IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (ABA) NO.697 OF 2021

(Samir Arunrao Wankhede Vs. State of Maharashtra, through PSO, PS Wadi, Nagpur)

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

Shri Anil Mardikar, Senior Advocate assisted by Shri Anil A. Dhawas, Advocate for applicant
Shri S.D. Sirpurkar, APP for the State / Non-applicant
Shri Y.D. Nagpure, Advocate for Complainant (Assist to Prosecutor)

CORAM : ANIL S. KILOR, J.
DATE : 21st FEBRUARY, 2022.

The applicant has approached to this Court by filling the present application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail in connection with crime No.399 of 2021, on a complaint made by his sister-in-law, namely Mamta Suraj Wankhede, registered with Police Station Wadi, Nagpur City dated 16.09.2021, for the offences punishable under Sections 406, 420, 467, 468, 471 and read with Section 34 of the Indian Penal Code.

2. It is the case of the prosecution that, the complainant lodged a report alleging that the applicant and co-accused Mangesh Ramdas Wankhede, conspired together and fabricated the documents of the company to grab property vested with the registered company Agro Pride Pvt. Ltd., Khadgaon Road, Wadi, Nagpur and siphoned off off the amount of Rs.5,92,57,406/- and thereby, cheated the owner of the said company i.e. the complainant.

3. I have heard Shri Mardikar, learned Senior Advocate, assisted by Shri Dhawas, learned counsel for the applicant, Shri Sirpurkar, learned APP for the non-applicant/State and Shri Nagpure, learned Advocate for the complainant, who has requested to permit him to assist the prosecutor.

4. Shri Mardikar, learned Senior Advocate for the applicant, submits that the applicant is the brother-in-law of the complainant and after the death of brother Suraj, the applicant filed a suit against the complainant, namely Special Civil Suit No.1 of 2021, praying for grant of injunction against the complainant that she should not create any third party interest by means of alienating in the suit property. It is further pointed out that a similar suit was filed by the mother of the applicant, namely Sau. Lata Arunrao Wankhede for grant of injunction against the complainant restraining her to withdraw the amount payable on the death of her son Suraj by Policy No.10427261. It is therefore, submitted that the present FIR is a counter blast of the civil suits filed by the applicant and his mother against the complainant and though no role is attributed against the applicant in the alleged offence, he is unnecessarily roped in the alleged offence as an accused.

5. Learned Senior Advocate for the applicant has drawn attention to Form No.DIR-12 and it is pointed out that the applicant became one of an Executive Director in the Agro Pride Pvt. Ltd. during the lifetime of his brother Suraj, who died in the month of November, 2020. It is further submitted that the said application was digitally signed by the complainant

herself.

6. The learned Senior Advocate has further drawn attention of this Court to the appointment letter of the applicant, as the Executive Director in the extra-ordinary general meeting of members of the Agro Pride Pvt. Ltd. held on 15.09.2020. The resolution was signed by the complainant and thus, according to him, the allegations made in the FIR about fabrication of the company's documents are baseless.

7. The learned Senior Advocate further submits that the allegations of siphoning off amount is also false, as during the lifetime of brother Suraj, on many occasions, the applicant deposited the loan in the account of Agro Pride Pvt. Ltd. He has pointed out certain entries in the bank account of the company dated 15.04.2020, 29.05.2020, 15.06.2020 and 16.07.2020. It is submitted that if these are the allegations of the complainant that the applicant had fabricated the documents of the company and siphoned off amount of the company, no complaint was lodged with the Registrar of Companies (RoC) and no steps were taken by the complainant to obtain orders against the applicant preventing him to act as a Director of Company or to prevent the applicant from operating the bank account of the company. He further submits that the complainant is more interested in the arrest of the applicant, as the applicant and his mother have filed civil suits against her.

8. The learned Senior Advocate lastly argued that the dispute is a family dispute and it is of civil nature. He therefore, submits that the custody

of the applicant is not necessary in the present matter and accordingly, he prays for confirmation of interim protection order dated 21.10.2021.

9. On the other hand, the learned APP strongly opposes the application. From the Police Diary, which he has made available for perusal to this Court, he has pointed out that there is a statement of employee of Suraj Wankhede, who has stated the role of the applicant in the alleged offence. He further submits that there is a Handwriting Expert Opinion filed along with the complaint, which supports that allegations made in the FIR about fabricating the company's documents by the accused persons. He further submits that the custody of the applicant is required for further investigation in the matter. He prays for rejection of the present application.

10. Shri Nagpure, learned counsel appearing for the complainant, submits that the documents, on which the applicant has placed reliance to show the applicant became the Executive Director of the company during the lifetime of his brother Suraj and the other documents, are fabricated documents and therefore, for the purpose of bail application, those may not be relied upon.

11. Learned counsel for the complainant further submits that though the complaint was made to the Bank and RoC, nothing has happened. It is submitted that the custodial interrogation of the applicant is necessary, as the applicant along with other accused person have siphoned off the huge amount of the company and hence, this application may be rejected.

12. I have perused the Case Diary, which is made available by the learned APP and also gone through the contents of the FIR and other documents placed on record by both the parties.

13. The allegation in the FIR is that the applicant and co-accused Mangesh conspired together and fabricated the documents of the company to grab property vested with the registered company and siphoned off the amount of Rs.5,92,57,406 /- and thereby, cheated the owner of the said company. It is come on record that the applicant had withdrawn the amount on 15.04.2020, 29.05.2020, 15.06.2020 and 16.07.2020 and the complainant lodged a criminal complaint on 16.09.2021. It is also pointed out that the complaint in question is a counter blast of the civil suits filed by the applicant and his mother against the complainant.

14. In this matter, though the Investigating Agency, while opposing the present application, has relied upon the Private Handwriting Expert's Report however, nothing has been pointed out that the opinion of the Government Handwriting Expert is sought in this matter. Moreover, the complainant has not produced any documents, supporting the allegations made in the FIR that the applicant was appointed as one of the Executive Director of Company after the death of Suraj on the basis of fabricated documents. The complaint was referred to the RoC and on failure of the RoC to take steps in the matter, further proceeding was filed, preventing the applicant to act as a Director of the company, by pointing out that he fabricated the documents of the

company to pose himself as the Executive Director.

15. After considering the material available on record, the Case Diary and the documents filed by the both the parties, along with the application and their affidavits, I am of the considered view that as the applicant has been attending the Police Station as directed by this Court vide Order dated 21.10.2021 and there is no complaint about misuse of liberty by the applicant. Moreover, nothing has been pointed out to show the involvement of the applicant in the alleged offence, except the fact that he has withdrawn the amount of the company from the bank, I am of the opinion that the order of *ad interim* anticipatory bail by this Court dated 21.10.2021, needs to be confirmed. Accordingly, I pass the following order:

i) The application is allowed.

ii) The order, granting *ad interim* anticipatory bail dated 21.10.2021, is hereby confirmed.

iii) The applicant shall attend the concerned Police Station as and when his presence is required.

iv) The application is accordingly **disposed of**.

JUDGE

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NIRANJAN DOMAJI THAWRE

Digitally signed by NIRANJAN DOMAJI THAWRE
Date: 2022.02.24 18:55:06 +0530