(2022) 05 CHH CK 0032

Chhattisgarh High Court

Case No: Miscellaneous Criminal Case (Anticipatory Bail) No. 370 Of 2022

Ashish Shah		APPELLANT
	Vs	
State Of Chhattisgarh		RESPONDENT

Date of Decision: May 11, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 34, 120B, 149, 408, 409, 420, 467, 468, 471
- Code Of Criminal Procedure, 1973 - Section 41A, 91

Citation: (2022) 05 CHH CK 0032

Hon'ble Judges: Deepak Kumar Tiwari, J

Bench: Single Bench

Advocate: Fouzia Mirza, Shobhit Mishra, Rahim Ubwani, Animesh Tiwari, KK Rai, Harshwardhan Parganiha, Anshul Rai, Saloni Verma

Final Decision: Allowed

Judgement

1. The applicant has preferred this bail application for grant of anticipatory bail as he apprehends his arrest in connection with Crime No.258/2021,

registered at Police Station City Kotwali District Raipur for offences punishable under Sections 409, 420, 467, 468, 471 and 120-B of the IPC.

2. Case of the prosecution is that the applicant is a Chartered Accountant and Company Secretary engaged in the profession of teaching students who

aspire to become Chartered Accountant. The complainant is the Managing Director of a Coaching Institute for CA and CS titled as J.K. Shah

Education Private Limited. The said company opened a Branch for imparting coaching for CA and CS at Raipur in the year 2019. Mr. Abhinandan

Bafna was appointed as the Branch In-charge at Raipur, who was responsible for managing the affairs of the said Institute like admission, fee

collection etc. Allegation against the present applicant is that several students opted for coaching in the complainantÃ¢â‚¬â„¢s Institute for which the fee

collection was done by said Abhinandan Bafna. The company raised a doubt in the accounts in the month of November, 2020 and sought for collection

report and other details of the account from said Abhinandan Bafna. The said Abhinandan Bafna replied vide his e-mail dated 12.12.2020 stating that

a sum of Rs.1,11,93,911/- has been received from the students through various modes, which was doubted by the Company. It is alleged that many

students have directly deposited the fee in the personal account of said Abhinandan Bafna and thereby it is further alleged that the said Abhinandan

Bafna committed financial irregularities and also prepared various forged bills for merchantsÃ¢â‚¬â„¢ payment and embezzled huge amount of money by

getting the same deposited in his personal account and forged receipts in the name of Company were issued. Alleging aforesaid irregularities, the

Managing Director of the company namely, Mr. Jitendra Shah (complainant) lodged an FIR against the said Abhinandan Bafna.

3. Learned Senior counsel appearing on behalf of the applicant would submit that the present applicant has neither been named nor anything has been

alleged against him in the FIR. The first notice against the applicant was issued on 22nd December, 2021 under Section 91 CrPC. The notices issued

were challenged by filing WP (Cr) No.15/2022 on 3.1.2022 and WP(Cr) No.135/2022 on 27.1.2022 for quashing the said notices. The complainant has

a long history of filing vexatious and frivolous litigation against the ex-employees and former lecturers of the complainantÃ¢â‚¬â„¢s company for harassing

them. The applicant was working with the complainant from the year 2009 to 2020, initially in the capacity of Chief Operating Officer and thereafter

as CEO from April, 2020. However, the role of the applicant was very limited. Form DIR-12 and Form MGT-14 are the mandatory documents to be filed before the company for appointment as CEO, however, the said requirement was not complied with. The applicant never signed any agreement

with the Company and was always entitled to start his new business. In the end of October, 2020, the applicant and his wife founded a company viz.

EDNOVATE Education Private Limited with an intention to provide quality education to the students aspiring to become CA. So the applicant

resigned from the complainantÃ¢â‚¬â„¢s company from 4th October, 2020. After formation of new concern by the applicant, some of the lecturers

voluntarily inclined to join the applicantÃ¢â‚¬â„¢s company. So the complainant with a view to restrain the applicantÃ¢â‚¬â„¢s business filed a Commercial IP

Suit No.25/2021 before the HonÃ¢â‚¬â„¢ble High Court of Bombay and also lodged the FIR against the applicant under Section 408 of the IPC at Andheri

Police Station, Mumbai vide FIR No.872/2020. A separate suit was also filed by the complainant against Dhawal Purohit for recovery of

Rs.49,54,000/- before the Bombay City Civil Court bearing Suit No.4234/2020 and also lodged FIR against Dhawal Purohit under Section 408 of the

IPC. The complainant had threatened to initiate multiple proceeding against the applicant and Mr. Dhawal Purohit before the various Courts and also

in different Police Stations all over India.

4. The complainant has also sent a vexatious notice for recovery of Rs.22,76,593/- to one Mr. Himanshu Patel, who is one of the senior most lecturer

of the company. Similar legal notices were also sent to different lecturers. As the entire career and future of the applicant and other lecturers was at

stake, a consent terms has been signed which was drafted by the complainantÃ¢â‚¬â„¢s advocate and the said consent terms was filed before the

HonÃ¢â‚¬â„¢ble Bombay High Court. The said terms are void, as the applicant and other lecturers could not obtain proper legal advise and they could not

understand the ill-motive and malafide intention of the complainant. Thereafter the complainant filed a Contempt Petition before the Bombay High

Court bearing Contempt Petition (L) No.3533/2021. The said petition was dismissed on 16.2.2021 and cost of Rs.1.5 lakhs was imposed on the complainant and in favour of the applicantÃ¢â‚¬â„¢s new concern. The complainant preferred a Commercial Appeal before the High Court of Bombay,

which was also dismissed on 16.2.2021. Assailing the order of learned Single Judge of the High Court, the Division Bench also dismissed a petition

vide order dated 17.3.2021.

5. Learned counsel for the applicant submits that FIR was also lodged against Abhinandan Bafna for siphoning of funds because he did not repay the

amount and said Abhinandan Bafna and Dhawal Purohit were enlarged on bail by the coordinate Bench in MCRC No.9490/2021 and 236/2022

respectively on 25.3.2022. The complainant has challenged the said bail orders before the HonÃ¢â‚¬â„¢ble Supreme Court by way of filing SLP and the

said SLP was dismissed vide SLP (Cr) Diary No.12216/2022 on 29.4.2022, as statement was given on behalf of Abhinandan Bafna that he was ready

to deposit an amount of Rs.16,39,600/-, which is lying with him. Therefore, the HonÃ¢â‚¬â„¢ble Supreme Court has observed in the said order that

Abhinandan Bafna shall deposit the said amount within 3 weeks, failing which, liberty was granted to the petitioner to apply before the High Court for

cancellation of bail.

6. Learned counsel further submits that in order to stop the EDNOVATE Education Private Limited to conduct their business, a false FIR No.50/2022

was filed at Jaipur on 27.1.2022. Learned counsel emphasizes that main allegations are against Abhinandan Bafna and he has forged certain

documents under the instructions of Dhawal Purohit for which Dhawal Purohit has received Rs.3 lakhs. Dhawal Purohit in his statement has clearly

stated that the present applicant is not aware about the affairs of the business in relation to the Raipur Branch. Considering all the aspecrts of the

matter, the applicant may be released on anticipatory bail.

7. Per contra, learned State Counsel and learned Senior Counsel for the Objector oppose the bail application and filed a status report by the IO.

Learned Senior Counsel submitted that at the time of consideration of bail, only prima facie case is to be seen and minute details of the evidence is not required. The applicant being the CEO has accessed the ERP (Enterprise Resource Planning) system, which is the central point through which all the

data relating to the students of all the Branches of complainant are regulated. The applicant manipulated the data relating to fee collected through

students at Raipur Branch by directing the co-accused to issue receipts for all those students whose part remaining was collected and not deposited by

the co-accused in the companyÃ¢â‚¬Ëœs account. Abhinandan Bafna has also prepared various fake bills showing bogus/inflated expenses in the name of

electrical and painting workers, which was approved by the co-accused Dhawal Purohit. The applicant along with other co-accused were siphoning

funds from the Raipur and Jaipur Branch.

8. Learned counsel also submits that filing various writ petitions challenging the notices, though later on the same were withdrawn, shows the intention

of the applicant as the Forum Shopping. He refers the judgment in the matter of Kamini Jaiswal Vs. Union of India & Anoher {(2018) 1 SCC 156},

para-153 in which it has been observed that another category of forum shopping; is approaching different Courts for the same relief by making the

minor change in the prayer clause of the petition. He also refers the judgment in the matter of Hema Mishra Vs. State of UP {(2014) 4 SCC 453} and

has drawn attention of the Court towards para-20 to submit that when notice issued under Section 41-A of the CrPC was not responded, it could be a

ground for arrest. He would also place reliance on the judgment in the matter of Satender Kumar Antil Vs. CBI {SLP(CR) No.5191/2021, decided on

7.10.2021} to submit that when the accused does not cooperate with the investigation nor appears before the IO nor answers the summons and the

Court feels judicial custody of the accused is necessary for completion of trial, then benefit of bail cannot be granted. So learned counsel prays to

dismiss the bail application.

9. Countering the submissions, learned Senior Counsel for the applicant would submit that challenging the notice, the applicant has filed two Writ

Petitions and the said fact was duly mentioned in the bail application at para-6.2 and nothing has been suppressed. She further submits that the notices

were properly responded and the applicant is always willing to cooperate with the investigation. She emphasizes that the prosecution and the Objector

failed to show any document which would show that the applicant was involved in any manner in the present case. She would submit that in the

statutory audit for the year 2019-20 & 2020-21, no fraud was reported by any employees of the company.

10. I have heard learned counsel for the parties at length and perused the record. It is settled law hat while deciding the bail application, the Court

should refrain from assessing the evidence and the same is not relevant consideration at the threshold stage. While the Court examining the issue

including any reasonable ground extensive consideration of merits which has the potential to prejudice either the case of the prosecution or defence, is

undesirable. Perusal of the FIR would reveal that the allegations were mainly against Abhinandan Bafna for the period 22.1.2019 to 30.11.2020 and

even the forensic audit was done on 6th April, 2021 in which it was reported that Rs.1,00,93,251/- was misappropriated. The FIR was lodged by the

complainant on 22.10.2021 belatedly vide FIR No.258/2021 and in column 8, reason for delay is not mentioned. Abhinandan Bafna was enlarged on

regular bail by the coordinate Bench and the HonÃ¢â‚¬â„¢ble Supreme Court while dismissing the SLP has observed that Abhinandan Bafna shall deposit

Rs.16,39,600/- within 3 weeks. Memorandum statement of Dhawal Purohit was recorded on 3rd April, 2021 wherein he has specifically stated that

the present applicant was not aware about the affairs of Raipur Branch. Dhawal Purohit was also enlarged on regular bail.

11.From perusal of record, it appears that the applicant has responded properly to the notices of the IO and sent an e-mail on 21.1.2022 stating that he

has no relations with the Raipur Branch and seeks time for personal appearance. Thereafter the Bombay High Court has granted transit anticipatory bail vide order dated 8.2.2022. The applicant appeared before the Investigating Agency on 16.2.2022 and his statement was also recorded. In the

statutory audit report for the period ending 31.3.2020 & 31.3.2021, no fraud was reported by the employees or officers of the company. The applicant

has started new concern. Thereafter such dispute arose and various cases have been filed.

12.The present case is based on documentary evidence as sufficient evidence was collected by the complainant himself through forensic audit, though

there is conflict of the amount mentioned and the Coordinate Bench has also observed while granting bail in para-11 that the embezzled amount is

highly disputed question of fact. After granting interim bail by this Court on 14.3.2022, the IO never issued any notice or supplied any questionnaire to

the applicant, as admitted by learned State Counsel during the course of arguments.

13.Moreover, in Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 the following was observed while considering the grant of

anticipatory bail :

Ã¢â‚¬Å“90. A great ignominy, humiliation and disgrace is attached to the arrest. Arrest leads to many serious consequences not only for the accused but

for the entire family and at times for the entire community. Most people do not make any distinction between arrest at a pre-conviction stage or post-

conviction stage.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in

respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or other offences;

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role

of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court

should consider with even greater care and caution because overimplication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be

caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant

of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an

order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and

circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly

attributed to the accused and these allegations are corroborated by other material and circumstances on record.

14.Considering the aforesaid principle and the nature of accusation, charge sheet was filed against Abhinandan Bafna and Dhawal Purohit and

permission was also sought to file supplementary charge sheet against co-accused Dhawal Purohuit wherein specific name of the applicant was not mentioned and further considering all the aspects of the matter, this Court is of the considered view that the applicant deserves to be enlarged on

anticipatory bail.

15.Accordingly, the application is allowed and it is directed that in the event of arrest of the applicant, he shall be released on anticipatory bail on his

executing a personal bond for a sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the arresting officer with the following

conditions:-

(i) he shall make himself available for interrogation by a police officer as and when required;

(ii) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him

from disclosing such facts to the Court or to any police officer.

(iii) he shall not act in any manner which will be prejudicial to fair and expeditious trial.

(iv) he shall appear before the trial Court on each and every date given to him by the said Court till disposal of the trial.

(v) The applicant shall produce all the necessary documents and shall respond to the notice/questionnaire, if issued to him during investigation, failing

which the State shall be at liberty to move application for cancellation of anticipatory bail.