IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.1624 OF 2022

Jesal Amit Vyas .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

WITH

ANTICIPATORY BAIL APPLICATION NO.1625 OF 2022

Amit Vijay Vyas .. Applicant
Versus
The State of Maharashtra & Anr .. Respondents

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Mr. Shirish Gupte, Sr. Advocate i/b Rucheeta Dhuru for the applicant in ABA No. 1624/22.
Mr.Avinash Avhad i/b Kavyal P. Shah for the applicant.
Mr.Kayval P. Shah for the applicant in ABA No.1625/22.
Mrs.Anamika Malhotra, APP for the State.
Mr.Hiten Venegaonkar with Amit Vyas and Mr.Mudit Ahuja i/b Vertices Partners for intervenor.

CORAM: BHARATI DANGRE, J.
DATED : 4th JULY, 2022

<u>P.C</u>:-

1 By the two applications, the husband and wife who are arraigned as accused in C.R.No. 600/2022 registered with Samta Nagar police station seek protection from their arrest. The said C.R. invoke sections 120(b), 406, 409, 418, 420, 422, and 477(A) read with Section 34 of the IPC.

The applicant Amit Vyas is arraigned as accused no.2, whereas Jesal Amit Vyas is arraigned as accused no.1.

2 Heard learned senior counsel, Mr.Shirish Gupte in ABA No.1624/2022 and Advocate Avinash Avhad for applicant in ABA No.1625/2022. Shri H.S. Venegaonkar represent the complainant, whereas the State is represented by the learned APP Mrs.Anamika Malhotra.

3 The FIR filed by one Hirenkumar Bhavanbhai Patel, a Chartered Accountant by profession and an active participant in a family business in the name of New Patel Saw Mills and Patel Goods Syndicate, which is engaged in import and export of material. Patel Goods Syndicate is engaged in exporting various quality of wood. The complainant claim that the family and their business houses enjoy a goodwill in the market. The complainant is also a Director in Infini Hybrid Pvt.Ltd with 50% investment.

4 Since the applicant Amit Vyas was also engaged in a similar business activity and was a partner in Durolex Pvt.Ltd and was engaged in the business of Solid surfaces, the applicant was acquainted with him and in the mean time, since he had some issues with his partner, Shravan Kumar Sutar, the applicant Amit gave him an offer for establishment of a new company for trading in solid surfaces.

Initially, the proposal was turned down by the complainant and his family, but on being assured that he will take up the responsibility upon himself and his wife Jesal, would also involve herself, into the business, the complainant was prompted to establish the company. Since he was already working with L.G Group and the products of the Company were available in the country at rocket high prices, contemplating that the business would render good returns and Amit's experience would take the business further, a Company by name Infinni Hybrid Pvt.Ltd Co. came to be established on 27/9/2017. It was agreed that both the partners, i.e. the applicant and the complainant would share the initial capital of Rs.Five lakhs each and Jesal, wife of Amit would be appointed as Director of the Company, and she would be responsible for looking after its day to day affairs. The terms of work were settled, the applicant was to act as advisor to the Company. Work of maintaining accounts, handling credits, dealing with the Bank was entrusted to accused no.1 Jesal. The complainant had restricted his responsibility to the purchase of raw material, arranging letter of credit and ensuring compliance of custom.

5 The complainant allege that in terms of the understanding, a current account was opened in which accused no.1 and the complainant were authorized signatory and necessarily the User-ID/password was shared with her. The Accountant for the year 2018-19 was selected by the accused no.2 Amit and he was handed over the responsibility of appointment of dealers/distributors and deciding the price of the product.

The complainant allege that though in the initial capital, he contributed his share of Rs.Five lakhs, the accused persons express their inability, as some amount was due to them from Durolex Company, and on receipt, it was assured that the investment would be made. As the business commenced in November 2017, the complainant entrusted the responsibility of marketing and sales to the accused no.2. The complainant obtained letter of credit from Kotak Mahindra Bank and since the goods were to be imported, invoices came to be issued in the name of Infinny Co. Initially, the amount borrowed was repaid, but thereafter, the default occurred and in order to continue the goodwill, the company of the complainant repaid the instalments upto March 2018, when the Infinni Company was in profit, but since the loan was not repaid, the complainant and his father looked into the accounts and noticed several deficiencies. It was noticed that the accused no.2 had changed the software P2P for accounting and replaced it by 'Tally' and therefore, the complainant was totally denied access to the transactions of the company.

6 In the entire complaint, there are eight accusations levelled against the accused persons, and on all these counts, the allegations faced by the applicants is, they have misappropriated amount of Rs.9,02,16,274/-. It is specifically alleged in the complaint that the accused no.2 without investing a single penny in the company of the complainant and from the proceeds of the products sold on behalf of Infinni Company, used the money for his individual business, and this he achieved by submitting false accounts, and misappropriating the amount from the company. The FIR give the details of the allegations and the manner in which the complainant was cheated. It is alleged that the accused no.2 had floated another Company Infinni Solid Surfaces and used the money for advertising in one exhibition by keeping the complainant in dark.

Serious allegations are levelled against accused no.1, since she was actively handling in the day to day affairs of the Company, and she is also alleged of misappropriating a sum of Rs.1,54,00,000/-.

7 The accusations faced by the applicants require custodial interrogation since they are accused of criminal breach of trust and cheating with the knowledge that wrongful loss

would be caused to the complainant, whose interest they were duty-bound to protect.

The learned senior counsel Mr.Gupte has sought to submit explanation for all the accusations and he would submit that these are all business dealings. I do not find substance in the said submission since though the dealings may be in the nature of business, which the complainant has clearly set out in the complaint, but the accusations faced by the applicant is that they have cheated the complainant and divested the money out of the Company, which was formed in partnership with the complainant and caused wrongful loss to him, particularly when both the applicants were given power and authority to transact on behalf of the company.

8 The accusations levelled in the complaint are serious and the nature of transactions undertaken by the applicants can only be assessed through custodial interrogation.

Applications are rejected.

(SMT. BHARATI DANGRE, J.)