

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 667 OF 2014

Sandeep Deepak Chawla .. Applicant

versus

State of Maharashtra .. Respondent

Mr. Mahesh Vaswani i/b. Farooque Ansari and Dharini Nagda for Applicant.

Mr. H. J. Dedhia - APP for the State.

Mr. Ravi Ahuja, Mr. Jagdish Chhabria, Mr. Sumit Dhirwan (POA) - Complainants present.

CORAM : M. S. SONAK, J.
(Vacation Court)

DATE : 30TH MAY 2014

P.C. :-

1] Heard Mr. Mahesh Vaswani, the learned counsel for the Applicant, Mr. H. J. Dedhia, the learned APP for the State and Mr. Ravi Ahuja, Mr. Jagdish Chhabria, Mr. Sumit Dhirwan – who claim to be the Complainants in this matter.

2] By this Application, the Applicant seeks pre-arrest bail under Section 438 of the Criminal Procedure Code. The Applicant apprehends arrest for the offences punishable under Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In

Financial Establishments) Act, 1999 and Sections 406, 420 r/w. 34 of Indian Penal Code being C.R. No. 120 of 2013 registered by Economic Offences Wing Unit No. 7, Mumbai.

3] By order dated 16.05.2014, Sessions Court, Mumbai, has rejected the Applicant's plea for pre-arrest bail. For the aforesaid offences, the Petitioner's brother and father have already been apprehended. The Sessions Court has rejected their applications seeking regular bail.

4] Mr. Vaswani submitted that if the entire material on record is perused, no case is made out of the Applicant having committed any offence either under the provisions of MPID Act or for that matter the Indian Penal Code. The material on record, at the highest reveals that the company of which the Applicant is the Managing Director has incurred losses and therefore was unable to comply with its contractual obligations. The circumstance that all amounts from the investors were accepted by means of cheques and also that post dated cheques and bills of exchange for the corresponding amount had been issued in favour of the investors, makes it clear that there is absolutely no element of *mens rea* involved, which is pre-requisite for any offence either under the MPID Act or the Indian Penal Code.

5] Mr. Vaswani further submitted that from the say / remand application filed by the State in the context of arrest of Applicant's father and brother, it is clear that an amount of Rs.5.65 crores is, in fact, due and payable to the Applicant's company. This amount is more than sufficient to cover up whatever amount that the Applicant's company may be due and payable to various investors.

6] Mr. Vaswani also submitted that the Applicant has joined in the investigations and is further willing to join in the investigations. Mr. Vaswani pointed out that the statement of the Applicant has already been recorded and further the police authorities have already seized a cupboard full of files and documents. Accordingly, Mr. Vaswani submitted that there is no question of any further recovery in terms of Section 27 of the Evidence Act that could be contemplated. Mr. Vaswani accordingly submitted that the Applicant be granted anticipatory bail.

7] The learned APP submitted that the Applicant is presently absconding. The police authorities were able to apprehend the Applicant's father and brother, however since the Applicant has made himself scarce, they have not been able to apprehend the Applicant.

8] The learned APP submitted that a printer valued at Rs.3,00,00,000/- came to be sold by the Applicant's company for a paltry amount of Rs.20,00,000/-. Further, properties at Pune came to be sold as late as on 12.07.2013 on basis of resolutions signed by certain persons who have no nexus with the Applicant's company. From all this, the learned APP submits that it is evident that the Applicant is bent upon disposing of the properties, so that the investors, who have already burnt their fingers are left in a lurch and further proper investigation is rendered difficult.

9] The learned APP along with the complainants pointed out that almost 104 persons have invested in the Applicant's company. The Applicant, who as the Managing Director, was responsible for preparation of the balance sheets, represented an extremely rosy picture in so far as the company's financial profile is concerned. On basis of such balance sheets and other representations, which were by no means bonafide, the investors were induced into making investments. The actual profile of the Applicant's company would indicate that the company owes huge amounts to banks and financial institutions. All this was not at all made clear at the stage when the investors were induced into investing amounts with the Applicant company. For all these reasons, they submitted in unison that custodial interrogation is a must and the application for

anticipatory bail be rejected.

10] Having considered the rival submissions and perused the record, in my judgment, the Applicant has failed to make out any case for grant of anticipatory bail.

11] The Sessions Court has rightly relied upon the decision of this Court in the case of *Harshad S. Mehta vs. Union of India* [1992 *Cri.L.J.* 4032], in which it has been observed that in matters of such nature, custodial interrogation is imperative. The proper technique of interrogation is confrontation either with person or documents and it is possible and most effective when interrogation is in custody. The liberty of a citizen is undoubtedly desirable but it is also equally desirable that offences of such nature are detected and investigated with promptitude and those guilty of such offences are brought to book at the earliest.

12] In the present case, although the brother and father of the Applicant have already been apprehended, the Applicant having made himself scarce, custodial interrogation has not been possible till date. Although, *per se*, ground that the applicant is absconding, may not always be a factor that should tilt the scales in matters of grant of anticipatory bail, nevertheless such circumstance, at least

in the context of the present case, cannot be altogether irrelevant. If the Applicant sees no anxiety to respect rule of law before his plea for anticipatory bail is taken into consideration, then the apprehension expressed by the learned APP that the Applicant, if enlarged on bail, will continue to similarly disregard any conditions that may be imposed upon him, cannot be said to be altogether unfounded.

13] Besides, the custodial interrogation would be necessary, in order to obtain appropriate explanation with regard to not just the sale of the printer but also sale of properties in Pune. It is not sufficient a cupboard full of documents and files are seized from the Applicant or of his company but further the Applicant has to be interrogated in order to obtain appropriate explanation qua the same. Recoveries may also be necessary, particularly considering the magnitude and the nature of the offence. Prima facie, the entire modus is infested with *mens rea*. This does not appear to be a mere contractual transactions that has gone sour.

14] Although, I am conscious that it is not an appeal or a revision against the order passed by the Sessions Court declining anticipatory bail to the Applicant, nevertheless, I must say that the reasoning adopted by the Sessions Judge in declining anticipatory

bail to the Applicant is proper and on legal lines. As such, no case is made out to take any different view. It is pertinent to note that despite the rejection of anticipatory bail by the Sessions Court on 16.5.2014 and the circumstance that there was no interim protection thereafter, the police authorities have been unable to trace the applicant. Learned APP is therefore, right in his submission that the applicant, if armed with a pre-arrest bail, may take undue advantage of the same. The possibility that such applicant may tamper with the evidence, therefore, cannot be ruled out.

15] Taking into consideration of the aforesaid circumstances cumulatively, I see no reason to enlarge the Applicant on anticipatory bail. Accordingly, the application for anticipatory bail is hereby rejected.

(M. S. SONAK, J.)