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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.951 OF 2023

1. Lalji Petha Kanzariya …
2. Upendra Vinod Kanzariya …Applicants

vs.

State of Maharashtra ...Respondent

Mr. Neeta Karnik for the Applicant.
Mr. H. J. Dedhia APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATED : 3RD MAY 2023

P. C. :

1. Heard learned Advocate for the Applicants and learned APP for the Respondent-State.

2. The Officer is present.

3. After hearing them and after going through papers made available, I find that custodial interrogation of the Applicants is required, so I am not inclined to grant protection from arrest. I will give the reasons hereinafter.

4. Earlier these Applicants along with others were carrying on business of selling of mobiles in the name and style of Trisha mobile.

They were running into losses.

5. That's why they along with the first informant, they started the same business but in different name and style as Raj Mobile. It was carried on in the shop of wife of the first informant. In fact, the business is being looked after by the Applicants and other accused persons. While carrying on the said business, the first informant realized that there is some accounting problem in business and that's why he asked and instructed the Chartered Accountant to verify the accounts. He noticed that there was difference of Rs.72,12,357/-.

6. The applicant have opened an account surreptitiously in the name of business with the Central Bank, Bhiwandi branch. The Chartered Accountant certified that the amount of Rs.49,48,844/- is transferred in the current account of Trisha Cellular of which Ravi Vinod Kanzariya is the proprietor. When asked Kanzariya tried to justify the said act by contending that the persons to whom they have to pay money were insisting for recovery and that's why the amount is transferred.

7. On this background, the Applicants and first informant have entered into MoU dated 21st August 2010. My attention is invited by learned Advocate Ms. Karnik to the contents of the said MoU. It

is on page 33. It mentions that the customers are being made aware of the loan for purchase of mobiles from Bajaj Finance company and business in the name and style of Trisha Mobiles. It further mentions that amount of Rs.72,12,357/- is outstanding with present two Applicants and one Ravi Vinod Kanzariya. It mentions that all these three owes an amount to the first informant, who is described as Satish Tejsingh Purohit. With this understanding the business continued.

8. Later on, the first informant realised that accused were not running business as assured. He realised that they have made false entries in the soft ware that the mobiles are sold in the business carried on in the name and style as Raj Mobile and false bills are prepared. However, the sale proceeds are transferred in the individual bank accounts to the tune of Rs.89,52,793/-. Realising this, FIR is lodged with Narpoli police station on 28th December 2022, and it is registered under sections 406, 420, 465, 467, 471 read with 34 of IPC.

9. It is submitted that in fact both the businesses i.e. Raj Mobiles and Trisha Mobile are looked after by the first informant (as mentioned in the MoU). In other words, he is In-charge of those

businesses. Furthermore, it is submitted that at the most dispute may relate taking up accounts and no criminal offence is disclosed. There is reliance placed on the observations of the Supreme Court in case of ***Sarabjit Kaur Vs. The State of Punjab and Anr.***[1] and more specifically para 13.

10. It is correct that for an offence under section 420 of IPC, there has to be intention to deceive right from the beginning. It is also true that every breach of trust does not give rise to setting criminal law into motion.

11. Learned APP submitted that bogus entries are made in the accounts and these two Applicants have signed MoU and in fact, the first informant was not looking after day-to-day business but it is being looked after by these two Applicants.

12. It is true that apart from section 420 of IPC, sections 406, 465, 467, 471 of IPC were also invoked. It deals with criminal breach of trust, forgery and related offences. It is true that the first informant has reposed trust on these two Applicants and he has allowed the shop of his wife to be used for business. There are also allegations that day-to-day activities are being run by these Applicants.

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1 Criminal Appeal No.581 of 2023 dated 1/03/2023

13. So if bogus entries are made in soft ware it prima facie suggest, the commission of offence of forgery. So this is not plain case of breach of promise but there are allegations which shows that these Applicants have sold away the mobile belonging to business and also transferred sale proceeds in their individual account. So custodial interrogation is necessary. No case for grant of anticipatory bail is made out. I am not inclined to allow this Application and it is rejected.

14. These are my prima facie observations and the trial Court may not be influenced by that.

15. All the parties to act on an authenticated copy of this order.

[S. M. MODAK, J.]