IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 458 OF 2024

Ritesh Anselem Fernandes ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

WITH
INTERIM APPLICATION NO. 798 OF 2024

Pallavi Manohar Patil ..Intervenor

In the matter between:

Ritesh Anselem Fernandes ..Applicant
Versus
The State of Maharashtra & Anr. ..Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO. 461 OF 2024

1. Mrs. Harsha Manohar Shah
2. Mrs. Manisha Raghunath Sapaliga ..Applicants

Versus
The State of Maharashtra & Anr. ..Respondents

WITH
INTERIM APPLICATION NO. 799 OF 2024

Pallavi Manohar Patil ..Intervenor

In the matter between:

1. Mrs. Harsha Manohar Shah & Anr. ..Applicants

Versus
The State of Maharashtra & Anr. ..Respondents

Mr. Punit Gehi for Applicants in both A.B.As.

Mr. Aabad Ponda, Sr. Advocate a/w. Kushal Mor i/b. Marmik Shah a/w. Tanmay Karmarkar for Intervenor in IA/798/24.

Mr. Kushal Mor i/b. Marmik Shah a/w. Tanmay Karmarkar for Intervenor in IA/799/2024.

Ms. Mahalakshmi Ganapathy, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 23 FEBRUARY 2024

P.C. :

1. Both these applications are decided by this common order because these applicants arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.327 of 2023 registered at M.R.A. Marg Police Station, Mumbai, on 22.12.2023, under sections 120B, 408, 420, 464, 465, 467, 468 and 471 r/w. 34 of the Indian Penal Code and U/s.66(D) of the Information Technology Act.

3. The A.B.A.No.458 of 2024 is filed by one Ritesh

Fernandes and A.B.A.No.461 of 2024 is filed by the applicants Harsha Shah and Manisha Sapaliga.

4. Heard Mr. Punit Gehi, learned counsel for the applicants in both applications, Mr. Aabad Ponda, learned senior counsel for the Intervenor in I.A. No 798 of 2024, Mr. Kushal Mor, learned counsel for the Intervenor in I.A. No. 799 of 2024 and Ms. Mahalakshmi Ganapathy, learned APP for the State.

5. The F.I.R. is lodged by one Pallavi Patil. She was working with M/s. Hind Offshore Pvt. Ltd. having office at Ballard Pier, Fort. She was working as a Secretary since past 20 years. Her company was in the business of giving ships on hire, providing catering and housekeeping services on the ships. One Manish Kshirsagar was the Director of that company. In 2008, the applicant Ritesh was appointed as a Consultant for the informant's company for getting the customers and enhancing the company's business. He was given an appointment letter as a Consultant on 02.04.2008. Since 2017, he was appointed as the business head. He was getting salary of Rs.3,40,000/-per month. Since the

applicant Ritesh was working from 2008, he had confidence of the Directors of the company. He was given an E-mail I.D. safety@hindoffshore.com on behalf of the company. Ritesh was expected to get the customers for the company. In the year 2020-2021, Ritesh told the informant company that since the company was not giving commission to the parties getting business for the company, the rival companies were taking advantage. He suggested that, they should pay the commission to the parties who could get business for the company. Manish believed him and started giving commission to those parties. Initially, the company's business was increased. In the year 2022, the company's profit was not on the expected lines, therefore, some investigation was made. The data was checked. It was found that, Ritesh had used the said e-mail I.D. safety@hindoffshore.com for sending secret information of the informant's company to its rival companies. It was revealed that, Ritesh was helping the informant's company's rival companies and getting the customers for them. There is one instance mentioned in the F.I.R. wherein, the applicant had sent an e-mail to the informant company's old customer M/s. Sapura

Energy and had told them that they should give their business to the informant's rival company Sinai Maritime Pvt. Ltd. There is an incident of other rival company to whom the applicant Ritesh had given the business. The applicant Ritesh had told another employee Swara Mayekar to prepare the invoices through company's other e-mail I.D. given to Swara Mayekar. On 24.08.2021, Ritesh opened a company by the name Neo Consultancy in partnership with his friend i.e. the applicant Manisha Sapaliga. It was a partnership firm and though they were the partners in that firm, he obtained commission from the informant company to the tune of Rs.86,36,557/-. In 2021, he opened similar firms in the name of his wife Harsha (Applicant No.1 in A.B.A.No.461/2024), his father in law, mother in law and the applicant Manisha. Those companies were Ocean Breeze Marine Brokers and Consultants, Neo Consultants, Paxton Consultancy Services and Marine Solutions and Brokers and Consultants. Those companies or firms did not have any experience, but using those firms, the applicant Ritesh obtained commission from the informant company and deposited that amount in those firms. The F.I.R. mentions various amounts given as a commission to his firms. It is more than Rs.7.7 crores. The other allegation in the F.I.R. is that, he formed another company which had similar name to the name of that of informant's company. It was Hind Offshore Management Services. He tried to take away other customers of the informant company. On these allegations the F.I.R. is lodged.

6. Learned counsel for the applicant invited my attention to the two agreements between the informant company and the applicant Ritesh. The first agreement is dated 01.08.2017 and it is titled as Agreement for Professional Service for Consultant. In that agreement, Clause 2(e) mentioned that the applicant was to devote his whole time and attention towards the interests of the informant company and that he was not to engage with any other enterprise/business/practice whatsoever. The other agreement was dated 29.12.2020. According to the learned counsel for the applicant, the said clause was modified and it was mentioned in Clause 2(e) that the applicant was not to indulge in any activities whatsoever which is harmful to the business of the informant

company either during the contract period or thereafter. Learned counsel for the applicant submitted that the change in the language of those two clauses made the difference and, therefore, the applicant cannot be held responsible if the commission was paid to the companies/firms owned by his family members. He submitted that, those entities in the name of his family members operated on their own. They had brought the business of clients for the informant's company and, therefore, they legitimately received their commission. He submitted that, there was absolutely no offence made out against the applicants. He submitted that, in respect of these payments, proper tax invoices were raised and the company, after verifying the invoices, had made the payment of the commission. He submitted that those companies were not closed but out of them the two firms are still active. He submitted that the applicant Ritesh had worked for the informant company for a long period and brought the business of more than 500 crores and only after he left in January 2023, the informant's company started creating trouble against the applicant Ritesh. The F.I.R. is filed with a malafide intention, only to harass the applicant Ritesh.

So far as, the other two applicants are concerned, learned counsel submitted that, they had their legitimate business. They had got the clients for the informant's company and, therefore, they had rightfully earned the commission which they had received. Therefore, no offence is made out against them.

7. Learned senior counsel for the informant appearing as intervenor in A.B.A.No.458 of 2024 submitted that the applicant Ritesh was not supposed to act against the interest of the informant company. In spite of that, he contacted the business rivals of the informant's company and painted a negative picture regarding the informant's company's business. He, in fact, diverted the informant's company's business to its rival companies because of which there was steep drop in the business and profit of the informant's company. The applicant formed the companies and firms owned by his own relatives and through those companies he manipulated the business, so that, the informant's company turned to him for getting the business and for that purpose he used those firms of his relatives to get the same business of the clients who were diverted to the rival companies. Based on these dishonest

activities, he earned commission from the informant's company. This was all in violation of the agreements. This is also an offence of cheating and misappropriation of funds and criminal breach of trust. He relied on an e-mail I.D. dated 08.05.2018 sent by the applicant Ritesh from his e-mail I.D. of the informant's company to the client of the informant's company. The client was one Nitin Kulkarni and D. Saran Kumar. In that e-mail the applicant Ritesh had introduced M/s. Sinai Maritime to these people. The said M/s. Sinai maritime was a business rival of the informant's company. In spite of that, Ritesh mentioned in his e-mail that he was introducing M/s. Sinai Maritime to Nitin Kulkarni and another. It was further mentioned in the e-mail that M/s. Sinai Maritime was quite dynamic and looking forward to explore more opportunities in the offshore industry but providing cost effective catering services. The applicant Ritesh had further recommended that, they should give an opportunity to M/s. Sinai. A copy of the said e-mail is at page No.231 of A.B.A.No.461 of 2024. Thus, the applicant Ritesh's activities were directly detrimental to the interest of the informant's company causing heavy loss and in spite of that, he was earning commission from the said informant's company. Thus, his dishonest intention and the activities are clearly established.

8. Learned counsel appearing for the informant's company in A.B.A.No.461 of 2024 supported these contentions of Shri. Ponda. Shri. Mor, however, added that the applicants Harsha and Manisha were not innocent and they not only allowed their names to be used for formation of the firms but the commission was transferred in the accounts of those firms. Their direct role is established and even their custodial interrogation is necessary.

9. Learned APP supported these submissions and relied on the two statements recorded during the investigation. Those are of one Swara Mayekar and Rajendra Devadiga. She also submitted that, an attempt was made to use different signatures in the bank accounts and invoices. Though, they were handled by some common accused.

10. I have considered these submissions. The statement of witness Swara Mayekar is important. She was working with the informant's company. Her job profile included making entries of

vendor's purchase invoices, preparing sale invoices, making entries of sales invoices, receipts, following up with the clients and do other miscellaneous work. As a part of her job, the money received by the informant's company was to be deposited in Punjab National bank. After it was deposited, Swara used to send that information on the informant's company's official e-mail. She has further stated that the commission rate for the contract obtained by the company was fixed after the discussion between Manish and Ritesh. They used to fix the commission rate. This information was shared by Ritesh on her official e-mail and thereafter she used to calculate the vendor's commission and prepare rough invoices. She used to send it to Ritesh from her official e-mail on his e-mail I.D. given by the informant's company. As far as, the firms which are referred to in the F.I.R. involving relatives of the applicant Ritesh, are concerned, she has stated that the rough invoices were sent by her in that behalf in respect of those firms on Ritesh's official e-mail I.D. provided by the company. But, she was not knowing those vendors. Ritesh used to obtain draft of this commission from this witness Swara. Based on those drafts the invoices were prepared by Ritesh and he used to submit those invoices to Manish. After the bills were passed, the commission was sent by net banking to those entities. Thus, according to her, she did not know what Ritesh used to do about the rough invoices sent by her. This witness has given one instance of sending draft commission bill of invoice in respect of M/s. Sinai Maritime to M/s. Sapura Energy for Rs.10 lakhs. It was dated 31.05.2020. The said draft was not related to the informant's company. Ritesh had obtained those rough invoices on the pretext that the bill was sanctioned by Manish. The prosecution case is that, this was a false representation and the said commission was wrongfully obtained by Ritesh.

11. Witness Rajendra Devadiga is connected with M/s. Globe Trans Prologistix Pvt. Ltd. His company used to take vessels on rent from the informant's company. He had made payment to M/s. Marine Solutions and Brokers and Consultants, M/s. Neo Consultants and M/s. Paxton Consultancy services. He had made such payment because the applicant Ritesh had sent an e-mail from the official e-mail I.D. of the informant's company. Because of

that, he had paid Rs.2,93,07,084/- to these entities and had paid Rs.3,59,61,975/- to the informant's company. Thus, the brokerage was obtained by the applicant Ritesh in the name of these three entities when they had nothing to do with the client like Globe Trans Prologistix Pvt. Ltd. He has categorically stated that, those entitles had not provided any services to his company, but he had paid the amount to these entities because he had received e-mail from the official e-mail I.D. of the informant's company. This is one more instance as to how the applicant Ritesh manipulated the business to earn the commission for his own companies which were opened in the name of his relatives and friend. The dishonest intention and the modus operandi is clear enough. Learned counsel for the applicants could not point out a single document which could show that all these entities opened in the name of applicant Ritesh's relatives and friends actually had business dealings with any of the clients. Thus, the applicant Ritesh has caused heavy loss to the informant's company by acting with dishonest intention and actually executing his plan. In this view of the matter, his custodial interrogation is necessary.

12. As far as, the applicants Harsha and Manisha are concerned, even as per the prosecution case, the entire scheme was manipulated by the applicant Ritesh. Though, these two applicants had accepted the commission in their firm's account, the entire idea was that of the applicant Ritesh and the beneficiary mainly was Ritesh. He had used the names of these applicants. At this stage, obviously, it cannot be said that these applicants were not involved in the offence, but their custodial interrogation will not reveal anything more than which can be revealed by the applicant Ritesh. He is the brain behind the entire offence. The fact that these applicants' companies had received commission can be proved by the documentary evidence. It would be sufficient if these applicants are directed to appear before the investigating agency and are directed to co-operate with the investigation. The applicant No.1 Harsha is the wife of the applicant Ritesh and the applicant No.2 Manisha was his friend and she was a partner with the applicant Ritesh in one of the firms. Both of them are ladies and they have helped the main accused Ritesh. But the fact remains that the main allegations are directed against Ritesh and

his custodial interrogation is important. In this view of the matter, these two applicants can be protected U/s.438 of the Cr.p.c.

13. Hence, the following order :

<u>O R D E R</u>

i) The A.B.A.No.458 of 2024 preferred by the applicant Ritesh Anselem Fernandes is rejected.

ii) In the event of arrest of Applicant No.1 Harsha Manohar Shah and the Applicant No.2 Manisha Raghunath Sapaliga in A.B.A.No.461 of 2024 in connection with C.R.No.327 of 2023 registered at M.R.A. Marg Police Station, Mumbai, the applicants are directed to be released on bail on their executing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.

iii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

iv) Both the Applications are disposed of.

(SARANG V. KOTWAL, J.)