IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

[1] ANTICIPATORY BAIL APPLICATION NO.1117 OF 2024

Karanraj P. Sahi .... Applicant
Versus
1. The State of Maharashtra, &
2. James Philip .... Respondents

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WITH

[2] ANTICIPATORY BAIL APPLICATION NO.1120 OF 2024

Swati Rajput .... Applicant
Versus
1. The State of Maharashtra, &
2. James Philip .... Respondents

Mr. Ashwin Thool, Advocate a/w. Aditya Raut, Sarthak Bharsakle, Archismati Chandramore i/b. Desai Desai Carrimjee & Mulla for the Applicants in both ABAs.

Smt. Madhavi H. Mhatre, APP for the Respondent-State.

Mr. Ghanshyam Upadhyay, Advocate a/w. Gaurav Agrawal, Devansh Lohiya, Utsav Maurya i/b. Law Juris for the Respondent No.2 in both ABAs.

CORAM : SARANG V. KOTWAL, J.

DATE : 02nd MAY, 2024

P.C. :

1. Both these Applications are decided by this common order today because they arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.74/2024 registered at Vanrai Police Station, Mumbai on 19.2.2024 under Sections 409, 420, 120-B of IPC.

3. Heard Mr. Ashwin Thool, learned counsel for the Applicants in both ABAs, Smt. Madhavi Mhatre, learned APP for the Respondent-State and Mr. Ghanshyam Upadhyay, learned counsel for the Respondent No.2 in both ABAs.

4. The FIR is lodged by one James Phillip on 19.2.2024. He was working as the Vice President with Hitachi Payment Company (hereinafter referred to as 'Hitachi'). On 8.10.2012, Hitachi entered into an agreement with Logicash Solutions Private Limited (hereinafter referred to as 'Logicash'). The subject of that agreement was to replenish the ATM machines of various banks. In the year 2020, the employees of Logicash misappropriated the cash of Rs.9,84,74,100/-. The cash was not deposited in the currency chest of Bank of Baroda; and instead it was misappropriated. For that purpose, Hitachi had lodged C.R. No. 110/2020 on

1.9.2020 under Sections 406, 420, 465, 468, 471 read with 34 of IPC with Central Crime Branch, Nampalli, Hyderabad. Logicash had taken insurance policy from ICICI Lombard from theft of such cash amount. Since in the entire episode, Hitachi had suffered heavy losses, the Applicant Karanraj Sahi, who was the Director of Logicash putforth a proposal that once the amount of policy was received, it would be paid to Hitachi to compensate their loss; and for that purpose and for claiming the policy, Hitachi was to provide necessary documents to Logicash. At the instance of the Applicant Karanraj, an Insurance Consultant Pramod Jain was appointed as Insurance Adviser of Hitachi by a separate agreement and he was paid Rs.1 Lakh per month. Hitachi accordingly supplied all the necessary documents. It is further mentioned that Logicash made Hitachi as a beneficiary in that policy. A letter to that effect was given by Logicash to ICICI Lombard and also informed Hitachi through an email. On 27.8.2020, ICICI Lombard issued a letter making Hitachi as a beneficiary under that policy. Hitachi was told that since the amount was big, it would take some time for getting that amount. Hitachi tried to contact Logicash and ICICI Lombard in that behalf but they stopped replying. On 27.2.2023, Hitachi sent a legal notice to both the Applicants as well as to the ICICI Lombard. On that occasion, the Applicant Karanraj sent an email dated 30.3.2023 stating that the amount of Rs.9,49,06,504/- was deposited in the account of Logicash by the ICICI Lombard. The insurance company also confirmed the said payment made on 26.8.2022. The amount was never transferred to Hitachi. It was misappropriated. On this basis, the FIR is lodged.

5. Learned counsel for the Applicants made the following submissions:

i. The Applicants were the Directors of M/s. NISA Industrial Services Private Limited. That company became the major share holder of Logicash in the year 2018 and, therefore, both the Applicants became the Directors of Logicash in the year 2018.

ii. The original agreement between Hitachi and Logicash was executed in the year 2012. At that time, both the Applicants were not connected with Logicash. Therefore, they were not responsible for any breach of that agreement or any offence committed in respect of that agreement. Said agreement itself mentions that no agency was created between Hitachi and Logicash. Therefore, Section 409 of IPC is not applicable.

iii. The Applicants had not played any role in the pilferage of the amount which was the subject of the FIR with Central Crime Branch, Nampalli, Hyderabad and the charge-sheet filed in that connection on 1.9.2020.

iv. The Applicants have not induced the informant company to part with any amount or to do any act or abstain from doing any act and, therefore, the offence of cheating is not made out.

v. He submitted that though initially a letter was written to ICICI Lombard by Logicash to make Hitachi as a beneficiary, subsequently the secured creditors of

Logicash objected to such arrangement because they had the first right over the dues of Logicash. Because of this legal hurdle, Logicash had to instruct ICICI Lombard to restore them as the beneficiary under that particular policy. Hitachi had not availed of any remedy under the civil law. Neither have they approached the N.C.L.T. to lodge their claim. They are, thus, misusing this criminal prosecution by lodging the FIR.

vi. The money which was received from the ICICI Lombard was paid to the secured creditors. The present Applicants are not the personal beneficiaries. Whatever amount has come in their account was their rightful salary.

6. Learned APP as well as learned counsel for the informant strongly opposed these submissions. According to them the fraud runs deeper. The Logicash had instructed ICICI Lombard to make Hitachi as a beneficiary. It was accepted by ICICI Lombard and Hitachi was infact made the beneficiary. After that there was absolutely no communication from them

informing Hitachi that subsequently that instruction was revoked, even though the Applicants are claiming that an email and a letter was sent to the informant company Hitachi particularly relying on Exhibits 'K-1' & 'K-2' at page Nos.151 & 152 of the present Application. That letter and the email were not received by Hitachi. Both of them relied on the money trail which is mentioned in the affidavit-in-reply of Hitachi in Paragraph-9. The money trail is described in a chart, which is reproduced as under :

Sr. No.	**Date of transfer/ diversion**	**Name of person/entity**	**Amount (in Rs)**
1	29.08.2022	NISA Industrial Services Pvt. Ltd.	5,35,00,000/-
2.	30.08.2022	Karanraj Sahi	57,00,000/-
3.	30.08.2022	Pramod Jain	10,00,000/-
4.	30.08.2022	Pramod Jain	50,438/-
5.	30.08.2022	Swati Rajput	3,00,000/-
6.	30.08.2022	Richa Haresh Ramchandani	32,77,640/-
7.	30.08.2022	Marsh India Insurance Pvt. Ltd.	55,99,100/-
8.	01.09.2022	Richa Haresh Ramchandani	3,56,360/-
9.	09.09.2022	Karanraj Sahi	5,35,000/-
10.	12.09.2022	NISA Industrial Services Pvt. Ltd.	15,00,000/-
11.	15.09.2022	NISA Industrial Services Pvt. Ltd.	15,00,000/-

7. According to the investigation and the bank account of Logicash, this is how the money had travelled after

it was deposited in the account of Logicash on 26.8.2022. They submitted that a substantial amount had gone in the personal accounts of various persons, including both the Applicants. More importantly, the major amount of Rs.5.35 Crores had gone in the account of NISA Industrial Services Private Limited. The Applicants had not mentioned these facts when they had filed the anticipatory bail application before the Sessions Court. It was material suppression of fact and only when this fact was brought to the notice of the Court during hearing of that Application, it was explained by the Applicants that the amounts were given to the secured creditor through NISA Industrial Services Private Limited because the said company was the Corporate Guarantor for the money taken from the secured creditors of Logicash.

8. Learned APP added that there was a Surveyor Report submitted to ICICI Lombard and it was clearly mentioned in the Surveyor Report that the money was due and payable to Hitachi. Inspite of that the said amount was not given to Hitachi.

9. I have considered these submissions. The chart, reproduced above, does indicate that the major amount had gone in the account of NISA Industrial Services Private Limited. Substantial amount had also gone in the account of the Applicant Karanraj Sahi. That was not in consonance with the submission that the amount paid by the insurance company was to be paid to the secured creditors first and not to anybody else to their exclusion. Section 405 of IPC reads thus :

> “**405. Criminal breach of trust.** Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".
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> *Explanation 1*. A person, being an employer of an establishment whether exempted under section 17 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employees contribution from the wages

payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2. A person, being an employer, who deducts the employees contribution from the wages payable to the employee for credit to the Employees State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

10. It was an admitted fact that initially Logicash had instructed ICICI Lombard to make Hitachi as the beneficiary under that policy, as mentioned earlier. It is the case of the

Applicants that the said instruction had to be revoked in view of the objection raised by the secured creditors of Logicash. But that was not brought to the notice of Hitachi. As far as Hitachi was concerned, Logicash's instructions to ICICI Lombard was valid. Thus, the money which was sent by the insurance company and which was to be paid to the beneficiary was dishonestly transferred to various persons including NISA Industrial Services Private Limited and the Applicant Karanraj Sahi in violation of the mode in which such trust was to be discharged. Therefore, the offence of criminal breach of trust is made out. The amount is huge.

11. Even otherwise, if the amount was to be paid to the secured creditors, it was not directly paid to the secured creditors, which also shows dishonest intention on the part of Logicash and in particular, the Applicant Karanraj Sahi. The substantial amount of more than Rs.57 Lakhs has come in his account. That also shows his dishonest intention. The money was misappropriated.

12. Learned counsel for the Respondent No.2 submitted that Hitachi had paid the entire amount to Bank of Baroda and had cleared the dues. They were expecting their losses to be compensated from the insurance company i.e. ICICI Lombard as per the instructions given by Logicash.

13. The Exhibit-B and Exhibit-C to the affidavit-in-reply shows that such instruction was given by Logicash to ICICI Lombard and said insurance company had accepted those instructions and had made Hitachi as the beneficiary. That letter is issued on 27.7.2020 by ICICI Lombard. Thereafter, there was complete silence on the part of the Applicants and Hitachi was not informed about the subsequent revocation of those instructions. This again shows clear dishonest intention on the part of the accused.

14. As far as the Applicant Swati Rajput is concerned, the role attributed to her is that she had allegedly sent a letter dated 10.8.2022 to one Rustom Irani of Hitachi mentioning that the instructions to make Hitachi as beneficiary was revoked. There is nothing to show that said letter was actually

received by Hitachi. The email at Exhibit 'K-2' dated 10.8.2022 is disputed by the informant. In any case, she is alleged to have received Rs.3 Lakhs, which is comparatively a very small amount.

15. On the other hand, there are specific allegations against the Applicant Karanraj. He himself had received the substantial amount of more than Rs.57 Lakhs on 30.8.2022 from the amount deposited by ICICI Lombard. His role is clearly made out. The offence is quite serious. The amount is huge. The informant's company has lost that amount. There is a clear dishonest intention and execution on the part of these Applicants. However, considering the lesser role played by the Applicant Swati and also because she is a lady arraigned as an accused having received only Rs.3 Lakhs out of the total amount, I am inclined to grant protection to her. On the other hand, there are serious allegations against the Applicant Karanraj. Therefore, I am not inclined to protect him under Section 438 of Cr.P.C..

16. Learned counsel for the Applicants submitted that the Applicant Karanraj be protected for a few more days. I am not inclined to accept that prayer. I have decided this matter after hearing both the parties. The offence is quite serious.

17. Hence, the following order :

ORDER

(i) A.B.A. No.1117/2024 preferred by the Applicant Karanraj Sahi is rejected.

(ii) A.B.A. No.1120/2024 preferred by Swati Rajput is allowed. In the event of her arrest in connection with C.R.No.74/2024 registered at Vanrai Police Station, Mumbai, the Applicant-Swati Rajput is directed to be released on bail on her furnishing PR bond in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) with one or two sureties in the like amount.

(iii) Both the Applications are disposed of accordingly.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

PRADIPKUMAR PRAKASHRAO DESHMANE

Digitally signed by PRADIPKUMAR PRAKASHRAO DESHMANE Date: 2024.05.04 12:43:34 +0530