MHCC050050792021

IN THE COURT OF SESSIONS AT DINDOSHI (BORIVALI DIVISION), GOREGAON, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.1422 OF 2021
IN
(C.R. No.750 of 2021 of Malad Police Station)

MUDASSIR JAMAL NASIR ANSARI,
Age 32 years, Occ.: Business,
Residing at- 5th Floor, Flat No.505,
Bismilla Residency, Ghodapdeo Cross Road,
Near NN Bakery, Hira Bhai Compound,
Ghodapdeo, Mazgaon, Mumbai-400010.

..Applicant.

V/s

The State of Maharashtra (Through Malad Police Station)

..Respondent.

Ld. Adv. Mr. Kapil Zodge, for the applicant.
Ld. Addl. P.P. Mr. Machewar, for the respondent.
Ld. Adv. Mr. Santosh Pawar, for the Intervener.

CORAM : SHRI L.S. CHAVAN,
ADDITIONAL SESSIONS JUDGE,
COURT ROOM NO.10.

DATE : 09th November 2021

ORAL ORDER

This is an application filed by the applicant under Section 438 of the Code of Criminal Procedure 1973, for granting anticipatory bail in connection with Crime No.750/2021 registered with Malad

Police Station for the offence punishable under Sections 408, 419, 420, 465, 467, 468, 471, 381, 120(B) of the Indian Penal Code.

2. The factual matrix of the prosecution case is that, in the year 2009, the complainant and his father had established Gokul Fuelchem Pvt. Ltd. Company for carrying the business of Coal Trading. In the year 2017, the complainant's father was expired. Thereafter, the complainant and his uncle namely Naresh Killa become the directors of the company and looking after the daily business. Mr. Kalpesh Anand Jadhav is working as a Chief Accountant in the company. Therefore, his company's Account No.698605116992 of ICICI Bank's online transactions are done by Mr. Kalpesh. He was the trusted employee of the complainant, so his Mobile No.9321158173 used for OTP purpose. The complainant's permission was mandatory to send the money to transport and raw material supplying companies. As per the company's policy, Kalpesh was informing the name of company before sending money and after his permission, he used to transfer the money. The complainant used to check bank statements time to time and it also reflected correct names of the companies to which money had transferred. Since beginning of year 2021, the complainant's company's cash flow was decreasing and to find out the exact reason of the same, the complainant had appointed Mr. Punit Tiwari as an accountant in his company to verify the transactions. When accounts were scrutinized from 10.08.2021, the company's chief accountant Kalpesh Jadhav switched off his mobile and stopped coming on duty. Mr. Punit Tiwari was checking company's bank transactions. He was informed by the supplier company R.V. Impex Pvt. Ltd., Surat, whose owner is Mr. Jigar that Rs.4,34,734/- was not received by them. Therefore, the

complainant with Punit Tiwari checked bank statements then found the description of bank statements that the above amount is transferred to R.V. Impex Pvt. Ltd. The complainant informed the same to Mr. Jigar then he confirmed from his side that, he has not received any amount. Therefore, on 13.08.2021 via e-mail, the complainant enquired to bank about the same. That time, bank replied that Mr. Vivek Mahadik is beneficiary of this account. His bank account is of Bank of India bearing Account No.121410510001509, Mobile No.8698460392 and his nick name in online bank account is R.V. Impex Pvt. Ltd., Surat. Therefore, after further scrutiny, the complainant found that on 06.07.2021, the amount of Rs.4,34,734/- was transferred to Mr. Vivek Mahadik with fake name of R.V. Impex Pvt. Ltd and the false bill was generated in the name of R.V. Impex Pvt. Ltd. The right of preparing the bills was only to Mr. Kalpesh. Therefore, the complainant tried to contact him. But, he was not found at his residential place and his mobile was switched off. Thereafter, on 17.08.2021 the company received E-mail from Kalpesh stating that, Kalpesh has done fraud in company's bank accounts and he is guilty for the same. Therefore, he is leaving the company. After receipt of E-mail, the complainant E-mailed to company's bank to send him the list of beneficiaries and nick name, their bank details and money transferred to those accounts. Accordingly, on 18.08.2021 the bank submitted all the requisite details to the complainant. All the data received from the bank indicates that, all the transactions and billing are made by Kalpesh's user name used in ERP Software. Mr. Kalpesh quoted extra cost in supplier's original quotation. He transferred original cost to suppliers and remaining extra amount transferred to his family and friends accounts with fake beneficiary nick name as a supplier's name. It is observed that, Kalpesh has transferred huge amounts to those accounts who have never done business with his company. In order to hide the fraud, he has given the beneficiary nick names of routine suppliers to these accounts. After scrutinize, it was found that the amount of Rs.3,86,77,704/- were stolen. The details of the name of beneficiary account is given in detailed. All the accounts holders are the family members and friends of Kalpesh Jadhav. Therefore, the complainant lodged the report to Malad Police Station against the applicant and other. On the report of the complainant, Crime No.750/2021 came to be registered against them for the offence punishable under Sections 408, 419, 420, 465, 467, 468, 471, 381, 120(B) of the Indian Penal Code.

3. The learned advocate for the applicant argued that, the applicant is innocent and has been falsely implicated in the abovesaid crime. The entire misappropriation of fund has been attributed by Kalpesh Jadhav who was the employee of the complainant's company. The applicant is neither directly nor indirectly has nexus with Kalpesh Jadhav. He is not beneficiary of the alleged amount. Nothing is to be recovered from him. His custodial interrogation is unwarranted. Hence, requested to enlarge the applicant on pre-arrest bail.

4. Per contra, the learned APP for the respondent duly assisted by Adv. Santosh Pawar for Intervener strongly opposed for granting anticipatory bail contending that, there is a fraud of huge amount in the complainant's company. Some amount has been transferred in the account of applicant. The custody of the applicant is required to recover the amount and to facilitate the investigation. Hence, requested for rejecting the application.

5. In view of the rival submission of both the sides, it appears that there is fraud to the tune of Rs.7,30,54,614/- in the complainant's company. As per the allegation of complainant, some amount has been transferred in the account of applicant. As the offence is serious in nature relating to financial scam. The investigation is an initial stage. Considering the nature of allegation against the applicant, his custodial interrogation is imperative to recover the amount and to facilitate the investigation. Therefore, he is not entitled to grant the anticipatory bail. Hence, I pass following order.

ORDER

Anticipatory Bail Application No. 1422 of 2021 is hereby rejected and disposed of accordingly.

Sd/-

(L.S. CHAVAN)
Additional Sessions Judge,
Borivali Div., Dindoshi, Mumbai

Dt. 09/11/2021

Dictated on : 09/11/2021
Transcribed on : 10/11/2021
Checked & Signed by HHJ on : 20/11/2021

CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER." 20/11/2021 at 03.05 pm. Mrs. J.S. Gawai UPLOAD DATE AND TIME NAME OF STENOGRAPHER	
Name of Judge (with Court room no.)	HHJ Shri L.S. Chavan, City Civil & Sessions Court, Borivali Div., Dindoshi. (C.R.No.10)
Date of Pronouncement of JUDGEMENT/ORDER	09/11/2021
JUDGEMENT/ORDER signed by P.O. on	20/11/2021
JUDGEMENT/ORDER uploaded on	20/11/2021