IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Anticipatory Bail Application No. 2299 of 2024

Dharmendra Gajendra Kothari
Aged 45 years, Occ. Business,
R/at. A1/34, Sri Punit Nagar,
S. V. Road, Borivali (W), Mumbai – 92. ...Applicant

Vs.

The State of Maharashtra
(C.R. No.39 of 2019 EOW, Unit 3,
General Cheating-1, Mumbai) ...Respondent

Mr Subodh Desai, Senior Advocate a/w. Mr Karan Mehta, Ms Asha Mehta, Mr Nishant Shah, Mr Shubham Dudwadkar, and Mr Ashwin Pande i/b. Karan Mehta & Associates, for the applicant.
Mr Arfan Sait, APP, for the respondent/ State.
PSI Chetan Pacherwal, Unit III, EOW, Mumbai, is present.

Coram: R. N. Laddha, J.
Date: 21 August 2024

P.C.

This application has been preferred by the applicant seeking bail in anticipation of arrest in CR No.147 of 2019, registered at Byculla Police Station, Mumbai. Subsequently, the case was transferred to the Economic Offences Wing (EOW), Unit-III, General Cheating-1, Mumbai, and re-numbered as CR No.39 of 2019. The applicant is accused of committing offences punishable under Sections 406, 409, 411, 414, 420, 465, 467, 468, 471, read with 120-B of the Indian Penal Code.

2. Between December 2018 and February 2019, the Mumbai Lokhand and Polad Kamgar Mandal ('the Mandal') invested Rs.45,00,00,000/- in seven fixed deposits with the State Bank of India ('SBI'), Mazgaon Circle Branch, Mumbai, at an interest rate of 6.75% per annum, maturing between December 2020 and February 2021. According to the prosecution, in 2019, when the Mandal faced issues with false fixed deposit receipts from other Banks, it decided to withdraw the SBI deposits. An inquiry revealed that Rs.36,00,00,000/- were withdrawn pre-maturely using forged documents. Despite demands, SBI failed to return the embezzled amount, leading to the present FIR. The investigation showed that the misappropriated funds were transferred to multiple entities, including Vernam Trading Pvt Ltd, Swetlana Infrastructure Pvt Ltd, and Crystlina Multimedia Pvt Ltd, which received Rs.3,08,75,000/- and further transferred Rs.1,16,00,000/- to the Axis Bank account of E-Retail Services Pvt Ltd ('E-Retail'). The applicant, a director of E-Retail and signatory of its Axis Bank account, is accused of conspiring with SBI officials to prepare false documents and siphoned off the Mandal's invested funds.

3. Mr Subodh Desai, the learned Senior Counsel appearing on behalf of the applicant, asserts the applicant's innocence and argues that the applicant has been falsely implicated in the crime solely based on the co-accused statement. The learned Senior

Counsel explains that the applicant was one of the three directors of E-Retail, along with Shivaji Pol and Milind Acharya. The learned Senior Counsel submits that the actual perpetrator, Nikhil Roy, the bank manager, was released on bail, and a charge sheet has been filed against him and other co-accused, who are also enlarged on bail. Furthermore, nothing remains to be recovered or discovered from the applicant and his custody is unwarranted. The case relies on documentary evidence, which is already in the investigating agency's custody.

4. On the other hand, Mr Arfan Sait, the learned Additional Public Prosecutor representing the respondent/ State, opposes the grant of pre-arrest bail, contending that the applicant, as a director and signatory of E-Retail's bank account, stands to benefit from the invested funds. He points to the statement of E-Retail's other directors, alleging that they became directors at the applicant's request, lured by promises of monthly payments. While the co-accused have been released on regular bail, the learned APP emphasises the severity of the offence, which involves embezzling public funds through shell companies. The monies are yet to be recovered. The applicant's custody is required to ascertain the money trail and the persons involved in the crime.

5. This Court has given anxious consideration to the rival contentions and perused the records.

6. The allegations against the applicant centre on the misappropriation of funds invested by the Mandal in fixed deposits with SBI. The applicant's role as a director of E-Retail and signatory of its Axis Bank account during the relevant period is not contentious. The records show a complex scheme to divert the invested funds to various entities, including the transfer of Rs.3,08,75,000/- to Vernam Trading Pvt Ltd, Swetlana Infrastructure Pvt Ltd, and Crystlina Multimedia Pvt Ltd. Additionally, Rs.1,16,00,000/- was transferred to E-Retail's Axis Bank account based on alleged fake bills. As a director and signatory, the applicant had authority over the company's finances. Statements from co-accused directors reveal that they became directors at the applicant's instance and were promised monthly payments. *Prima facie,* sufficient material is on record to suggest the applicant's involvement in the crime. The siphoning of public funds is a severe offence with far-reaching and irreversible consequences for a country's economic growth. Investigating such crimes, particularly facets of false entities, layered transactions, and concealed beneficiaries requires the utmost seriousness and diligence.

7. It is a settled position in law that granting anticipatory bail is an extraordinary power. While regular bail is generally considered the norm, the same principle does not apply to anticipatory bail. The Court must exercise careful and prudent

discretion when deciding whether to grant anticipatory bail, considering each case's specific circumstances. There is no one-size-fits-all approach. Caution is necessary, as granting protection in serious cases could potentially hinder investigation or lead to miscarriage of justice by allowing tampering with evidence. A profitable reference in this regard can be made to the decision of the Hon'ble Supreme Court in ***Srikant Upadhyay v. State of Bihar***[1].

8. Given the gravity of the offence and its implications on society, the custodial interrogation of the applicant for thorough investigation is deemed necessary. In light of the foregoing, this Court is not inclined to exercise its discretion in favour of the applicant. As a result, the present application stands rejected.

(R. N. Laddha, J.)

1 2024 SCC OnLine SC 282.