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Order in ABA no. 2814/22

MHCC020172042022



BEFORE THE DESIGNATED COURT UNDER M.P.I.D. ACT
CITY CIVIL & SESSIONS COURT, MUMBAI

ANTICIPATORY BAIL APPLICATION NO.2814 OF 2022

Maheshkumar Balkishan Choudhary]
Aged : 43 years, Occupation : Business]
Residing at Flat No.C-1801, situated at]
18th Floor, Metropolis Co-operative Housing]
Society Ltd., J. P. Road, Opposite Gurudwara,] *Applicant/*
Andheri (W), Mumbai-400053.]... *Accused no.1*

Versus

The State of Maharashtra]
(Through EOW, Unit-1, Banking-1, Mumbai)]... *Respondent*

Appearances:-

Ld. Advocate Ld. Advocate Mahesh Vaswani for the Applicant.
Ld. SPP V. C. Malankar for the State/ Respondent.

**CORAM : HIS HONOUR JUDGE
SHRI S. M. TAPKIRE
(Court Room no. 7)**

DATED : 11th January, 2023.

ORAL ORDER

1. This is an application under Section 438 of The Code of Criminal Procedure, 1973 for availing the protection of pre-arrest bail to the applicant/accused no.1 in connection with crime vide C.R. No.89 of 2014 registered with respondent/EOW (C.R. No.190 of 2014 registered with BKC Police Station) for the offences punishable under Sections 420, 465, 467, 468, 471 r/w Section 120-B of the Indian Penal Code, 1860 (hereinafter referred as

“IPC”).

2. The Respondent/EOW and Investigating Officer have strongly opposed to the pre-arrest bail plea of applicant by filing their written say at Exhibit No.03.
3. Perused the application, plea, grievance, submissions grounds raised therein coupled with documents placed reliance by the applicant along with the written say of respondent. Heard, Ld. Advocate Ld. Advocate Mahesh Vaswani for the Applicant and Ld. SPP V. C. Malankar for State/ Respondent.
4. Taking into consideration, the rival submissions, contentions and availed record it inclined in impugned crime in all 3 accused are involved. The accused no.2 Balkishan Choudhary is father of applicant. He is enlarged on bail as per order of Ld. Trial Court dated 12.02.2021. Against the father of applicant, charge-sheet is already submitted in the year 2014. Wherein against the present accused the report under Section 299 has been submitted. It is also alleged that against the present applicant on 27.07.2019 the notice vide the LOC Suspect no.1945707 has been recorded. It is alleged that the applicant is not in India but concealed himself in Dubai, UAE since 2014. Thereby, as he could not detect, therefore, the Investigating Agency has unable to arrest him. It is also alleged that the applicant by taking disadvantage of old age of his father formulated the Financial Establishment Microqual Techno Limited and in the name of said Financial Establishment get availed the loan facility from the Standard Chartered Bank and the Invoice Discounting Facility also get availed upto the

limit of Rs.20 Crores. Initially with regard to the Invoice Discounting Facility they submitted the invoice delivery challan of All India Transport Corporation and other receipts thereby, discounted various invoices by sending request letter. The bank have provided Invoice Discounting in all Rs.6,81,01,429/- However, later on inclined the said invoice transport receipts and other concern documents are fake false dubious and forged. Thereby, raised the impugned crime against the applicant, his father and the Financial Establishment Microqual Techno Limited. With regard to the impugned crime dated 07.10.2014, the charge-sheet has been submitted with Ld. Trial Court on 12.02.2021. Thereby, the applicant has raised the present application and seeking relief of pre-arrest bail.

5. The applicant in regard to plea grievance allegations raised against him come with the case that he has not committed the alleged or any other crime. In view of raised allegations against him prima facie no any offence would reveal or constitute by any manner. There was just transaction of loan facility of Invoice Discounting availed from Standard Chartered Bank in tune of Rs.7.99 Crores, however, no any incident of submitting false forged documents bills receipts encashed the Invoice Discounting and get availed the said amount for his personal other purpose is there. Thereby, dishonestly deceiving cheated by committing forgery of valuable security and documents thereof for misappropriation of any amount prima facie doesn't reveal. Moreover, the alleged transaction was just a transaction in nature of loan amount for which the applicant is already furnished

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appropriate required property towards security. It is alleged by the informant that in all Rs.2.94 Crores amount was due in regard to Discounting facility availed to the firm of applicant. In that regard they had already obtained post dated cheques in view of refund of availed Discounting facility amount. The Standard Chartered Bank has already forfeited the mortgaged / secured properties of applicant by auction of property recovered entire loan amount. Allegedly the cheques issued by firm of applicant were dishonoured. Thereon the informant bank has raised 4 criminal cases vide C.C No.3197/SS/2015, 3198/SS/2015, 3199/SS/2015, 3215/SS/2015 against applicant, his father and FE M/s. Microqual Techno Limited. While pending all above cases on 13.10.2022, the informant has withdrawn the same on the ground they are not intended to proceed with the case and also sought the relief of refund the Court fees stamp. Thereby, very purpose of informant is duly served. Also submitted that though the impugned crime raised by bank on 07.10.2014. However, till not the Investigating Agency has not taken any step or attempt to arrest him. Against his father Balkishan Choudhary the charge-sheet is submitted on 12.02.2021. Thereon he is also enlarged on bail as per order passed in Bail Application No.257 of 2021 by the Ld. Trial Court. He has not prepared fabricated any forged false fake document. Moreover, the informant bank has upon verified and ascertained the entire documents for availing Invoice Discounting facility confirmed its legality and thereupon disbursed the due amount to the concern. Only due to not return the amount availed from the bank within prescribed period, falsely raised the impugned crime and implicated him in it. Also

submitted that the immovable property furnish towards security with informant and other banks which were worth of Rs.85.94 Crores is already alienated by the banks in view of recovery of their amount. Thereby, recovered amount is certainly huge than the availed Discounting facility amount to him. Therefore, now no any grievance is remained as alleged by the informant. Also submitted that in view of plea grievance allegations raised against him as the entire document is already availed with the bank and the same is submitted with the charge-sheet. Thereby, no any necessity requirement for custodial interrogation of him is remained. Though, he is out of Country, however, as the Investigating Officer has registered LOC due to that he was unable to enter in the nation. Thereby, he was not absconded. He also raised general grounds on relying it requested to have the pre-arrest bail.

6. The respondent/State strongly opposed to the pre-arrest bail plea of applicant principally on the ground the applicant is absconded since prior to raising of the impugned F.I.R. Against him his father and Financial Establishment sufficient considerable evidence is availed in regard to their intentional dishonestly to deceiving cheating to bank by availing Invoice Discounting facility by submitting false fake forged dubious documents receipts of transactions and to grab the loan amount. Though, the investigation against the accused FE and father of applicant completed and charge-sheet is submitted. However, in view of plea allegations grievance raised against the applicant and thereby, certain material relevant facts and circumstances are

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required to be interrogated properly cautiously and exhaustively his custodial interrogation is necessary. Also submitted that in regard to the alleged transaction of Invoice Discounting Facility heap of the documents are yet to be detected transpired and seized. Moreover, the devices used for forged documents are also required to be detected and seized, the applicant is alone aware about it. He is absconded since long back. Therefore, the alleged facts could not investigated. On relying it requested to reject plea raised by the applicant.

7. In above such circumstances eventualities cautiously having into consideration, rival submissions, contentions and availed record it revealed in impugned crime in all 3 accused are implicated who are applicant, his father Balkishan Choudhary and their Financial Establishment. Against the father of applicant and accused FE charge-sheet is already submitted on 12.02.2021. The father of applicant i.e. accused no.2 is enlarged on bail by order dated 12.02.2021 in Bail Application No.257 of 2021. In charge-sheet submitted against other accused the applicant has shown as absconded thereby, submitted report under Section 299 of Cr.P.C. Principally material allegation grievance against applicant that he has get availed Invoice Discounting facility from Standard Chartered Bank of the amount in all upto Rs.10 Crores. However, time to time he has submitted letter of notes by submitting the receipts Invoice transport bills for purchasing goods and thereby get availed Invoice Discounting facility allegedly in all Rs.7.99 Crores. However, later on the said entire amount not repaid to the bank and stopped to repay the said loan amount. Thereby,

upon cautiously considered the entire documents it transpired impugned crime against applicant just raised plea allegations in regard to preparation fabrication false dubious forged documents for availing loan facility. It is also alleged that the applicant has taken disadvantage of old age of his father by adding him as Director of said Company and through him the certain transactions have been performed. Considering the same coupled with documents availed in charge-sheet which is submitted against other accused by it prima facie inclined that certainly the substantial material facts and circumstance are investigated. Moreover, it also revealed in view of allegations raised against the applicant the same are just concerned linking and connective with just documentary evidence and the same is already inclined to the Investigating Agency. Thereby, possibility of tampering of evidence cannot be possible. It is also required to be appreciated that though the impugned crime raised on 07.10.2014, however, the Investigating Agency has submitted charge-sheet even against other accused on 12.02.2021. They have merely submitted that the applicant is absconded since prior to registration of impugned F.I.R. Thereby, they have registered LOC. It reveals during the period from date of registration of F.I.R. and till now the respondent EOW did nothing. As per record relied by the applicant it reveals the informant Standard Chartered Bank has raised in all 4 criminal cases for the offences under Section 138 of the Negotiable Instrument Act, 1881 against the applicant, his father and accused FE by vide C.C No.3197/SS/2015, 3198/SS/2015, 3199/SS/2015, 3215/SS/2015 for the recovery of loan amount due with applicant which is get availed by him

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through the Invoice Discounting facility. All those 4 cases are already unconditionally withdrawn by the informant bank on 13.10.2022 just submitted reason that they are not intended to proceed further. It is contention of applicant that the property given toward security of loan facility availed to him with bank, the said property is already auctioned by the bank collusion with other bank and recovered the entire due amount with interest. Therefore, no any grievance is remained to the informant bank. On relying such submissions coupled with certified copies of withdrawn cases prima face inclined certain substance force in submission of applicant. Thus, in such eventualities in view of allegations plea grievance raised against applicant and thereby, no any necessity for custodial interrogation of him inclined in view of objection raised by the respondent coupled with seriousness gravity of crime and allegations leveled against him I felt by saddling certain conditions it would appropriate to have the protection of pre-arrest bail of applicant. Hence, I passed the following order :

ORDER

1. The present Anticipatory Bail Application No.2814 of 2022 is hereby allowed, subject to following conditions by applicant /accused:-
 - i. The applicant/accused Maheshkumar Balkishan Choudhary residing at Flat No.C-1801, situated at 18th Floor, Metropolis Co-operative Housing Society Ltd., J. P. Road, Opposite Gurudwara, Andheri-West, Mumbai – 400053 be released on executing a PR Bond of Rs. 10,00,000/- (Rupees Ten Lakh Only) with furnishing one or two solvent sureties or cash surety in the like amount in the event of his arrest in crime vide C.R. No.89/2014 registered with EOW, Mumbai (C.R. No.190/2014 registered with BKC Police Station) for the offences punishable under Sections 420, 465, 467, 468, 471 r/w Section 120-B of Indian Penal Code, 1860.

- ii. The applicant shall co-operate in investigation, as well as whenever required, he shall availed for interrogation.
- iii. The applicant shall not tamper or hamper the prosecution witnesses and evidence by any manner.
- iv. The applicant shall not leave the jurisdiction of Court without prior permission of this Court.
- v. The applicant shall deposit his passport with the Investigating Officer, if any, availed with him.
- vi. The applicant shall not indulge in any criminal activity.
- vii. The applicant is directed to record his attendance with the Respondent and Investigating Agency on every Friday between 11.00 a.m. to 5.00 p.m. until submission of charge-sheet.
- viii. The applicant shall submit his proper considerable address proof as well as telephone and cell numbers with respondent / Investigating Officer in view of his contact.
- ix. In the event of breach of any condition or default this pre-arrest bail order availed to the applicant shall liable to be canceled.

2. Accordingly, respondent/State and the concern I.O. to take the note of this order.

3. The present Anticipatory Bail Application No.2814 of 2022 stands disposed of accordingly.

(Dictated and pronounced in open Court)

Date : 11.01.2023.

(S. M. Tapkire)
Addl. Sessions Judge,
City Civil & Sessions Court, Mumbai.

Dictated on : 11.01.2023.
Transcribed on : 17.01.2023.
Signed on : 23.01.2023.

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“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER”

On 24.01.2023 at 12.43 p.m.
UPLOADED DATE AND TIME

Mrs. G. P. Acharekar
NAME OF STENOGRAPHER

Name of the Judge (with Court Room no.)	H.H.J. S. M. Tapkire C.R. No.07
Date of Pronouncement of Judgment/Order	11.01.2023
Judgment /Order signed by P.O. on	23.01.2023
Judgment/Order uploaded on	24.01.2023