AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3419 OF 2022

Sunil Kumar Garg … Applicant

V/s.

The State of Maharashtra & Ors. … Respondents

Mr. Abad Ponda, Senior Advocate with Ms. Shraddha Achliya & Ms. Neha Achliya i/by Ms. Sapana Rachure for the applicant.

Mr. P.H. Gaikwad, APP for respondent No.1/State.

Mr. Sanjog Parab, Senior Advocate i/by Ms. Sulabha V. Rane with Mr. Mohan Rao, Mr. Rakesh Umarani, Mr. Gaurav Rana, Ms. Sakshi Baadkar and Mr. Amey Karmudi for respondent No.2.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.380 of 2022 registered with Chakan Police Station, Pune for offences punishable under Sections 420, 406, 409, 467, 468, 471 read with Section 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, the applicant served as Managing Director and co-accused persons were holding key positions in

HUF India Pvt. Ltd. It is the Indian Unit of a German company manufacturing automobile parts. The report alleges that the applicant and three co-accused in collusion with each other caused wrongful loss of Rs.139 crore to the company. Through a computerized administrative system (SAP) series of bogus purchase orders, invoices were generated, payments were released though the goods were never received by the company. Large amounts were misappropriated in various ways including false labour payments, donations, payments to jewellers etc. The co-accused and their relatives received kick backs from company's vendors. This continued over a long period since 2010 to 2021.

3. In January 2020, internal audit was held and thereafter special audit was held in August 2021. On the basis of this report, informant officer of the Indian unit of the company lodged complaint with the police. Accordingly, crime is registered. Three co-accused are already arrested by the police. Present applicant is yet to be arrested. He is said to be the key accused in this crime as he was Head of the Indian unit. All the four accused persons held the key posts since prior to 2010 till the time they resigned or expelled in the years 2020-2021. It is alleged that all the financial illegalities, offences have been committed as per the design of the applicant. Accordingly, first information came to be lodged.

4. The applicant has applied under Section 438 of the Criminal Procedure Code, 1973 before the Additional Sessions Judge, Khed-Rajgurunagar, District Pune which came to be rejected by order dated 26 August 2022. The applicant has, therefore, filed present anticipatory bail application.

5. Learned Senior Advocate for the applicant submitted that first information report is alleged to be based on Forensic Audit Report. The findings and documents along with said report reveal that allegations in the report are prima facie false. No material is produced on record to show bogus purchase orders were created by the applicant. The Forensic Report was prepared without considering key documents and, therefore, such Report cannot be relied upon. For period from 2011 to 2020 books of company were audited by internal and external auditors who did not found any fraud. The company has taken input credit from GST on the material received under alleged fraudulent purchase orders. Therefore, after having benefited from these purchase orders raised on vendors, having received material and taken input credit, it is not open for the company to allege invoices to be fraudulent. The company was always aware of donations to Yashaswi Academy. All the income received from Vendor Hari Om Udyog by the applicant has been disclosed in its tax return. Though the allegations of receipt of Rs.139 crore is made against the applicant; however, it is submitted by the informant during pendency of present application that Rs.20 crore has been received by the applicant in respect of transactions between company and vendors which are allegedly fraudulent. The applicant has not signed any purchase order or any other document in favour of Ravi Enterprises or Test-9. Co-accused Nikhil Agarwal has been released on bail. The applicant has cooperated with the investigation and charge-sheet is filed against the accused persons. It is submitted that in the charge-sheet name of the applicant is mentioned which indicates that charge-sheet is filed against the applicant. Therefore, custodial interrogation of the applicant is not necessary.

6. Per contra, learned APP and learned Senior Advocate for the informant submitted that the applicant along with other accused raised fictitious and fabricated purchase orders (bearing series Nos.170 and 172) on several vendors of the company for the goods that were never delivered and misappropriated the amount by receiving such amount in the account of the applicant and his family members. Regular purchase order series of the company ended at No.169; however, the applicant with co-accused created a completely different fake Nos.170 and 172 in the name of fictitious entities like Ravi Enterprises, Chakan Enterprises etc. which are not in existence and having no GST registration numbers. The GST number used for fake orders was of Hari Om Udyog. The corresponding invoices matching purchase orders were raised by Ravi Enterprises, Chakan Enterprises etc. were submitted by Hari Om Udyog and not these vendors. Payment of these fake purchase orders was approved by the applicant as Managing Director of the company. The statement of watchman of the company indicates that gate entry register containing records of inward of goods delivered to the company are fabricated. The statement of one of the vendor Mr. Vishwesh Kulkarni recorded under Section 164 of the Criminal Procedure Code, 1973 gives details of illegitimate payments made to the applicant and other accused persons. Similarly, vendors Ajay Gupta and Vijay Gupta (owners of M/s. Hari Om Udyog) said to have paid applicant and his family members crores of rupees. The applicant absconded to the United

States of America for period of nine months a day before registration of the first information report. The applicant tried to tamper crucial witness which is clear from the supplementary statement of Mr. Vishwesh Kulkarni. Therefore, the applicant is not entitled to any relief.

7. The Apex Court Court in *Sushila Aggarwal* v. *State (NCT of Delhi)* [(2020) 5 SCC 1] has enunciated the considerations that must govern the grant of anticipatory bail in the following terms : (SCC p. 110, para 92)

> "*92.3.* … While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc. …
>
> *92.4.* Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court."

8. On perusal of the material on record, prima facie shows PO Nos.170 and 172 are in the name of entities like Ravi Enterprises, Chakan Enterprises etc. Existence of these entities is *doubtful.* They have no GST registration number. The GST number used for orders are of Hari Om Udyog. The corresponding invoices matching purchase orders were raised by Ravi Enterprises, Chakan Enterprises etc. which were submitted by Hari Om Udyog.

Payment of these purchase orders was approved by the applicant as Managing Director of the company. It appears that purchase order dated 12 December 2018 indicating M/s. Chakam Traders to be vendors bears GST number of Hari Om Traders. The material on record indicates payments received by the applicant and his family members and firms where family members of the applicant are partners. It prima facie indicates that the applicant has received Rs.8,54,55,884/-, Ritu Garg(Wife) Rs.5,69,67,.252/-, Pratik Garg(Son) Rs.3,50,000/-, Dinadayal Associated (Firm of family members) Rs.3,70,45,000/- and Shree Hari singh Associates (Firm of family members) Rs.2,35,74,700/- (Total Rs.20,33,92,836/-). According to prosecution, the amounts received by the applicant, his family members and firms consisting of family members are towards fake purchase orders issued to fictitious entities. Prima facie no material is on record to indicate that payments made to the family members are towards rent of property taken by the vendor. On perusal of the amount received by the applicant or his family members from the vendors, there is no uniformity of payment either on monthly or yearly basis or any fixed amount for a fixed period. There are unexplained payments received by the applicant, his family members and firms consisting of family members. Prima facie no material is on record that payments received are towards consultancy services. Material on record prima facie indicates that gate entry register containing records of inward of goods delivered to the company is doubful.

9. According to the learned Senior Advocate, charge-sheet is filed against the applicant as his name is mentioned in Form 5B.

However, on overall reading of the charge-sheet placed on record, it appears that the said charge-sheet is filed against arrested accused and not against the applicant. The facts mentioned in Form 5E are stated in the context of arrested accused Ritu Sunilkumar Garg.

10. Supplementary statement of Vishwesh Kulkarni (Vendor) indicates that the applicant tried to persuade him not to cooperate with the investigation which prima facie creates possibility of applicant influencing witnesses.

11. *Applicant left for United Sates of America on 2 March 2022. FIR was registered on 14 March 2022.* Look Out Circular was issued against the applicant on *23 March 2022.* The applicant remained out of country for period of nine months. It is only after order of this Court in present application dated 9 December 2022, the applicant returned to India.

12. On overall consideration of the aforesaid factors, custodial interrogation of the applicant is necessary.

13. The bail application, therefore, stands rejected. No costs.

14. Learned Senior Advocate for the applicant states that the interim relief is in force from 9 December 2022. Considering the said fact, the ad-interim relief is extended for a period of one week from today.

(AMIT BORKAR, J.)

Note: This order is modified as per order dated 11 August 2023 to carry out corrections in paragraphs 8 and 11.