IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (ABA) NO.243 OF 2022

(MUKUND GHANSHAMDAS DAGA MAHESHWARI & ANR.....VS.. STATE OF MAH. THR. PSO PS SEVAGRAM, DISTRICT : WARDHA)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Shri S.K.Mishra, Sr. Adv. a/b. Shri A.M.Sharma, Advocate for Applicants.
Shri V.A.Thakre, A.P.P. for Non-applicant No.1/State.
Shri Anil S. Mardikar, Sr.Adv. a/b. Shri Abhay Sambre, Adv. for Complainant.

CORAM : ANIL S. KILOR, J.
DATED : JUNE 15, 2022.

1. Heard.

2. This is an application under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail in connection with Crime No.619 of 2021, registered with Police Station, Sewagram, District : Wardha for the offences punishable under Sections 409, 420, 468, 469, 506 read with Section 34 of the Indian Penal Code and Sections 103 and 104 of the Trademarks Act, 1999.

3. Learned Senior Advocate Shri Mishra submits that the complainant is a maternal uncle of the applicant No.1 and the First Information Report (FIR) is a counterblast of the F.I.R. filed by the applicants against the complainant in the month of March 2021, alleging that the complainant has siphoned Rs.113 Crores illegally.

4. It is further submitted that the present F.I.R. is the subject matter of proceedings filed under Section 482 of the Code of Criminal Procedure for quashing of the F.I.R. and in the said proceedings namely Criminal Application No.723 of 2022 the Division Bench of this Court while issuing notices directed not to file charge-sheet without prior permission of the Court.

5. Shri Mishra, learned Senior Advocate submits that GST Registration obtained by the applicant No.1 in the name of 'Microflex India' on 27/05/2020 has lapsed after 45 days of registration because no bank account was opened. He therefore, submits that GST registration in the name of the applicant No.1 cannot be the basis to say that the applicants are involved in the alleged offence.

6. The learned Senior Advocate has drawn attention of this Court to the Certificate of Registration issued by Government of Telangana, Labour Department in the name of 'Microflex India' wherein the name of the employer is mentioned as B.N.Venugopal. It is submitted that if any amount is defalcated Shri B.N.Venugopal is responsible. However, in any case, as there is no document showing that the applicants are directly involved in the alleged offence, the custody of the applicants is not necessary.

7. It is submitted that the purpose of GST registration in the name of the applicant No.1 was to

obtain refunds and there was no intention to commit any defalcation of money. He, accordingly, submits that the maternal uncle has lodged report to harass the applicants.

8. He further submits that the applicants are no way connected with the alleged offence and they have been falsely implicated in the alleged offence.

9. He further submits that while granting *ad-interim* anticipatory bail this Court has directed to attend the Police Station on certain dates and in compliance the applicants attended the Police Station and submitted all the relevant documents as asked to submit by the police. He therefore, submits that the applicants have cooperated the Investigating Officer in the investigation and now there is nothing to recover from the applicants. Accordingly, he prays for confirmation of *ad-interim* anticipatory bail granted to the applicants.

10. He lastly points out that as far as applicant No.2 is concerned, there is nothing on record to show that she is anyway connected with the alleged offence. However, she has been roped in only because she is the wife of the applicant No.1.

11. On the other hand, learned A.P.P. strongly opposed the application. He submits that this is an economic offence and in view of the judgment of the

Hon'ble Supreme Court of India, in the case of *P. Chidambaram ..vs.. Director of Enforcement*[1], this Court may not consider the request of the applicants for grant of anticipatory bail.

12. He further submits that as far as merits of the matter is concerned the GST Certificate issued in the name of the applicant No.1 is sufficient to show the involvement of the applicants in the alleged offence.

13. The learned A.P.P. has pointed out the bank statement of the company and also the credit entries from the case diary, which show that time to time the cheques issued by Telangana Government were deposited in the said account. It is further pointed out that the amount involved in the alleged offence is huge and it is approximately Rs.12 crores and odd. He, therefore, submits that unless there is a custodial interrogation it is difficult to investigate the matter.

14. The learned A.P.P. has pointed out from the reply that on numerous dates the applicants were requested to remain present and cooperate in the investigation by submitting the necessary documents. However, there was no cooperation from the applicants.

15. Shri Mardikar, learned Senior Advocate, who is

1 (2019) 9 SCC 24

assisting the prosecution on behalf of the complainant, has pointed out that the submission of the applicants that, the present F.I.R. is a counterblast, cannot be accepted for the simple reason that in the said F.I.R. the Final Report has been filed by police as a false case.

16. He further submits that the applicants have forged account opening forms. They siphoned off a huge amount of the complainant. It is pointed out from the reply that the applicants have forged account opening forms of Karnataka Bank, Hyderabad of Microplex India and made himself and his wife Authorized Signatories, firstly by forging the resolution by which he has himself made a signatory and then later on authorized himself as Authorized Signatory. It is submitted that the applicants have also made forged signature on Aadhar Card to submit documents before the Bank. Shri Mardikar, learned Senior Advocate has drawn attention of this Court to the relevant documents in this regard to fortify his submission.

17. Shri Mardikar, learned Senior Advocate further argues that *prima-facie* sufficient incriminating material is on record and being economic offence the custody of the applicants is necessary and accordingly, he prays for rejection of the present application.

18. I have perused the F.I.R., documents filed along with the application, reply of the State, the application moved by the complainant for permission to

assist the prosecution and the documents filed along with the same.

19. In the case of *P. Chidambaram* (supra) the Hon'ble Supreme Court of India has observed thus:

> *"78. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.*
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> *79....*
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> *80. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal it was held as under:- (SCC p.371, para 5)*
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> *"5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to*

administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

81. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in Y.S. Jagan Mohan Reddy v. CBI, the Supreme Court held as under:- (SCC p.449, paras 34-35)

"34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." [emphasis supplied]

82.…

83. Grant of anticipatory bail at the stage

> *of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail."*

20. The F.I.R. discloses economic offence and the amount involved is more than Rs.12 Crores.

21. The G.S.T. registration in the name of the applicant No.1 *prima-facie* shows that on 27/05/2022 the certificate was obtained in the name of 'Microflex India' and in the said certificate the name of the applicant No.1 is mentioned as 'Legal Name'.

22. Whether the said certificate was obtained only for the purposes to obtain refund amount or whether it has been used or not used or whether the registration is expired, these are the matter of trial. However, at this stage, no comments can be made on merits of this certificate as it would be prejudicial to fair trial. But one thing is clear that there is GST certificate in the name of

the applicant No.1 which *prima-facie* shows connection of applicant No.1 with the alleged offence.

23. Similarly, Page No.76 of the paper book shows the Certificate of Registration issued by Government of Telangana, Labour Department in the name of 'Microflex India', wherein the name of the employer as mentioned as B.N. Venugopal. It is the case of the prosecution that said B.N.Venugopal and the applicants are in collusion. Though the said fact is denied by the learned Senior Advocate appearing for the applicants, it is a matter of investigation.

24. Similarly, the Bank Account shows credit entries in relation to the amount paid by Telangana Government in the name of 'Microflex India' and deposited in the alleged bogus account opened by B.N.Venugopal. Again, it would be the part of investigation, whether the applicants have received any benefit or not.

25. This Court, while granting *ad-interim* anticipatory bail, imposed certain conditions. The relevant of the same is that the applicant shall not leave the jurisdiction of the concerned Police Station without permission of the Court.

26. Shri Mishra, learned Senior Advocate fairly

states that there was a breach of this condition. He further submits that the affidavit filed by the applicant shows compelling circumstances for such breach. He therefore, submits that the said breach may not be considered as breach of condition of bail.

27. From the documents on record and after considering the case of the prosecution, as there is *prima-facie* incriminating material available on record against the applicant No.1, any observation on breach would not change the ultimate result of the present application.

28. As far as applicant No.2 is concerned, she is wife of applicant No.1 and nothing has been pointed out to *prima-facie* show that she is directly involved in the alleged offence. In that view of the matter, in my opinion, custodial interrogation of the applicant No.2 is not necessary.

29. In the above referred backdrop, I am of the considered view that the custodial interrogation of the applicant No.1 is necessary in this case and as such I am not inclined to grant bail to the applicant No.1. Accordingly, I pass the following order:

i) The application for grant of anticipatory bail *qua* applicant No.1-Mukund Ghanshamdas Daga-Maheshwari is **rejected**.

ii) The application for grant of anticipatory bail *qua* applicant No.2-Sau. Neeta W/o. Mukund Daga-Maheshwari is allowed. Order dated 12/04/2022, granting ad-interim anticipatory bail, qua the applicant No.2, is confirmed.

iii) The applicant No.2-Sau. Neeta Mukund Daga-Maheshwari shall attend the concerned Police Station as and when her presence is required. However, it is made clear that whenever her presence is required, the Police shall give 72 hours prior notice.

The Criminal Application is **disposed of** accordingly.

JUDGE

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