IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3169 OF 2023

Moydul Sekh .... Applicant

versus

State of Maharashtra & Anr. .... Respondents

…....

- Mr. Moinuddin Mondal a/w Kush M. Lahankar, Advocate for Applicant.
- Ms. Pallavi N. Dabholkar, APP for the State/Respondent.
- Mr. Milan Desai a/w Siddharth Iduani i/b. Mr. Ram I. Ramrakhiani, Advocate for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th JANUARY, 2024

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No.303/2023, dated 31/08/2023, registered with Vanrai Police Station, Mumbai, under sections 406, 420 r/w 34 of the Indian Penal Code.

2. Heard Mr. Moinuddin Mondal, learned counsel for the Applicant, Mr. Milan Desai, learned counsel for the Respondent No.2 and Ms. Pallavi N. Dabholkar, learned APP for the State.

3. The FIR is lodged by one Chirag Khatri working as the Deputy Vice President with Capsave company. The said company was in the business of providing financial assistance to the small scale industries by giving financial assistance to purchase medical instruments and machinery. The company had four zonal offices. One company by the name Medisolution was situated in Kolkata and there was business transaction between the informant's company and this Medisolution company. That company i.e. the Medisolution submitted a loan proposal for M/s Khanam Hospital Pvt. Ltd. for purchase of various medical machinery. In June 2022 the informant's company had sanctioned the loan of Rs.1,93,00,000/-. But the condition was to deposit post dated cheques. The Applicant was connected with Khanam Hospital. The Director of Khanam Hospital did not give the post-dated cheques and therefore the loan was cancelled.

4. After that, Medisolution again sent another proposal

for the same Khanam Nursing Home for sanctioning a loan of Rs.1 Crore. The informant's company told him that, at the highest, the loan amount of Rs.50,00,000/- to Rs.60,00,000/- could be sanctioned. After considering the financial condition of the Nursing Home and the price of the machinery, the informant's company sanctioned the loan of Rs.59,84,748/- for the machinery worth Rs.90,74,300/-. The balance amount of Rs.30,89,552/- which was not included in the sanction loan amount, was directed to be deposited in the account of BDS system as the down payment. That amount was to be deposited by Khanam Nursing Home to BDS system which was the distributor of the machinery. The present Applicant was the proprietor of Khanam Nursing Home. After the loan was sanctioned, the documents and the agreements were prepared. They were signed by the Applicant and his wife. The amount of down payment i.e. Rs.30,89,552/- was deposited in the account of BDS System. The bank statement and the invoice for those medical machinery were sent to the informant's company. The process for sanctioning loan was completed on 24/08/2022 and the amount of loan of Rs.59,84,748/- was deposited in the account of M/s. BDS System at Kolkata. The Medisolution company was given commission of Rs.44,885/-.

5. As per the normal procedure, the informant's company verified whether this machinery was supplied and whether it was installed in Khanam Nursing Home. When the Applicant was asked about it, he informed the informant's company that the machinery was not delivered by BDS System. The informant company's Regional Manager Saugato Mukherjee made enquiries with the proprietor of BDS System. Mr. Debashish Chatterjee, proprietor of BDS System, informed that because of the Applicant's pressure, out of the amount of Rs.59,84,748/- deposited in BDS company's account, the amount of Rs.49,55,448/- was transferred in the personal account of the present Applicant. Since the amount was transferred to the personal account of the Applicant, the machinery was not delivered. Debashish further informed that he was confined to one office and under threats, that amount was transferred to the

Applicant's personal account. He did not lodge any complaint because of the fear created by the Applicant. He forwarded the amount of Rs.10,29,300/- in respect of GST to the informant company's account. He also submitted his bank statement showing that the amount of Rs.49,70,392/- was transferred in the account of the Applicant's wife. These amounts were transferred between 26/08/2022 to 08/09/2022.

6. The FIR further mentions that the Applicant had repaid the installments of the loan to the tune of Rs.2,41,011/-. But the rest of the amount was misappropriated. On this basis, the FIR is lodged.

7. Learned counsel for the Applicant submitted that he is the victim in this case. He himself had lodged the complaint at Domkal police station, District Murshidabad against the aforesaid Debashish. It is mentioned in that complaint that said Debashish was an employee of P. Bhogilal company and was having company by the name BDS system. He along with some

officers of Capsave company had cheated him. The Applicant himself had deposited certain amount with P. Bhogilal and BDS System from May 2021 to May 2022 for the purpose of getting loan for medical instruments. But he was not given any loan and therefore as per their commitment, the BDS company returned the amount of Rs.25,00,000/- and Rs.19,70,392/- on 26/08/2022 and 29/08/2022 respectively.

8. Learned counsel for the Applicant submitted that those amounts were deposited in the Applicant's wife's account. This was strictly in the nature of refund by the BDS company and it has nothing to do with the loan amount purportedly disbursed by the informant's company. He further submitted that he had not directed the informant's company to deposit the sanctioned loan amount in the account of BDS company. The amount should have directly come to the Applicant's account. He therefore submitted that the amount which he has received from BDS is an independent amount and it is not the amount which is sanctioned by way of loan by the informant's company. He

submitted that he has not received the machinery and he has not even received the amount purportedly disbursed by the informant's company as the loan amount. He further submitted that the transaction is in the nature of commercial transaction. At the highest it is a civil dispute. The informant's company can take steps for recovery of the amount. The criminal offence is not made out. The Applicant himself is suffering from psychological issues and therefore his custodial interrogation is not necessary. He is willing to cooperate with the investigation.

9. Learned counsel for the Applicant submitted that the FIR was registered at Vanrai Police Station on 31/08/2023. He himself had given complaint at Domkal police station on 17/02/2023. The FIR is registered vide C.R.No.103/2023 at Domkal police station u/s 420 r/w 34 of the IPC. The investigation is going on and in that case, the charge-sheet is already filed. He therefore submitted that the present FIR is in the nature of second FIR.

10. Learned APP as well as the learned counsel for the first informant strongly opposed these submissions. Both of them submitted that the dates in this case are important. The first informant had already approached the officers of Vanarai police station on 12/12/2022. Vanarai police station were conducting the preliminary enquiry and after being satisfied with the genuineness of the allegations, the FIR is lodged. Therefore it cannot be said that the FIR in this case is the second FIR which is lodged subsequently. They further submitted that the subject matter of the present FIR is completely different from the alleged subject matter of the FIR lodged by the Applicant at Domkal police station. In the present case, the first informant is the victim and the informant's company has lost the amount. Learned APP produced the investigation papers before me in which there is a letter issued by Khanam Nursing Home. It is addressed to the informant's company and it is clearly mentioned in that letter that the amount of loan be deposited in the account mentioned in that letter. That account was of BDS system in Bandhan Bank at Gariya, Kolkata. Therefore as per his

own instructions, the amount was disbursed in BDS company's account. Learned counsel for the Applicant submitted that the Applicant is disputing his signature on that letter. However, at this stage the investigation reveals that the amount was in fact deposited in the account of BDS company as per the directions of the Applicant himself. The loan was disbursed on 24/08/2022 and immediately on 26/08/2022 and 29/08/2022 the major amount was transferred from the BDS company's account in the Applicant's wife's account. The amount was not utilized for purchase of machinery. The FIR mentions that it was done at the behest of the present Applicant who had pressurized the officers of BDS.

11. I have considered these submissions. The facts mentioned by both the sides speak for themselves. The dates in this case are important. The loan was disbursed on 24/08/2022 in the account of BDS company. Immediately on 26/08/2022 and 29/08/2022, the major amount from that loan amount was transferred in the account of wife of the present Applicant. Thus,

it is clear that the informant company has lost their money. There is nothing to show that there was collusion between the informant company and BDS company so that the informant's company would help BDS in getting the amount which was actually sanctioned for the Applicant. The loan amount was disbursed to BDS at the instance of the Applicant himself as it is evident from the letter signed by the Applicant. It is beyond doubt that the informant's company has lost that money. There is no substance in the submissions of learned counsel for the Applicant that the amount which the Applicant's wife has received, was in respect of their private transaction with BDS and it is nothing to do with the amount of loan received from the informant's company. The flow of money clearly indicates that the Applicant obtained the loan on the pretext of purchasing machinery but instead of purchasing the machinery, the amount got transferred by the Applicant in the name of his wife. The machinery was not purchased. The installments of loan were not paid and this caused heavy loss to the informant's company. All this requires custodial interrogation. This is not merely a commercial dispute, but a well thought out plan causing financial loss to the present informant with the requisite criminal intention. In this view of the matter, considering the gravity of the offence and also considering the necessity of custodial interrogation, no relief u/s 438 of Cr.P.C. can be granted. The application is rejected.

(SARANG V. KOTWAL, J.)