IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1819 OF 2021

Hemant Shivaji Kolhe : Applicant
Vs.
The State Of Maharashtra : Respondent

Adv. Sahil Ghule, i/by Adv. Avinash Avhad, for the Applicant.
Mr. A. R. Metkari, APP for the State.
Adv. Chirag Naik, a/w Adv. Mahesh Ahire & Adv. Prasanna Kumar i/by MZM Legal LLP for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATE : 20th MARCH, 2024

P.C. :

1. Heard the parties. This Application is filed seeking Bail in the event of arrest of the Applicant in connection with F.I.R. dated 09.12.2019 bearing no. 646 of 2019, registered with Dindoshi Police Station Mumbai, for the offence punishable under Section 409, 109, 120-B of the Indian Penal Code, 1860.

2. The Informant is a Senior Vice President and Head (Legal) of Kotak Mahindra Life Insurance Company. It is alleged in

the F.I.R. that the Applicant while working as debt dealer immediately on the Company was entrusted with the work of trade in Security/Instruments of the Government bonds for the Company. The said trading is done under CCIL (Clearing Corporation India Limited) provided by RBI NDS-OM. On 30.04.2019, a complaint was lodged by whistle blower with the company alleging that the present applicant by taking bribe from the outside agencies entering into deal at price lower/higher than the best price. The instances are given in the complaint have been given. On coming to know the Informant made an inquiry with the Applicant. The Applicant on inquiry accepted that he has accepted some amount in cash from one Smt. Mohana Apate from TIPSON Financial Services Company and One Sachin Vipat from East Indian Company.

3. The amount taken was Rs. 2.50 crores which later on accepted to Rs. 2.25 crores. The Company took in writing from the Applicant before the notary on 04.06.2019 and 10.06.2019 that he would pay the said amount to the company. It is thus alleged that the Applicant has committed criminal breach of trust and has caused loss

to the Company by converting the amount for his own use.

4. It is the case of the Applicant that the trading in the Security and Instrument is done on the instructions of the company. Certain leverage/margin is allowed while doing the trading as the market is highly volatile. He has done the trading to the best of his Judgment and there is no fraud committed by him. In the alternative he submitted that at the most the allegation shows that he has accepted the amount from 2 other accused persons from the amount of commission which those 2 accused persons received. There is no allegation that it directly caused a loss to the company. He further submits that a notarized documents was taken from by Company in the month of June-2019. Whereas the FIR is lodged on 09.12.2019. He attended the police station when he was called. To attract Section 409 it is necessary to show that the amount was entrusted with the Applicant. He thus submit that even no offence is made out. He thus prays for bail.

5. The learned Advocate for Respondent No. 2 and the learned APP vehemently opposes the Application, stating that the

Applicant has committed serious economic offence. On the point of delay it is argued that before lodging the complaint the Company is required to cross check/verify the details. Before lodging complaint against employee is taken seriously and therefore it was necessary to verify all the facts. Till lodging of the FIR the Applicant was in employment it is only after verifying and after holding proper inquiry the Applicant was dismissed and thereafter complaint was filed. The complaint is thus filed only after due verification of the facts. There is no delay in lodging FIR.

6. It is seen that this Court had already granted pre-arrest protection to the Applicant by Order dated 13.08.2021 with a condition to join the investigation as and when called by the Investigation Officer. Now the affidavit is also filed by the Investigation Officer, the said affidavit shows that the Applicant was called for investigation on 20.12.2019, and he was interrogated by the Investigation Officer. There is no complaint of misuse of liberty. The FIR was registered in 2019. This Court finds that when the company got the knowledge of the alleged fraud, it entered into

settlements and did not feel it necessary to lodge the complaint for almost 5 months thereafter. It shows that the company do not wanted to in lodge the FIR immediately. Now since the amount is not paid by the Applicant as per the settlement deed, it appears that the complaint is filed. Though it is stated that company has to verify a details before lodging the FIR the said reason does not appear in the FIR. Considering all above aspects this Court finds that Custodial Interrogation is not necessary.

7. The learned Advocate for the Applicant relied on the Order passed by the Hon'ble Apex Court dated 01.03.2024, in SLP (Criminal) No. 9949 of 2023 therein similar circumstances the Hon'ble Apex Court has set-aside the order passed by the High Court rejecting the bail Application in the event of arrest and directed the Applicant therein to be released on bail in the event of arrest. Considering all above this Courts finds that the case is made out to allow the Application. Hence the following order.

ORDER

a) The Application stands allowed.

b) The Applicant be released on Bail on furnishing P. R. bond and solvent surety in the sum of Rs. 50,000/- in the event of arrest in connection with the FIR dated 09.12.2019 bearing no. 646 of 2019 registered with Dindoshi Police Station Mumbai for the offence punishable under Section 409, 109, 120-B of the Indian Penal Code, 1860.

c) The Applicant shall attend the Police Station as and when required by the Police.

d) The Applicant shall always keep informed the police about his contact details such as residential address and mobile number etc., pending the trial.

8. Application stands disposed of.

(KISHORE C. SANT, J.)