IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3123 OF 2022

Karishma Kaku .. Appellant

Versus

State of Maharashtra & Anr. .. Respondents

ALONG WITH

ANTICIPATORY BAIL APPLICATION NO.3125 OF 2022

Ishita Gala .. Appellant

Versus

State of Maharashtra & Anr. .. Respondents

…

Mr.Vineet Naik, Senior Advocate a/w Pranav Badheka, Mr.Hrishikesh Mundargi, Komal Joshi, Pushkraj Deshpande, Pawni Chadda, Piyush Pandhare, Ashwin Hirulkar i/b ALMT Legal for the Applicant in ABA no.3123/2022.

Mr.Ashok Mundargi, Senior Advocate a/w Mr.Vineet Naik, Senior Advocate, Pranav Badheka, Hrishikesh Mundargi, Komal Joshi, Pushkraj Deshpande, Pawni Chadda, Piyush Pandhare, Ashwin Hirulkar i/b ALMT Legal for the Applicant in ABA No.3125/2022.

Mr.Sudeep Pasbola a/w H.S. Venegaonkar, Mithilesh Mishra, Mudit Ahiya, Amit Vyas i/b Vertias Partner for Intervenor in both the Applications.

Smt.A.A. Takalkar, APP for the State.

API Kamlesh Jadhav, EOW, Unit-5 present.

CORAM: BHARATI DANGRE, J.
DATED : 16th NOVEMBER, 2022

P.C:-

1 The two applicants, in the two applications are apprehending their arrest in C.R.No.8/2022 registered with EOW, Unit-5 Mumbai, on being arraigned as accused. The said CR invoke Sections 406, 409, 420, 465, 471 r/w Section 34 of the IPC.

2 Suffice it to note that Ishita, the applicant in ABA No.3125/2022 is named as accused no.9 in the proforma FIR, whereas the applicant Karishma in ABA No.3123/2022 is arraigned as Accused no.15.

3 Heard learned senior counsel Shri Ashok Mundargi for the applicant (Ishita Gala), in ABA No.3125/22 and learned Senior counsel Mr.Vineet Naik for Karishma Kaku in ABA No.3123/22.

The respective senior counsel claim that the Applicants have no connection with the accusations that are levelled in the complaint, wherein three entities are alleged to be the culprits, being Dentsu Communication India Pvt.Ltd, Suumaya Industries Limited and it’s subsidiary Suumaya Agro Ltd.Co, and one Veda Multi Corp. LLP. It is submitted that in the narration of the longish events contained in the complaint, which is lodged on account of the business relationship shared between the parties, inter-se and as far as Ishita is concerned, it is argued that she ceased to be Director of Dentsu, when the agreement was entered, revolving around which the accusations are levelled in the complaint.

4 As far as applicant Karishma is concerned, the submission is, she is the wife of brother of Ishita i.e. Accused no.11 and merely because some amount is transferred in a Company, in which she is a Director, (MUSK), the allegations are too far fledged to demand their custody for the purposes of investigation.

5 Before I appreciate the said contentions advanced by the learned counsel for the applicants and by the learned counsel Mr.Pasbola and Advocate Venegaonkar appearing for the Intervenor as well as the learned APP for the State, I must briefly refer to the accusations levelled in the complaint.

It is alleged by the complainant, one Vinay Kumar Agarwal, the head of Supply Chain Finance in one non-banking financial company, Cap Save Finance Pvt. Ltd, and Chief Business Officer of the sister company Capalpha Trade Pvt.Ltd. He narrated that he is occupying the said post since February 2021 and the Company deal in trade finance, and is in the business of supplying finance to the vendor company, pursuant to which the vendor company supply the material/goods to the client company, and the purchaser client company, within the stipulated period and the decided margin repay the finance to their company. Both the aforesaid companies are described to be the subsidiaries of one Rent Alpha Pvt.Ltd.

6 The complaint makes reference to one Dentsu Communications India Pvt.Ltd (A1). It is alleged that one Smt.Dhwani Dattani established contact with the complainant through Linkedin and by introducing herself, she informed that she was working as a consultant for Suumaya Group Companies, which has received a contract from Dentsu Communications India Pvt. Ltd, for supply of PPE kits as a part of Corporate Social Responsibility (CRS) and she made inquiries for invoice finance for Suumaya Group. The proposal was accepted and the complainant Cap Save agreed to provide invoice finance as desired on completion of documentation. The arrangement was arrived as, Dentsu would place order to Captcha trade, who on receiving the agreed commission, would place an order with Suumaya, who would send goods to Dentsu, who would confirm the receipt of goods to the complainant, upon which the payment would be made to Suumaya and Dentsu would settle it's account with the complainant. Since the invoice finance would have limit on the amount of transaction, it was agreed to provide trade finance and accordingly, on 19/2/2021, a new Company by name 'Capalpha' was incorporated. This Company was introduced to Dentsu through Suumaya as Capalpha had, in the past, done some vendor financing transactions with Suumaya.

The proposed arrangement was agreed as under :

> "a) Dentsu was the buyer, Suumaya was the nodal supplier and Capalpha was providing supplier/buyer credit as a trade intermediary in respect of certain goods/commodities like rice, wheat, pulses etc. with respect of Dentsu (uyer's) Need to Feed Program supposedly received from the State Government of Hariyana which was introduced by the Accused.
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> b) Considering the Credit rating of Dentsu the Capalpha agreed to participate trade financer in the CSR Need to Feed Program. As per the arrangement, Dentsu issued Purchase Orders (PO's) to the Capalpha who then issued back to back Purchase Orders to Suumaya. So, the invoicing was done by Suumaya upon the Capalpha and the goods were to be shipped directly to Dentsu by Suumaya or as per Dentsu directions at the address provided by Dentsu and the Capalpha would raise an invoice upon Dentsu for which the payment was to be made within a period of 30 plus 15 days (where mutually agreed).
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> c) The Capalpha made payments to Suumaya for the goods supplied upon the confirmation from the authorized representatives of Dentsu. Capalpha was to get around 6% margin for participating in the said arrangement.

7 As per the arrangement, initially the payments were cleared by Dentsu, however when the magnitude of the transactions grew, the delay in the payments started. As per the re-confirmations from Dentsu officials and initial transactions, the Capalpha continued to discharge its part of the transaction/s and Dentsu kept on confirming the receipt of the goods from

Suumaya. Until one day, Dentsu based on an internal enquiry, disputed the earlier transactions citing that the goods have never been delivered and that it was defrauded by its employees.

A complaint was filed with EOW, Mumbai thereafter, wherein the investigation revealed that the “Need to Feed” program was bogus and that the lorry receipts prepared by Suumaya showing the dispatch and delivery of goods were fake including certain other crucial documents. It was further discovered that Dentsu was told that the goods were being supplied directly to Veda by Suumaya and Dentsu was asked to confirm the delivery without ever seeing the goods personally. For the said conformation by Dentsu, it was receiving a significant margin on the said transactions. Subsequently, a FIR was registered by the EOW, Mumbai on 12.02.2022.

8 In the light of the accusations in the complaint, it can be seen that the applicant Ishita is sister of Ushit Gala (the Chairman and Managing Director of Suumaya). She was the Managing Director for some period of time, but she resigned on 2/1/2021 before the agreement was entered with Cap Alpha on 19/4/2021.

9 Pertinent to note that the agreement/MOU dated 19/4/2021, the trade arrangement was mutually agreed by both the signatories and in the month of February and March 2021, orders for PPE kit under the need to feed campaign was placed

for the said purpose, finance of Rs.120 crores was provided by Capalpha. The payment for the same was received by Cap Alpha in full, in the month of May and June respectively.

The submission on behalf of the applicant is, post June the payments were delayed for further orders due to Covid-19 Second wave. For the month of June and July, Capalpha again financed towards the 'need to feed programme' and for the said transaction, Dentsu was supposed to repay Capalpha, an amount of Rs.117,73,12,128/- by August 2021, and the said amount was not paid and this is the thrust of the allegation levelled in the complaint.

It is the case of the prosecution that in the month of September 2021, Dentsu raised Purchase Order of Rs.51 crores on Capalpha but since the past payments were not made by Dentsu, Suumaya proposed that Cap Alpha may issue Purchase Orders on Suumaya, and can pay Suumaya, when Dentsu make past payments to Capalpha. However, since Cap Alpha did not receive payment from Dentsu, they did not pay to Suumaya.

10 In the wake of the accusations, when the role of the applicant Ishita is to be searched for, admittedly she is not a signatory to the MOU dated 19/4/2021, entered between Cap Alpha and Suumaya, to cater to the demand of Dentsu for certain agro commodities. The MOU specifically agreed to the terms that First Informant company would place back to back orders on

Suumaya, through Purchase Orders, against the Purchase Orders received from Dentsu and the said orders were on a 60 day credit limit and there was an agreement to support and pay Sumaya on the terms and conditions set out in the MOU. Pursuant to the said purchase orders, Suumaya had to supply the agro products directly to Dentsu and the products were to be despatched from any one of the warehouse of Suumaya and would be dropped to the requisite locations given by First Informant Company and this would be transported in trucks by way of a carrier, raising a lorry receipt, reflecting the invoice number, quantity of goods being transports and the pickup and drop off location. The complaint after, narrating the entire methodology to be adopted, alleged that for the period from 4/6/21 to 16/7/21, an amount of Rs.117,73,12,128/- is to be received from Dentsu.

11 In the whole sequence of events which are narrated in the complaint, which is purely a business transaction and since the agreement contain an arbitration clause, it is informed that the parties had approached the learned Arbitrator.

Copy of the Arbitration Petition filed by the complainant Capalpha Vs. Dentsu Communication India Pvt.Ltd is placed along with the application. The agreement contain a specific clause for reference of all disputes between the seller and buyer arising under/pursuant to this order, which reads thus :

> 15. DISPUTES & JURISDICTION : All disputes between the seller and the buyer arising under/ pursuant

> to this order or relating to the price payable thereunder or any other matter relating to this order shall be settled by arbitration of a sole arbitrator appointed by the mutual consent of the seller and the buyer under and in accordance with the provisions of the Arbitration & Conciliation Act, 1996.

Since the parties have chosen the route of arbitration and are agitating their difference/ disputes between the learned Arbitrator, I do not think that in absence of the specific accusations levelled against Ishita, her custodial interrogation is necessary.

Further, as far as the allegation that Ishita has purchased large number of shares fom the amounts gained from the proceeds of offence, forming the subject matter in the FIR, that by itself, is not sufficient to show her complicity in commission of the offence. As far as Ishita is concerned, along with the application, a meeting of Board of Directors of Suumaya Industries Limited, which took place on 12/2/2021, the minutes are placed on record which clearly reveal that the applicant was not present in the said meeting, though Mr.Pasbola would vehemently submit that she was operating behind the curtains. I do not think this submission can be accepted.

12 As far as the other applicant Karishma is concerned, she is the wife of Ushit Gala and the allegation against her is to the effect that amount which was received by Sumaya Corporation Limited, came to be transferred in Suumaya Agro

Limited, the sister concern and it was used for purchase of two flats on the very same date.

It is alleged that the amount of which Capalpha was defrauded, was used for purchasing the flats and she is one of the Director along with her husband, in MUSK Investments Pvt.Ltd. For the same reason, that the dispute being arbitrable, has been referred for arbitration, which is in progress, and the amount which is alleged to have been defrauded is sought to be recovered through the said process. In absence of any specific and active role attributed to the two women, in the whole episode, I am inclined to protect them from arrest by the following order :-

ORDER

(a) Applications are allowed.

(b) In the event of their arrest in connection with C.R.No.8/2022 registered with EOW, Unit-5, Mumbai, the applicant Karishma Kaku in BA 3123/2022 and applicant Ishita Gala in BA No.3125/2022 shall be released on bail on furnishing P.R. bond to the extent of Rs.50,000/- each with one or more sureties of the like amount.

The Applicants shall report to the EOW, Unit – 5, on Thursday and Friday between 3.00 pm to 5.00 p.m for a period of four weeks, and thereafter as and when directed.

(c) The applicants shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him from disclosing the facts to Court or any Police Officer and should not tamper with evidence.

(SMT. BHARATI DANGRE, J.)

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