant and that is the reason why her application was rejected.

Another submission of Mr.Merchant, being that one Gayatri Sky Scrapers owed some money to the applicant's husband and they have intimated the applicant that they will deposit a sum of Rs.One crore 20 lakhs in 60 days, so as to clear the liability of the applicant, also fail to impress me. The learned APP has placed on record the current audit report dated 10/7/2022, where the liability of the present applicant is ascertained as Rs.3,53,75,028/-, bifurcation of the said amount is also found in the audit report under various heads, as the applicant was receiving the amount in her account from the investors. She is also shown to have received her remuneration to the tune of Rs.29,65,025/-. The active participation of the applicant in the entire episode was the precise ground on which the protection from arrest was refused and the prosecution was held entitled to her custody.

11 Though Mr.Merchant vehemently submit that the whole purpose in enacting the MPID Act, is to ensure that the investors get their money back, it should also be borne in mind any fraudulent default by the financial establishment in repayment of deposit on maturity along with any assured benefit

in the form of interest, bonus, profit, make the promoter, partner, director, manager or any other person or employee responsible for the management of or conducting the business of the financial establishment, liable for an imprisonment which may extend to 6 years and fine, which may extend to Rs.One lakh. The scheme of the enactment contemplate appointment of the competent authority and designation of a designated court with power of attachment. That is a different procedure which will have to be followed and it is ultimately for the competent authority and the designated court to pass appropriate orders to secure the interest of investors by attaching the properties. However, as far as the criminal liability is concerned, by attributing a specific role to the present applicant, and on discerning the role, the protection was refused on an earlier occasion. The learned APP specifically pointed out the various entries in the case diary where the Investigating Officer has made serious attempts for securing her custody for interrogation, but she is seen evading the arrest.

In the wake of the above, I do not think that the present applicant deserve any consideration, particularly when the liability of the applicant from the current audit report is an overwhelming figure of Rs.3,53,75,028/-. Her custodial interrogation is very much warranted, even now as much as it was warranted when I rejected the earlier application. Despite the charge-sheet being filed against other co-accused, I do not think that she is entitled to be protected from arrest.

The Application is rejected.

(SMT. BHARATI DANGRE, J.)

Tilak