BDP-SPS-TAC

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 2454 OF 2022

Nilesh Shrirang Bharti ..Applicant
V/s
The State of Maharashtra ..Respondent

Mr. Satish Sharma, for the Applicant.
Ms. Sharmila S. Kaushik, APP for the Respondent/State.
Sr. PI Anil Lad, EOW, Raigad, present.

CORAM: NITIN W. SAMBRE, J.

DATE: SEPTEMBER 21, 2022

P.C.:-

1] Applicant is seeking pre-arrest bail in Crime No.25 of 2022 registered with Mahad City Police Station for the offence punishable under Sections 420, 406, 409, 465, 467, 468, 471 and 120-B of the Indian Penal Code.

2] Prosecution case is, Complainant and Directors of ARK Industrial Private Limited who are in production of steel are having work place at Talegaon Dabhade, District Pune. It is claimed that business of the Company went into rough financial weather. As such, accused No.1 who was a general manager was requested to procure finance by making arrangements and as such was provided with KYC documents. It is the case of the prosecution that accused No.1 in connivance with his wife and present Applicant opened an Account in the name of said Company, made customers to deposit the amount due and payable to the Company in the said Account and withdrawn the same for their personal gains. As such, the offence in question.

3] Amongst other allegations against the Applicant are, he has helped co-accused in procuring forged no objection from Canara Bank with whom ARK Industrial Private Limited was initially having an Account.(since companies are not permitted to have parallel Accounts.)

4] Counsel for the Applicant would urge that on 3/4/2020, Applicant transferred an amount of Rs 10,00,000/- in the account of Accused No.1 who was general manger of ARK Industrial Private Limited. According to him, out of the said transaction, Accused No.1 has returned part of the amount viz. 4,50,000/- in the month of August, 2020 and Rs 2,50,000/- in the month of September, 2020. His contention is, Applicant is not concerned with the issue of procurement of KYC documents illegally or opening of parallel Account with IDBI Bank.

5] While opposing the prayer, learned APP based on the statement of witness Rohit would urge that Applicant was instrumental in opening of parallel account with IDBI Bank as the Applicant has assisted Accused No.1 in the process of opening of an account. It is further claimed that even if case of the Applicant of hand-loan of Rs 10 lakhs is accepted still Applicant cannot have refund of the said amount from Company's Account which was illegally opened and operated by Accused No.1. As such, learned APP would urge that custodial interrogation of the Applicant is necessary so as to find out mode and manner in which forged KYC documents in the name of Canara Bank were procured so also for recovery of stamps etc.

6] I have appreciated submissions.

7] Statement of witness Rohit does not repose confidence in the case of the prosecution, particularly when, he himself is the author of the document in regard to opening of Account with IDBI Bank. As such, his claim in the statement under Section 161 of the Cr.P.C. that Applicant was instrumental for procuring KYC documents cannot be relied for implicating the Applicant in the offence in question. As far as receipt of amount of Rs 7,00,000/- by the Applicant from Accused No.1 is concerned, it is inferred from the record that accused No.1 has received an amount of Rs 10,00,000/- from the Applicant on 3/4/2020 and the Applicant has received an amount of Rs 4,50,000/- in the month of August, 2020 and Rs 2,50,000/- in the month of September, 2020. Merely because the amount is received from Accused No.1 by the Applicant from illegally opened and operated Account with IDBI Bank of the Company by itself will not make the Applicant criminally responsible for operation of illegally opened Account of the Company. It's a fact that accused No.1 who was liable to pay the amount to the Applicant was working in the capacity of general manager of the Company. In the aforesaid backdrop, a serious doubt is created as regards involvement of the Applicant in the offence in question. If the Applicant had an intention to draw illegal benefits from the unauthorized Account operated with IDBI Bank by Accused No.1, he would have been benefited to the extent of complete liability i.e. Rs 10 lakhs.

8] That being so, Applicant in the event of his arrest in C.R. No. 25 of 2022 registered with Mahad City Police Station for the offence punishable under Sections 420, 406, 409, 465, 467, 468, 471 and 120-B of the Indian Penal Code, be released on bail on executing P.R. Bond of Rs 15000/- with one or more sureties in the like amount. Applicant shall neither influence the witnesses in any manner nor tamper with the evidence. Applicant shall attend the Investigating Officer of the concerned Police Station from 26th September, 2022 to 30th September, 2022 between 10.00 A.M. and 12.00 Noon and thereafter as and when directed by the Investigating Officer.

9] Application is disposed of.

(NITIN W. SAMBRE, J.)