IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2981 OF 2023

Ashish Deviprasad Dubey ...Applicant
vs.
The State of Maharashtra and Anr. ...Respondents

Mr. Umesh Mankapure a/w. Mr. Sagar Kursija, for the Applicant.
Mr. Prashant Jadahv, APP, for the Respondent/State.
Mr. Subodh Desai a/w. Ms. Rujuta Patil and Mr. Yohaan Shah i/b. Negandhi Shah & Himayatullah, for Respondent No. 2.

CORAM : N. J. JAMADAR, J.
DATE : APRIL 30, 2024

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 476 of 2023 registered at Baramati police station for the offences punishable under sections 408 and 420 of Indian penal Code, 1860.

3. This Court has granted interim protection to the applicant vide order dated 25th October, 2023.

4. The first informant is the General Manager of Sahyadri Agro & Diary Pvt. Ltd. which is engaged in the business of collection and chilling of milk. In the month of June, 2006, the applicant was initially appointed as an Accountant-Consultant in the said company on contract basis. Eventually, the applicant became a

Director of the company and on 1st April, 2014 the applicant was appointed as the Managing Director and Chief Managing Director w.e.f. 1st December, 2016.

5. It transpired that the applicant indulged in various acts of misfeasance and malfeasance. Thus, a meeting of the Board of Directors was held on 27th September, 2021 in which the applicant was removed from the post of Chief Managing Director. After the staff was apprised that 30th September, 2021 would be the last day in office of the applicant, many staff members disclosed the applicant's various acts of commission and omission with dishonest intent.

6. In substance, the accusation against the applicant was that : (i) despite the company not having generated profits, the applicant dishonestly showed that the company had generated profits in the financial year 2019-20 by fraudulently suppressing the expenditure of Rs. 11,93,94,161/- and thereby the company was made to pay tax of Rs. 1,40,20,000/- which it would not have been required to pay and also pay a dividend of Rs. 52,54,200/- to the applicant, to which the applicant would not have been otherwise entitled to; (ii) the applicant obtained bonus of Rs. 37,49,200/- to which he was not entitled under the terms of employment; (iii) the applicant obtained salary to the tune of Rs. 22,54,113/- even for the days for which he

did not attend the office; (iv) the applicant hired vehicles belonging to his relatives at a higher rental and thereby caused wrongful loss of Rs. 4,68,383/- to the company; (v) even after removal from the post of Chief Managing Director, the applicant did not return the vehicle and thereby caused wrongful loss to the tune of Rs. 2,71,671/-; (vi) the applicant availed services of two drivers though he was entitled to one driver and thereby caused wrongful loss of Rs. 13,89,064/-; (vii) the applicant released payments to one 'Parag Group' at higher rate and thereby caused wrongful loss to the tune of Rs. 2,75,10,017/- and (viii) the applicant dishonestly entered into financial transactions with this 'Parag Group' leading to wrongful loss to the tune of Rs.4,13,73,651/-.

7. Mr. Mankapure, the learned counsel for the applicant submitted that very premise of the prosecution that the company found that the applicant was indulging in acts of misfeasance and malfeasance and therefore he was removed from the post of Chief Managing Director is demonstrably incorrect. In fact, the applicant had tendered resignation of his post of Managing Director, which was accepted in the meeting of the Board of Directors of the company on 27th September, 2021. Thereafter, the applicant started to demand his due wages and other benefits. Initially the company bought time on one or the other pretext. As the dues were not

released, the applicant addressed a legal notice on 14th June, 2023 and, thereupon, to give a counter blast, the FIR came to be lodged on 28th July, 2023. The applicant has also instituted proceedings to recover the outstanding dues from the company. Thus, the personal liberty of the applicant deserves to be protected.

8. In contrast, Mr. Jadhav, the learned APP submitted that there is ample material in the form of the audit reports, other documents and the statements of witnesses which indicates that the applicant has indulged in a massive fraud. The applicant has not cooperated with the investigation. Few of the electronic devices have not been produced by the applicant despite having undertaken to do so. The custodial interrogation of the applicant is, therefore, warranted to facilitate further investigation.

9. Mr. Subodh Desai, the learned counsel for respondent No. 2, submitted that the fabrication of the record and the manner in which the applicant indulged in the fraud is evident from the correspondence exchanged between the applicant and the other officers/ officials of the company. Since the applicant was the Chief Managing Director of the company, the applicant was in a position to influence the decision of the other officers and officials, and by abusing the said position, the applicant indulged in fraud. An endeavour was made to draw home the point that the applicant had

obtained the bonus to which he was not entitled to and had also pocketed financial incentives by showing that the company was in profit by fraudulently suppressing expenditures.

10. I have given careful consideration to the submission canvassed across the bar. Prima facie, it appears that the controversy arose after the cessation of employment of the applicant with the company. The minutes of the Board meeting dated 27th September, 2021 indicate that the Board considered and discussed the agenda of 'approval of the resignation of Managing Director' and resolved to accept the same.

11. Mr. Desai, the learned counsel for the first informant would urge that all these meetings were conducted in audio visual mode and the record of which is in the custody of the applicant alone. Therefore, no credence can be given to the minutes of the meeting relied upon by the applicant.

12. At this stage, I find it difficult to accede to this submission. In the FIR, it is the positive case of the first informant that the Board of Directors had a meeting on 27th September, 2021 wherein it was resolved to remove the applicant from the position of the Chief Managing Director. The company would thus be expected to in a position to produce copy of such resolution. The manner of cessation of employment assumes significance as it is the claim of

the applicant that the dispute arose as the applicant demanded his dues. In the email dated 30th September, 2021 addressed on behalf of the company, it is specifically recorded that the resignation tendered by the applicant was accepted as discussed in the Board meeting. It appears that since November, 2021, the applicant started to demand his dues. Eventually, on 14th June, 2023, applicant addressed a legal notice. As noted above, the FIR came to be lodged on 28th July, 2023.

13. Prima facie, it appears that the prosecution case that the applicant was removed from the position of Chief Managing Director is not borne out by the material on record. Conversely, there is material to indicate that the applicant was insisting for payment of his dues.

14. In these circumstances, whether the applicant had shown excess profit and indulged in other acts of commission and omission with dishonest intention, would be a matter for adjudication at the trial. The material on record, prima facie, indicates that the annual financial statements have been duly approved in the Board meeting and audited by the statutory auditors. In the face of such material, at this stage, the statements of witnesses attributing various acts of commission and omission to the applicant, after the controversy arose between the applicant and the company, may not be taken at

their face value.

15. In any event, the offences revolve around documents. The custodial interrogation of the applicant does not seem warranted to facilitate further investigation. The major offence under section 420 of the Penal Code entails punishment which may extend to seven years. The Court would thus be justified in exercising discretion in favour of the applicant.

Hence, the following order.

ORDER

1] The application stands allowed.

2] The order of interim bail dated 25th October, 2023 is made absolute on the terms and conditions incorporated therein.

3] The applicant shall henceforth appear before the investigating officer as and when directed.

4] The applicant shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

5] The applicant shall regularly attend the proceedings before the jurisdictional Court.

6] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

7] The interim application, if any, stands disposed.

(N. J. JAMADAR, J.)