

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/CRIMINAL MISC.APPLICATION NO. 4140 of 2020

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BHARATBHAI JAYANTILAL PATEL (DELETED)
Versus
STATE OF GUJARAT

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Appearance:

DELETED for the Applicant(s) No. 1,6
MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 2,3,4,5
ADVOCATE NOTICE SERVED for the Respondent(s) No. 1
MR MANAN MEHTA APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE ILESH J. VORA

Date : 11/03/2022

ORAL ORDER

1. Apprehending the arrest, the applicants herein seek pre-arrest bail in connection with **FIR being CR. No. I. 41 of 2019 registered with Bhadarva Police Station, Dist.: Vadodara** for the offences punishable under Section 120B, 420, 406 and 114 of IPC.

2. Facts and circumstances giving rise to present application is that, the complainant is one of the Directors of M/s. Manpasand Beverages Ltd.(herein after referred to as M/s. MBL for short). In the 2019, the complainant company was in dire need of financial assistance to come out of the situation, as company was facing huge tax amount of illegal tax credit. The accused no.1 Bharat Patel, at relevant point of time, was Director of non-banking Finance Company, M/s. Finquest Financial Solutions Pvt. Ltd., agreed to sanction term loan of Rs.100 crores subject to creating security on all assets of the company for which the complainant

agreed to create the security as stipulated in favour of FFSP Company. It is alleged in the FIR that the accused Bharat Patel and others misused terms and conditions of agreement and disbursed only Rs. 9 crore, with object to take over the company and its properties worth approximately Rs.1000 crores. It is alleged that the accused company nominated 3 persons as Directors of the Board of M/s. MBL and took complete control of its management, mortgaged properties of the company, causing a loss to the tune of Rs.1000 crore and also illegally raised call option to purchase equity shares of the company with BSE and SEBI for purchase of 50% equity @ of 10 paisa per share, causing a loss to the complainant. It is alleged that the complainant when offered to repay Rs.9 crore and asked the accused to release the management and control of the company, then, they demanded Rs.20 crore. In this background facts, the FIR for the acts of cheating, criminal breach of trust and criminal conspiracy came to be registered against in all 7 persons.

The applicants herein have been arraigned as accused no. 1, 2, 3, 4 and 5 in the alleged FIR.

During the proceedings of this petition, the principal accused Bharat Patel is passed away.

The applicants have approached the Sessions Court seeking anticipatory bail and same was rejected by the learned Sessions Judge. Vadodara.

3. Heard Mr. N.D. Navavati, learned Senior advocate assisted by Mr.

Rahul Dholakia, learned advocate for the applicant. Learned Senior counsel submitted the following submissions :-

- (i) Despite the fact that disbursement of loan amount was to be made only after due diligence, the company had considered the acute urgency of the company and accordingly, pay Rs.9 crore. Drawing the attention of this court towards, Charter Accountant's report, the company could not disburse the remaining amount of loan as agreed between the parties. In this context, it is submitted that there is no any malafide intention on the part of the accused, as alleged by the complainant.
- (ii) Prior to the FIR, the complainant moved an application before the National Company Tribunal, Ahmedabad for various reliefs for pressurizing the applicants.
- (iii) The FFSPL filed Commercial Arbitration Petition before the High Court of judicature at Bombay against the complainant company.
- (iv) The complainant company filed suit for declaration and permanent injunction before the Civil Court, Vadodara asking various reliefs, including the relief to declare the loan agreement is null and void.
- (v) In the aforesaid contentions (i) to (iv), it is submitted that the transactions as alleged, is purely a business transaction and contractual nature, without there being any intention, and

therefore, prima-facie, no offence under Sections 406, 420 is made out.

- (vi) Placing reliance on the final summary report submitted by the Economic Office Unit- VI, GC- 4, Mumbai. It is submitted that the son of the complainant, Abhishek Singh, had filed complaint against the accused Bharat Patel and others under Sections 406, 420 alleging similar kind of allegations, made hereinabove, wherein, it has been concluded that the allegations made in the FIR are found to be false as no loss is caused to the complainant.
- (vii) Lastly, it is submitted that the accused herein have no control over the management of the company and the complainant and his son having control over the company and accused herein are not claiming either day to day affairs of the company, nor in the assets of the Company.

4. Mr. Manan Mehta, learned APP for the respondent State, vehemently opposed the plea of the anticipatory bail, contending that, the allegations made against the applicants are grave and serious in nature and systematically, after paying Rs.9 crore, the accused herein taken over the control of the company worth Rs.1000 crore and therefore, considering the allegations, their custodial interrogation is necessary for effective investigation. The accused Hardik Patel and Ajay Agrawal having past antecedents in their pocket, and therefore, no exceptional case is made out by the applicants for exercise of the powers to grant anticipatory bail.

5. Learned counsel Mr. Prabhav Mehta was representing the original complainant, however, during the pendency of this application, he is passed away. Record indicates that the Registry issued Advocate notice to complainant and the board remarks indicates that the service was served upon the complainant. Thus, though served, none appears for the original complainant.
6. This Court has considered the contentions raised by learned advocates for respective parties and perused the materials placed on record.
7. After having considered the contents of the FIR and material placed on record, this Court is of considered view that the company M/s. FFSPL, did not have sanction the loan on account of false audited figure observed by the CA in his report and further recommended for detailed investigation of books of account for last 3 financial years through an independent agency, as the CA noticed fraudulent transaction of the company. Record indicates that Rs. 9 crore being disbursed as a good gesture, subject to further agreement and audit report. At present, out of 6 accused, no one is on board of the Company, as the Directors nominated have already resigned from the post on 30.09.2019. Civil litigation in various forms are pending before court concerned. After this FIR, the son of the complainant filed complaint before the Economic Wings at Mumbai, alleging similar kind of allegations, wherein, the investigating agency came to the conclusion that the allegations made in the FIR are false and as such no loss is caused to the complainant, as a result, "B" summary report is being submitted before the court concerned.

8. In the aforesaid background facts, prima-facie, it appears that the dispute is purely a civil in nature. The principal accused Bharat Patel is passed away. The applicants have cooperated in the investigation. Whole case is based on documentary evidence and same has been collected by the IO during the course of investigation. So far accused No. 2 - Hardik Patel is concerned, as such he is not having any past antecedent as referred by the IO.
9. For the foregoing reasons and considering the factors and parameters, necessary to be considered for adjudication of the anticipatory bail under Section 438 of Cr.P.C, and considering the peculiar facts and circumstances of the case, more particularly, the role attributable to the applicants in the alleged offence, without commenting on merits of the case, this Court is of considered view that the applicants herein made out a case for exercise of powers to grant anticipatory bail. I find no reason to decline pre-arrest bail to the applicants. In the result, the present application is allowed. The applicants i.e. applicant no.2 – Hardik Bharatbhai Patel, applicant no. 3 – Ajay Parmeshwar Agrawal, applicant no. 4 – Vishal Rajenbhai Jarivala, applicant no. 5 – Parashiva Sharna Basappamurti, are ordered to be released on bail in the event of their arrest in connection with a **FIR being CR. No. I. 41 of 2019 registered with Bhadarva Police Station, Dist.: Vadodara**, on their executing a personal bond of **Rs.10,000/- (Rupees Ten Thousand Only)** each with one surety of like amount on the following conditions:

- (a) shall cooperate with the investigation and make themselves available for interrogation whenever required;
 - (b) shall remain present at concerned Police Station **on 21.03.2022 between 11.00 a.m. and 2.00 p.m.;**
 - (c) shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
 - (d) shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
 - (e) shall at the time of execution of bond, furnish the address to the investigating officer and the court concerned and shall not change their residence till the final disposal of the case till further orders;
 - (f) shall not leave India without the permission of the Trial Court and if having passport shall deposit the same before the Trial Court within a week; and
 - (g) it would be open to the Investigating Officer to file an application for remand if he considers it proper and just and the learned Magistrate would decide it on merits;
10. Despite this order, it would be open for the Investigating Agency to apply to the competent Magistrate, for police remand of the applicant. The applicants shall remain present before the learned Magistrate on the first date of hearing of such application and on all subsequent occasions, as may be directed by the learned Magistrate. This would be sufficient to treat the accused in the judicial custody for the purpose of entertaining application of the prosecution for police remand. This is, however, without prejudice to the right of the accused to seek stay against an order of remand, if, ultimately, granted, and the power of the learned Magistrate to consider such a

request in accordance with law. It is clarified that the applicant, even if, remanded to the police custody, upon completion of such period of police remand, shall be set free immediately, subject to other conditions of this anticipatory bail order.

11. The observations made in this order shall not affect the merits of the case in any manner and strictly confine for the disposal of this bail application. At the trial, the Trial Court shall not be influenced by the prima facie observations made by this Court in the present order.
12. Rule is made absolute to the aforesaid extent. Direct service is permitted.

P.S. JOSHI

(ILESH J. VORA,J)

