IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No.1701 of 2024

Kaushik Arvind Vyas
Age 58 years, Occ. Self Employed,
Adult, Indian Inhabitant,
R/at. 606, Ganesh Darshan CHS,
Pratap Nagar, Link Road,
Jogeshwari (East), Mumbai - 400 060. ...Applicant/Org.Accd No.10

Vs.

The State of Maharashtra
At the instance of Sr. Inspector of Police,
Economic Offence Wing, Crime Branch,
Unit No.13. ...Respondent.

Mr Sunny Waskar a/w Ms Harshada Morey and Mr Shailesh Rajbhar, for the Applicant.
Mr Yogesh Y Dabake, APP for the Respondent – State.
Mr Sunny Jain a/w Mr Sanjay Pandey and Mr Abhishek Kogle, for the Intervenor.
API Rupesh Darekar, EOW, Mumbai, is present.

Coram: R. N. Laddha, J.
Date: 22 August 2024.

P.C.

Heard Mr Sunny Waskar, the learned counsel for the applicant, Mr Yogesh Dabake, learned Additional Public Prosecutor representing the respondent/State and Mr Sunny Jain, the learned counsel appearing on behalf of intervenor/complainant.

2. This is an application for pre-arrest bail filed by the applicant, apprehending arrest in C.R. No.31 of 2024, registered with EOW,

Mumbai (C.R. No.421 of 2024 registered with L. T. Marg Police Station), for the offences punishable under Sections 406, 409 and 420 read with 34 of the Indian Penal Code.

3. According to the prosecution, the complainant, a cloth merchant, engaged the services of the applicant/accused, a broker, to connect with various cloth suppliers, including M/s Nhavkar Enterprises, Bhoomi Enterprise and others. However, these suppliers defrauded the complainant of Rs.10,14,68,316/-. The prosecution claims that the applicant/accused was aware of the supplier's previous offences related to fraudulent business dealings but failed to disclose this information to the complainant. By withholding this knowledge, the applicant breached the trust placed in him, resulting in a wrongful loss of Rs. Rs.10,14,68,316/-.

4. Mr Sunny Waskar, the learned Counsel for the applicant submits that the applicant was merely a broker and not a beneficiary of any amount transferred to traders. The applicant did not receive any brokerage as alleged in the FIR, except for a legitimate brokerage fee of Rs.50,000/- from Nhavkar Enterprises for a successful order, for which the complainant received the full payment. However, the complainant then excluded the applicant and continued dealing with the company directly. Notably, accused No.1, Dinesh Sharma, was employed with Nhavkar Enterprises during initial transactions and later ran Panchvati Textiles, with whom the complainant continued to do business despite default payments. This suggests the complainant made independent

business decisions without the applicant's knowledge. The applicant was not an appointed agent liable for company's payment defaults. Additionally the applicant is undergoing Cancer treatment, having undergone surgery and requiring constant family support. With no criminal history and a willingness to cooperate with the investigation, the applicant deserves consideration for bail.

5. On the other hand, Mr Yogesh Dabake, the learned APP, and Mr Sunny Jain, the learned Counsel for the intervenor/first informant jointly submit that the complainant provided cloth material to the co-accused on credit, relying on the applicant's assurance, but has yet to receive payment. They argued that the applicant, as the beneficiary of the transaction, received brokerage and, in collusion with the co-accused, defrauded the complainant. Therefore, they contend that the applicant's custody is necessary to facilitate the recovery of the supplied cloth material.

6. Upon examining the records, it is evident that the dispute arises from a commercial transaction and is essentially a civil matter. The applicant, a broker, was responsible for facilitating deals and received brokerage fees for his services. The available material suggests that the applicant received the brokerage amount for a successful order, for which the complainant received full payment. Moreover, the applicant is not a beneficiary, and there is no material avialable on record to indicate that any illegal proceeds were transferred to his account. The applicant's role was limited to earning a commission from the

transaction, and there appears to be no grievance against the payment of the transaction for which he received the commission. The charge sheet has been filed against the co-accused and prima facie, nothing incriminating has been found against the applicant. Notably, two of the three co-accused were arrested and subsequently released on bail. Furthermore, the applicant is undergoing Cancer treatment, having undergone surgery and requiring constant family support. The applicant has no criminal antecedents. In light of the above, this Court is inclined to grant the anticipatory bail to the applicant. Hence, the following order.

ORDER

(i) In the event of applicant's arrest in connection with C.R. No.31 of 2024, registered with EOW, Mumbai (C.R. No.421 of 2024 registered with L. T. Marg Police Station), he shall be released on bail on furnishing a PR Bond of Rs.25,000/- with one or more sureties in the like amount.

(ii) The applicant himself or through any other person shall not indulge in any activity that would tamper with the evidence or influence the witnesses.

(ii) The applicant shall cooperate with the investigation and attend the police station as and when required.

7. It is made clear that the above observations are *prima facie* in nature and made only to decide the present anticipatory bail application. The trial Court shall not be influenced by the same during the trial.

8. The application stands disposed of accordingly.

[R. N. Laddha, J.]