2023:BHC-AS:32447

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

BAIL APPLICATION NO. 2707 OF 2023

VISHAL ANIL PAREKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

WITH
INTERIM APPLICATION NO. 3454 OF 2023
IN
BAIL APPLICATION NO. 2707 OF 2023

MR. HEMANT GIRDHARILAL BOHRA ..APPLICANT

IN THE MATTER OF

VISHAL ANIL PAREKH ..APPLICANT
VS.
THE STATE OF MAHARASHTRA ..RESPONDENT

Mr. Anil Singh, Senior Advocate a/w Mr. Aadarsh Vyas i/b Advocate Shailesh Rai, for the Applicant.
Mr. Bhanudas Jagtap a/w Mr. Mahesh Rajpopat, for Original Complainant.
PSI- Mr. Siddharth Dudhmal, Kasturba Marg police station is present.
Ms. Rutuja Ambekar, APP for the State.

CORAM : M. S. KARNIK, J.

DATE : OCTOBER 27, 2023

P.C. :

1. Heard learned Senior Advocate Shri Anil Singh appearing for the applicant, learned APP for the State and learned counsel for the complainant.

2. This is an application for bail in respect of the offence punishable under sections 406, 409, 420, 506 read with 34 of the Indian Penal Code registered on 17/09/2022 vide C.R. No.1269 of 2022 with Kasturba Marg police station, Borivali.

3. Learned APP and learned counsel for the complainant opposed the application. Briefly stated, it is the case of the prosecution that there are 3 accused who are involved in the present offence. The applicant is the accused no. 3. The present applicant is the son of accused no.2. The applicant and his father were dealers in Honda two-wheelers. There was a contract between the applicant's company and the Honda Motorcycle & Scooters Pvt. Ltd. for dealership in Honda two-wheelers. As the applicant was not properly conducting the dealership, notices came to be issued by Honda Motorcycle & Scooters Pvt. Ltd. on 04/07/2019 and thereafter on 19/01/2021. Ultimately, on 27/10/2021, Honda Motorcycle & Scooters Pvt. Ltd. terminated the dealership of the present applicant. It is the accusation that knowing fully well that under the contract, there cannot be any assignment or permission for sub-dealership, the applicant with a view to cheat the complainant entered into a Memorandum of Understanding on 26/08/2021 with the complainant. As per this Memorandum of Understanding, the complainant had agreed to invest a sum of Rs. 2.5 Crores (interest free) in the business on the terms and conditions stipulated therein. It is the contention of the learned counsel for the complainant that knowing fully well that there was possibility of termination of the contract, concealing all material facts, the applicant and his father induced the complainant to invest the said sum of Rs. 2.5 Crores in the business. Accordingly, the complainant initially had paid a sum of Rs. 71 lakhs and thereafter Rs. 1.62 Crores in the name of the firm of the applicant.

4. It is then the accusation that not only the amount was siphoned off by the applicant but, even when the applicant had negotiated with the complainant later on for settling the dispute, the applicant and his father had agreed to convey the property belonging to them at Wada in favour of the complainant to compensate for the amount which the complainant had invested. The complainant was shocked to know later that though the original documents of the property at Wada were handed over to the complainant by the applicant and his father, the applicant and his father proceeded to sell the property at Wada to a third person by projecting that the original documents are lost. Learned counsel for the complainant therefore submitted that right from the inception, intention of the applicant has been to cheat the complainant. It is further submitted that the amounts which have been received by the applicant, were invested into various properties. An attempt was also made to submit that the bank accounts of the applicant’s father were defreezed by unfair means as the applicant’s father succeeded in transferring the amount in the said account to some other accounts with a view to defeat the complainant’s claim. It is submitted that the application for cancellation of bail that is granted to the applicant’s father is pending. It is open for the complainant to pursue the application made for cancellation of bail which shall obviously be decided on its own merits in accordance with law. I may not be construed to have made any observations so far as the application for cancellation of bail of applicant’s father-co-accused is concerned.

5. So far as applicant is concerned, it is undisputed that an amount of Rs. 38 lakhs is already paid by the applicant to the complainant. To show the bonafides of the applicant, an affidavit has been filed by the applicant in this Court stating that further amount of Rs. 35 lakhs will be paid to the complainant within a period of 2 weeks from today. However there is some ambiguity. Statement made by learned Senior Advocate appearing for the applicant on instructions of Advocate Shailesh Rai on behalf of the applicant is accepted as an undertaking to this Court that this amount of Rs. 25 lakhs will be paid to the complainant within 2 weeks from today.

6. Learned counsel for the complainant was at pains to point out that the accusations are serious and the manner in which the complainant has been cheated disentitles the applicant from claiming the facility of bail. Learned Senior Advocate submitted that present proceedings cannot be converted into the proceedings for recovery of money.

7. It is prayed that the applicant should be made to deposit a substantial amount. It is always open for the complainant to pursue the civil remedies to recover the amounts. The Memorandum of Understanding provides for an arbitration clause for resolution of the disputes. The criminal action will of course take its own course and the applicant shall face the consequences if found guilty post trial. Suffice it to note that the applicant was arrested on 25/09/2022 and is now in custody for almost 13 months. There is nothing on record to indicate that the applicant is a flight risk and in any case, even though I am inclined to enlarge the applicant on bail, the same shall be by imposing stringent conditions. The investigation is complete. The charge-sheet has been filed. Further incarceration of the applicant will only be by way of pre-trial punishment. Hence, the following order :-

O R D E R

(a) The application is allowed.

(b) The applicant-Vishal Anil Parekh in connection with C.R. No. 1269 of 2022 registered with Kasturba Marg police station, Borivali shall be released on bail on his furnishing P.R. Bond of Rs.1,00,000/- with one or more solvent sureties in the like amount.

(c) The applicant shall attend the investigating officer of Kasturba Marg police station, Borivali once in a month on every first Monday of the month between 11.00 a.m. and 1.00 p.m.

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

(e) On being released on bail, the applicant shall furnish his contact number and residential address to the Investigating Officer and shall keep him updated, in case there is any change.

(f) The applicant shall attend the trial regularly. The applicant shall co-operate with the trial Court and shall not seek unnecessary adjournments.

(g) The applicant shall not leave the country without permission of the trial Court.

(h) The applicant shall surrender his passport to the investigating officer, if not already surrendered, prior to his release.

(i) The applicant shall abide by the undertaking given to this Court. It is made clear that breach of any of the conditions of the order or the undertaking will entitle the complainant as well as prosecution to apply for cancellation of bail.

(j) Only for the purpose of honouring the undertaking and complying formalities of paying amount of Rs.35 lakhs to the complainant as observed above, the applicant is permitted to operate bank account no. 0181102000010946 which shall be defreezed for this limited purpose.

8. The application is disposed of. The interim application also stands disposed of.

(M. S. KARNIK, J.)