IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2939 OF 2021

Bhupesh Sevantilal Shah …Applicant
vs.
The State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO. 239 OF 2022

Kunal Narendra Gandhi ...Intervener

In the matter between
Bhupesh Sevantilal Shah …Applicant
vs.
The State of Maharashtra ...Respondent

Mr.Niranjan Mundargi with Jatin P. Shah, Snehankita Munj, Keral Mehta and Sahil Mahajan for Applicant.
Mr.Abad Ponda with Jugal Kanani for Intervener.
Mr.A.A. Takalkar, APP for State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 22 MARCH 2022

P.C. :

. This is an application for pre-arrest bail in C.R. No.571 of 2021 registered with Tardeo Police Station, Mumbai, for offences under Sections 406, 465, 468, 471 and 511 of IPC.

2. The aforesaid crime was registered pursuant to the FIR lodged by Kunal Narendra Gandhi alleging that the Applicant herein forged letter dated 26 June 2019 and cheques which are subject matter of 138

proceedings, being Criminal Complaint No. C.C.5600437/SS/2021 filed by the Applicant and which is pending before Metropolitan Magistrate, 56^{th} Court, Mazgaon, Mumbai.

3. Shri Niranjan Mundargi, learned Counsel for the Applicant, submits that the father of the complainant as well as the complainant had issued post-dated cheques in the course of business transaction. The said cheques were dishonoured for insufficient funds leading to filing of 138 proceedings against the complainant. It is stated that in the said proceedings, the complainant has taken a defence that the said cheques are forged and fabricated. He states that the allegations in the FIR, if are taken as face value, do not *prima facie* disclose offence, as alleged.

4. Shri Abad Ponda, learned Counsel for the Intervener/complainant, submits that a plain perusal of the cheques would *prima facie* indicate that the said cheques and the forwarding letter are forged. He submits that the Applicant has admittedly received money, details of which are given in letter dated 1 July 2016. He submits that cheques, which relate to 138 proceedings, are allegedly issued for the same amount, which was already paid to the Applicant. He submits that the Applicant has filed 138 proceedings on the basis of forged cheques. The offence being serious, needs to be investigated thoroughly and his custodial interrogation is necessary to unravel the truth.

5. Learned APP submits that the Applicant has not produced the relevant documents and has not co-operated with the investigation. Learned APP further submits that this Court (Coram : Nitin W. Sambre, J.), while granting interim bail, had allowed the Investigating Officer to

procure copies of the documents from the court proceedings relating to offence under the Negotiable Instruments Act as to facilitate effective investigation. Learned APP states that the copies of the subject cheques and the letter were forwarded to the Handwriting Expert. However, the Handwriting Expert opined that opinion cannot be given on the basis of photocopy of the documents. He submits that the original documents, i.e. the subject cheques produced in Criminal Complaint No. C.C.5600437/SS/2021 and letter dated 26 June 2019, are required to obtain the opinion from the Handwriting Expert.

6. I have perused the records and considered the submissions advanced by learned Counsel for the respective parties.

7. The aforesaid crime was registered pursuant to the first information report lodged by Kunal Gandhi, the Managing Director & CEO of the 'Lyka Labs Ltd'. The Applicant is the sole proprietor of M/s.Khushbu Impex. M/s.Khushbu Impex has provided Letter of Credit facilities from their Banker to Lyka Labs for payment to supplier of raw material and packaging material. It is the case of the complainant that cheques of LC amount were given as security and the same were taken back after the payment.

8. The case of the prosecution is that in the year 2016-17, Lyka Company had issued undated cheques as security for payment of LC amount of Rs.4.99 Crore. The said cheques were issued by Narendra Gandhi, the father of the complainant and the Ex-Managing Director of Lyka Labs. The company paid the LC amount to the Applicant despite which the Applicant did not return the security cheques and forged the

signature of the complainant and presented the same in the bank for encashment. Upon dishonour of the forged cheques, filed proceedings under Section 138 of NI Act.

9. The intervener has placed on record letter dated 1 July 2016 wherein the Applicant had acknowledged having received Rs.3,63,00,000/. The said statement, if read in *juxta position* with the said cheques, would reveal that the cheque amount tallies with amount mentioned in the letter dated 1 July 2016, which was paid in the year 2016. It is also to be noted that though the Applicant claims that the complainant had forwarded cheques with forwarding letter dated 26 June 2019, it is on record that by letter dated 1 July 2020, the complainant had denied its liability to pay any amount. This letter was not replied to nor any reference was made to the forwarding letter wherein the complainant had allegedly acknowledged his liability. *Prima facie* there is some merit in the allegations raised by the complainant. The allegations levelled against the Applicant certainly need to be investigated. However, the nature of allegations does not justify custodial interrogation, particularly considering the fact that pursuant to the order of interim bail, the Applicant has reported to the Investigating Officer and has been interrogated.

10. As noted above, the main grievance of the complainant is that the subject cheques and letter are forged. These documents are produced before the trial court. This court, while granting interim bail vide order dated 8 December 2021, has already allowed the Investigating Agency to obtain copies of the relevant documents, including the subject cheques and the letter. Learned APP states that the Handwriting Expert was unable to give any opinion on the basis of photo copies. The solution for this is not to

seek custody, but to obtain original records from the trial court.

11. Considering the above facts and circumstances, no case is made out for custodial interrogation. Hence, the application is allowed on following terms and conditions.

(a) In the event of arrest of the Applicant in Crime No. 571 of 2021 registered with Tardeo Police Station, Mumbai, for offences punishable under Sections 406, 465, 468, 471 and 511, the Applicant is ordered to be released on bail on furnishing P.R. Bond in the sum of Rs.50,000/- (Rupees Fifty Thousand) with one or more sureties in the like amount ;

(b) The Applicant shall report to the Investigating Officer as and when required by the Investigating Agency and to co-operate with the Investigating Officer.

(c) The Applicant shall give his permanent address to the Investigating Officer and mobile contact number, and/or change of residence or mobile details, if any, from time to time.

(d) The Applicant shall neither influence prosecution witnesses nor tamper with evidence in any manner.

12. The Investigating Officer is at liberty to seek original documents from the trial court for the purpose of obtaining Expert

opinion. If such request is made, the trial court shall handover the original documents to the Investigating Officer after placing on record the photo copies of the said documents. The Investigating Officer to return the original documents to the trial court on receipt of the opinion of the Handwriting Expert. The Investigating Officer to endeavour to obtain the opinion of the Handwriting Expert within a period of four months.

13. The application stands disposed of in above terms.

14. In view of the disposal of the application, intervention application, being Interim Application No.239 of 2022, does not survive and the same is disposed of.

(SMT. ANUJA PRABHUDESSAI, J.)

MEGHA S PARAB Digitally signed by MEGHA S PARAB Date: 2022.03.30 19:03:50 +0530