



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

ANTICIPATORY BAIL APPLICATION NO.890 OF 2024

Shripal s/o. Devkaran Kawadiya,
Age 41 years, Occu. Business,
R/o. Plot No.545, CIDCO, Waluj,
Mahanagar-1, Aurangabad

.. Applicant

Versus

1. The State of Maharashtra
2. The Commissioner of Police,
Police Commissioner Office,
Mill Corner, Aurangabad
3. The Police Station Incharge,
M.I.D.C. Waluj Police Station,
Aurangabad

.. Respondents

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Mr. Shaikh Sohail Subhedar, Advocate for Applicant;
Mr. S. P. Sonpawale, A.P.P. for Respondentd/State

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**WITH
ANTICIPATORY BAIL APPLICATION NO.859 OF 2024**

Kushal s/o. Devkaran Kavdiya,
Age 34 years, Occu. Business,
R/o. Plot No.545, Cidco Mahanagar,
Waluj, Chhatrapati Sambhajinagar

.. Applicant

Versus

1. The State of Maharashtra
Through Investigation Officer,
Police Station, MIDC Waluj,
Chhatrapati Sambhajinagar
2. Atul Mohan Bhandari,
Age 51 years, Occu. Business,
R/o. Flat No.301, Signature Building,
Bansilal Nagar, Chh.Sambhajinagar

.. Respondents

Mr. Vikram S. Kadam, Advocate for Applicant;
Mr. S. P. Sonpawale, A.P.P. for Respondent No.1;
Mr. R. P. Mote, Advocate for Respondent No.2/Assisting the A.P.P.

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**WITH
ANTICIPATORY BAIL APPLICATION NO.691 OF 2024**

Bharat s/o. Machhindra Khedkar,
Age 33 years, Occu. Worker,
R/o. Pawan Nagar, Rajangaon, MIDC,
Waluj, Chh. Sambhajnagar .. Applicant

Versus

1. The State of Maharashtra
Through:- M.I.D.C., Waluj Police Station,
Chh. Sambhajnagar
2. The Commissioner of Police,
Chh. Sambhajnagar
3. The Superintendent of Police,
(Aurangabad) Chh.Sambhajnagar .. Respondents

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Mr. Avinash B. Katkar, Advocate for Applicant;
Mr. S. P. Sonpawale, A.P.P. for Respondentd/State
Mr. R. P. Mote, Advocate for Assisting the A.P.P.

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CORAM : S. G. MEHARE, J.
Reserved on : 23.09.2024
Pronounced on : 16.10.2024

PER COURT :-

1. Heard the learned counsels for the applicants, the learned A.P.P. for the respondents and the learned counsel assisting the A.P.P.
2. The applicants are claiming pre-arrest bail in C.R.No.160 of 2024 registered with Police Station, MIDC Waluj, Chhatrapati

Sambhajinagar, for the offences punishable under Sections 406, 408, 420, 465, 467, 468, 471, 477A read with Section 34 of the Indian Penal Code.

3. Applicant – Kushal Devkaran Kawadiya, in A.B.A.No.859 of 2024, has a case that he runs Kushal Agencies, a proprietary firm at CIDCO, Waluj. He started a partnership firm at Cidco in the name of “Guru Labddhi Enterprises”. Applicant – Shripal Devkaran Kawadiya, in A.B.A.No.890 of 2024, has a case that he has two firms, namely, “M/s. Shubham Industries” and “M/s. Amar Industries”. Shubham Industries is the proprietary firm, whereas, M/s. Amar Industries is a partnership firm with his wife. Applicant – Bharat Machhindra Khedkar, in A.B.A.No.691 of 2024, has a case that he was a workman-cum-machine operator and employee of the first informant.

4. The prosecution has a case that the complainant runs M/s. Shubham Industries and M/s. Amar Industries and engaged in manufacturing automobile parts. M/s. Shubham Industries is his proprietary firm and M/s. Amar Industries is his partnership firm and his wife is partner in M/s. Amar Industries. In 2018, he started a new plant in the State of Gujarat. Therefore, he could not pay proper attention to his above-named business. He alleged that since he could not pay attention to his business at Waluj MIDC, his employees in conspiracy with the other two co-accused have

cheated him financially. The payments received to his above named firms, from Luminaz Safety Glass Pvt. Ltd. and Perfect Dynamics, were shown received from applicants – Shripal and Kushal and his staff took the false entries in the account book. They took false and fabricated entries to the ledger. They sent false and fabricated credit notes to the company. They also showed the balancesheet was correct. They had prepared false job work invoices for the firms of applicants – Shripal and Kush. They have to pay a huge money to his firms, He audited his accounts of his firms by Chartered Accountant - Mr. Dilip Jain. Since his employees were making false entries in the accounts, he could not realize that they were playing fraud with him. However, in 2021, he suspected that something wrong happened in his firm. Therefore, he made inquiries with the employees concerning the accounts. They resigned one by one from the firm. Thereafter, he reviewed the audit of the accounts from Chartered Accountant/Auditor Shri. Suryanarayan Shastri. In his audit report, he find misappropriations in the transactions. He also learnt that the employees from his account section had received the benefit from the firm in whose name false entries were taken. He lodged the report against the employees.

5. Applicants – Kushal and Shripal claimed that they have the firms manufacturing and processing automobile spare parts in MIDC Waluj. Applicant- Kushal runs a Proprietary Firm, namely,

Kushal Agencies. He was in the business of trading, selling and purchasing automobiles spares and materials. It has registration under the Goods and Service Tax as per provisions of the Central Goods and Service Tax Act and Rules thereunder. He is partner with Shripad Kavadiya, who started Shree Guru Labdhi Enterprises. Shree Guru Labdhi Enterprises has the business of manufacturing various automobile products and job works for various vendors and automobile industries. It is also registered under the Goods and Service Tax as per provisions of the Central Goods and Service Tax Act and Rules thereunder. In 2017, the said firms were purchasing the raw and scrap materials from Shubham Industries and Amar Industries and supplying various automobile parts to it. Both companies of the complainant were supplying him with yearly ledger accounts, and up to 2020 there was no dispute with respect to the transactions and accounts between them. After the Covid-19 pandemic, the industries of the complainant stopped supplying raw and scrap materials and also stopped giving job work. The applicant persuaded the complainant for job work and scrap material. However, he raised the dispute over the settlement of accounts. At the time of purchasing the raw material and scrap, the complainant had taken various blank cheques from the applicant- Kushal as security. However, he misused the said blank cheques and without there being any legally enforceable debts against them he filed 14 private complaints against the applicant

and his partner under Section 138 of the Negotiable Instruments Act, 1881. Thereafter, he lodged the first information report against them. From time to time, the applicant made the payment for the raw material and scrap purchased from the complainant. From 2017 onwards, from time to time, the complainant raised invoices of the job works, and also raised the invoices of the job work carried out for the firms of the complainant and, accordingly, payment was made for the job works as per the invoices of the firms of the complainant. He also paid the Goods and Service tax as per the invoices generated by their firms after the payment was made by the complainant's firms. However, the complainant again claimed and or taken set off of the Goods and Service Tax paid by the applicant. The accounts, from 2017 onwards till 2020, were settled. GST was paid and reclaimed or set off was taken by the complainant. The complainant never raised any dispute about the same. He has falsely stated that he did not know about those transactions. The complainant was preparing a yearly balance sheet and auditing the accounts. The accounts between them were already settled as per the ledger issued by the complainant himself. The entire record of the accounts and the finances of the firms of the complainant was in his custody, which was allegedly forged or manipulated. The applicants have no concern with complainant's accounts and employees. Nothing is to be recovered from the applicants.

6. During the pendency of the applications, various orders were passed. The applicants attended the police station. Their counsels have a case that whatever documents the Investigating Officer had demanded from them, were supplied. However, the complainant and their counsel have created a mess by raising voice in the Court that the applicants are hiding certain accounts and documents deliberately. They have referred to the documents supplied to the Investigating Officer. Whatever the documents they were in possession of the transactions with the complainant firms, those have been supplied long back to the Investigating Officer. However, the complainant is not satisfied. Therefore, he was intervening in the smooth investigation and creating hurdles in the matter. It is also their argument that since the applicants were attending the Court from May 2024, the evidence against the applicants has been collected. They cannot be forced to produce a document which is not in existence. It is a matter of account, which was maintained by his employees and shown to be correct. There is no *prima facie* evidence to show that the applicants have received benefits due to the alleged fraud played by the employees of the complainant. They are reputed businessmen having no antecedents to their discredit. The complainant wanted to grab GST and avoid the income tax. Therefore, he created the scene that the applicant and his employees in conspiracy with them misappropriated a huge amount and put him to the loss.

The custodial interrogation of the applicants would serve no purpose, simply for the reason that nothing is to be recovered from them. They have submitted the detailed charts of the relevant papers to support their contention that their custodial interrogation is not essential.

7. The learned counsel for the applicant/employee - Bharat states that he has been falsely implicated in the crime. He was the workman-cum-operator of the informant's firm. He was never the plant head. He from a long time was demanding for wage hike and other benefits from the complainant. However, he denied to hike the salary. Therefore, he quit the job and started his own grocery shop at Waluj. He was never in the accounts department. He was not acquainted with the co-accused. He does know about the irregularities in the informant's firms. The complainant was insisting him not to quit the job because the complainant had an apprehension that if the applicant revealed his irregularities then he might lose his key business. The complainant suppressed the material facts because he was having more than eight firms in his name and his family member's name. There is nothing to be recovered from the applicant. The investigating agency is aiding the informant to cover up the real facts by implicating the applicant in the false crime. The papers of investigation do not show his involvement in the crime. He is a poor man. Hence, he may be granted pre-arrest bail.

8. The learned A.P.P. has opposed the applications. He argued that the applicants did not cooperate with the Investigating Officer about the entries in the ledger book. The accused did not supply account information which was sought. There must be an assessment order of the GST. However, it is also not produced. They are not obeying the instructions and supplying the documents to the Investigating Officer. They never purchased the raw materials. They are not entitled to bail.

9. Per contra, the learned counsel for the first informant has vehemently argued that though interim protection was granted to the applicants, they did not support the prosecution. Therefore, to unearth the truth and find out the involvement of the applicants in the crime, their custodial interrogation is essential. He pointed out each and every stage of the investigation. He further argued that the employees of the complainant and the applicants were in collusion. There was no contract for job work. They were only purchasing the scraps. The ledgers were sent by the employees. The applicants were the beneficiaries of the fraud played collusively. He further argued that the applicants were not cooperating with the investigation and deliberately had not supplied the documents sought. The *prima facie* material is available against them that they played fraud with the complainant.

10. To counter the allegations of the learned counsel for the first informant and the learned A.P.P., the learned counsel for the applicants placed on record a bunch of documents explaining that whatever the documents, the Investigating Officer had sought, have been supplied to him. They submitted that they were always providing him with the documents demanded. Therefore, it cannot be said that they are not cooperating with the Investigating Officer. The Police Inspector also filed some documents with the report of the Chartered Accountant on the financial fraud. He contended that no separate documents like cash vouchers were provided with the ledger of Kawadiya brothers. No cash payments were made during 2016-2020. The ledger supplied to the Investigating Officer was in contravention of Section 14(1) of the Income Tax Act. The applicants issued G.S.T. labour charges bills from Sadashiv Industries to Shubham Industries of the applicant for January to March 1990, but the GST registration was cancelled with effect from 2017-2018.

11. On this report, the learned A.P.P. has further argued that the applicants have siphoned the money of the complainant. However, the question is, whether the applicants could be forced to supply the documents which are not in existence. If it is not, they would not be forced to supply the same. The overall facts of the case reveal that it is purely an accounting matter. A detailed

investigation has been done. Necessary ledgers of the applicants as well as the complainant have been recovered and assistance of the Chartered Accountant has also been taken. It may be an attempt of the complainant to recover money from this criminal case only. However, criminal law does not provide for recovering money through criminal proceedings. Besides, the complainant has filed cases against the Kawadiya Brothers under Section 138 of the N.I. Act before lodging the report and legally enforceable debt would be a matter of facts and the evidence of the case.

12. Considering the cooperation extended by the applicants during the interim protection, the Court is of the view that sending the applicants to custodial interrogation would serve no purpose.

13. As far as the allegations against applicant - Bharat Machhindra Khedkar are concerned, he resigned long back. Whether he committed fraud of such huge money would be determined by appreciating the evidence. The relevant bank account has been recovered. Nothing has remained to be recovered from him. He also cooperated with the Investigating Officer. Whether he was the plant head is also question of fact.

14. For the above reasons, this Court is of the view that custodial interrogation of the applicants is not essential. Hence, they deserve anticipatory bail. Hence, the order:-

ORDER

- i) The applications are allowed.
- ii) The orders granting interim protection to the applicants in A.B.A.Nos.890 and 859 of 2024, dated 29.05.2024 and 27.05.2024, stand confirmed.
- iii) In the event of arrest, the applicant - Bharat Machhindra Khedkar in A.B.A.No.691 of 2024, be released on bail on furnishing P.B. and S.B. of Rs.50,000/- with one solvent surety in the like amount, in the above crime for the aforesaid offences, on the conditions that,
 - (a) He should not tamper with the prosecution witnesses,
 - (b) He should attend the Police Station as and when called on written notice by the Investigating Officer till filing the chargesheet.

**(S. G. MEHARE)
JUDGE**

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