

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

ANTICIPATORY BAIL APPLICATION No.2125 OF 2014.

IN

MPID SPECIAL CASE No.1,6 & 10 OF 2014

IN

C.R. No.89 OF 2013 LODGED AT EOW UNIT - V.

Nimish Keshavlal Patel,
 Age 54 years,
 R/o 41, Ashwamegh Bungalow,
 Nr. Someshwar Complex, Satellite,
 Ahmedabad -380 015.

... Applicant/Accused.

V/s.

The State of Maharashtra,
 Through
 Economic Offence Wing
 Unit V, CB CID, Mumbai.

... Respondent.

Adv. Girish Kulkarni for Applicant.
 SPP Adv. Avinash Avhad for State.
 Adv. Sandeep Karnik for Intervener.

Coram : His Honour the Addl. Sessions Judge.
 Shri D.P. Surana.
 Dated : 19th of Nov., 2014.

ORAL ORDER

By this application u/sec.438 of the Cr.PC., accused Nimish Patel is anticipatory ^{seeking} ~~seeking~~ bail for the offence punishable u/sec.

(corrected copy) & made on dt 19/11/14
 any applied on 20/11/14 0-456

409, 465, 467, 468, 471, 474, 477-A r/w 120-B of the I.P Code and sec.3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishment) Act (in short MPID Act), vide C.R. No. 89/2013, registered at Economic Offences Wing of Crime Branch and under investigation with EOW SIT, CB CID, Mumbai.

2] Prosecution case in nutshell is as under :

It is the case of prosecution that, NSEL provided electronic platform to buyers and sellers for entering into pair contract T+2 and T+25. That, on the NSEL platform the buyers and sellers who resides far away from each other and don't know each other can trade in different commodities. That one who intend to sell his commodity/s has to deposit his goods at warehouses operated by NSEL, wherein quality, quantity etc., of goods were checked. On deposit of goods electronic warehouse receipts were generated by NSEL. One who intend to purchase the goods, so deposited in NSEL warehouses, is required to deposit margin money and on purchase, copy of electronic warehouse receipt is issued to him.

It is alleged that the NSEL, which was supposed to trade in sale and purchase, deviated from its business module. That without there being actual physical stock of the commodities, NSEL officials in collusion with there 25 borrowers / brokers, appointed by NSEL itself, generated false and bogus warehouse receipts, without there being actual stock of the commodities, whereas in all 13,000 investors were induced for higher returns by the NSEL and were

duped to the tune of Rs.3,500 Crores, and thereby NSEL has undertaken financial transactions, on the garb of sale and purchase. That these 13,000 investors were fraudulently defrauded and defaulted by the NSEL in collusion with his member borrowers.

That, the applicant accused is one of the Promoter Director of M/s. N.K. Proteins Ltd., a company having registered office at 7th floor, Popular House, Ashram Road, Ahmadabad. The company is in the business of refining of edible oil and its brand is Tirupati. His company started its trading on NSEL since September 2009 and became Trading Cum Clearing Member of NSEL. That the company used to trade in Castor Seed, Castor Oil and Cotton Seed Wash Oil. The applicant accused gave false storage receipts cum quality certificates, issued fake sale invoices without having physical delivery and making false statement about the stock of commodities and diverted funds totally to the tune of Rs.969/- Crores in connivance with NSEL officials.

That, as per declaration of NSEL, on August 6, the company should have 7,553 tons of castor oil, 96,581 tons of castor seed and 84,766 tons of cotton wash oil in the plants at Kadi and Thor, Dist. Mehsana, Gujarat. However, police team didn't find the stock at these places when visited immediately after registration of this offence.

That the company of the accused is the first company to start trading in paired contracts without stocks.

That, during the course of further investigation it is revealed that the N.K. Proteins had transferred the funds received from NSEL in 1) Tirupati Retail (India) Pvt. Ltd. and with 2) Darshan Baldevbhai




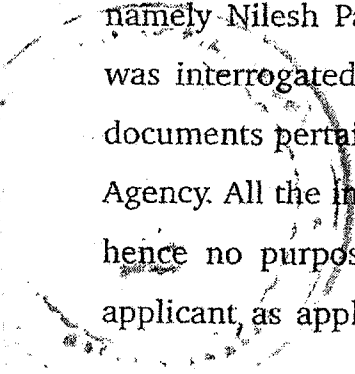
rr

Patel of N.K. Corporation, both of Ahmedabad. Former is the company promoted by N.K. Proteins, whereas later is a cousin of present applicant.

That, I.O. claims that it is reliably learnt that the brothers of said Darshan Baldevbhai Patel viz. K.B. Patel and A.B. Patel are involved in price rigging of shares of FTIL along with one Dipak Patel of Passport Capital. It is known fact that FTIL is a promoter of NSEL. It is reliably learnt that this Passport Capital through its sub account Passport India (Investment) Mauritius Limited was holding 8.46% stake in FTIL as on June 2010. Besides this, Passport Capital LLC has been a significant investor in most other FTIL connected businesses and ventures promoted by Jignesh Shah like MCX, DGCX, Delhi, Stock Exchange etc., while they had board representation in SMX Singapore. The SEBI also found passport India investments (Mauritius) Ltd. guilty of insider trading in the shares of FTIL.

3] Heard, Ld. counsel for applicant, Ld. SPP and Ld. counsel for intervener.

Counsel for applicant submitted that brother of applicant namely Nilesh Patel was arrested in the crime on 22/10/2013. He was interrogated and chargesheet is filed against him. That all the documents pertaining to N.K. Proteins are seized by the Investigating Agency. All the information in respect of the company is with I.O. and hence no purpose will be served in custodial interrogation of the applicant, as applicant is also interrogated and his statement is also



recorded by I.O. He further submitted that no offence p/u/sec.409, 465, 467, 468, 471, 474, 477-A r/w 120-B of the I.P Code and u/sec. 3 of the MPID Act, is made out against the applicant. That applicant has no concern with N.K. Proteins, except he being a director. He was not involved in the day to day affairs of the company. That there is no material in the chargesheet against the present applicant nor it is shown in the last remand dtd.04/11/2013 against Nilesh Patel or in the chargesheet against him. That no material was found in the investigation so that custodial interrogation of the applicant is required. He further submitted that if really applicant would have any way related with the crime, I.O. would have shown him as accused in the chargesheet but there is no allegations against the applicant in the chargesheet filed in January 2014 against Nilesh Patel nor there is anything which is shown to be remained against the applicant nor he is shown as a suspected accused, so that there is likely hood of filing of chargesheet against him. He further submitted that statement of employees of the company are also recorded, wherein too it can be seen that applicant is not liable for day to day affairs of the company. That till May 2014, there is no allegations against the applicant and his involvement comes only post September 2014. According to him, only because applicant was pioneer in filing petition at Hon'ble Gujarat High Court and Hon'ble Bombay High Court, he is taken at task, though there is no justification of his arrest or custodial interrogation. He further submitted that deposit of 52 crores by the company or his co-accused brother Nilesh is nothing to do with applicant's involved in the crime. There is no material to

4/2/14

show any money trail by the applicant. He submitted that none of the reason mentioned in say filed by I.O. in Exh.2 or additional reply Exh.3 is sufficient for custodial interrogation of applicant. That all such information was already with the I.O. and which cannot be said to be a new information. That sufficient time was with I.O. to collect the said information. He further submitted that irrespective of the said fact, now information is also received to the I.O. and hence no custodial interrogation of applicant will be required.

Counsel for applicant placed his reliance on the ratio laid down by the Hon'ble Apex Court in the case of **Arnesh Kumar V/s. State of Bihar & Another- CDJ 2014 SC 514** and in the case of **Nandini Satpathy V/s. PL. Dani & Another - CDJ 1978 SC 189**. He also placed reliance on the observations made by the Hon'ble Bombay High Court while releasing co-accused Nilesh Patel in the crime (Criminal Bail application no. 2124/13).

4] As against this the Ld. SPP and Adv. for intervener/informant in one voice submitted that applicant has himself claimed that he is the Chairman of Board of Directors of N.K. Proteins, as such, applicant is aware of day to day affairs of the company. That applicant himself has admitted that he was called by EOW on 11/08/2014 but applicant has not attended Investigating Officer and thereby has committed breach of notice u/sec.41-A of the Cr.P.C. That, applicant was granted transit anticipatory bail by Hon'ble Gujarat High Court for 4 weeks but though time is lapsed applicant has not approached to the office of EOW. They further

per

submitted that applicant has done all the exercise except ^{to} co-operate the investigating agency. That though chargesheet is filed against Nilesh Patel but the window of investigation against the applicant was kept open u/sec.173(8) of the Cr.PC. That after summons to the applicant no chargesheet is filed.

5] I.O. submitted that the statement of Nilesh Patel to EOW, recorded by Enforcement Directorate (in short ED) is contrary to each other. He submitted that Nilesh Patel has stated to them that amount Rs.350 crores was expended for establishment of plant but has not stated so to ED. He further submitted that Nilesh Patel stated to ED that an amount of Rs.250 crores was utilized for the purchase of flats, which is not stated to them . He further submitted that in recent investigation they came to know that some amount /funds received from NSEL to N.K. Proteins has been transferred in 2 companies via. Tirupati Retail (India) Pvt. Ltd., and N.K. Corporation of Darshan Baldevbhai Patel. He submitted that Darshan Patel is related to the applicant. He also submitted that, to confront the applicant and no know the trail of amount, custodial interrogation of applicant is necessary. That, as the applicant is involved in day to day affairs of the borrower N.K. Proteins company, he is well aware of the siphoned amount.

Counsel for informant placed his reliance on the ratio laid down by the Hon'ble Bombay High Court in the case of Harshad S. Mehta Vs. Union of India (1992 Cri. L.J. 4032); In the case of Rajinder Kumar Sharma V/s. Directorate of Revenue Intelligence

DR

and another (1998 Cri.L.J. 3734) and that of Hon'ble Apex Court in the case of Shivanarayan Laxminarayan Joshi and others V/s. State of Maharashtra and others (1980 Cri.L.J. 388). He also placed reliance on the findings of Hon'ble Bombay High Court in the Anticipatory Bail Application No.1238/2013 in the case of Maneesh Chandra Pandey V/s. State of Maharashtra, wherein Hon'ble Bombay High Court was pleased to reject anticipatory bail application of one of the co-accused in the crime.

6] After hearing rival contentions, I have perused the application documents filed with it, say filed by Investigating Officer Exh.2, additional reply filed by I.O. Exh.3 and the remand applications in the crime dtd.23/10/2013, 28/10/2013 and 04/11/2013. I have also gone through the citations relied by applicant and intervener.

7] At the outset, I would like to mention here that, applicant has moved before the Hon'ble Bombay High Court with one of the prayer not to take coercive action against him. Though this application was strongly objected by SPP and Counsel for intervener on the point of maintainability, contending that the relief sought before this court and before Hon'ble High Court are the same, but the SPP and Counsel for informant has admitted that Hon'ble High Court has asked the applicant to take recourse u/sec.438 of the Cr.P.C., as such, the present application, in my view, is maintainable.

RR

8] The basic contention of applicant is that the investigation as regards N.K. Proteins is mostly completed and there is no fresh material required as against N.K. Proteins or the applicant in the crime for which custodial interrogation of applicant is necessary. If it is found that some information is required from the applicant for which custodial interrogation is required, then applicant is out of move. As Hon'ble Apex Court, in the case of Arnesh Kumar V/s. State of Bihar & Another (CDJ 2014 SC 514), cited supra by applicant, has held that police officer do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. Section 41(1)(b)(ii) of the Cr.P.C. authorizes police officer to arrest but subject to his satisfaction and for the proper investigation of the offence. Sec.41-A(3) of the Cr.P.C. also authorizes police officer to arrest person when such person do not comply and continues non compliance with notice of appearance before him.

9] Herein the case, it is not disputed fact that applicant was issued notice by Investigating Officer to remain present on 11/08/2014, but till date applicant has not marked his presence at concern police station. The contention of investigating officer that during the course of further investigation and recently it revealed to them that N.K. Proteins had transferred funds received from NSEL in 2 companies viz. Tirupati Retail (India) Pvt. Ltd. and 2. Darshan Baldevbhai Patel of N.K. corporation, is apparently seen from the investigation papers. Darshan Patel is alleged to be cousin brother of present applicant. The contention of I.O. that there is contrary

SR

statement given by Nilesh Patel to I.O./them and E.D, is also substantiated from the documents of the recent investigation against the applicant. As such, it is apparent that there is intracontrary statement of co-accused Nilesh Patel who is the brother of applicant and with whom applicant was running ~~running~~ N.K. Proteins. Applicant has admitted in para no.2 of his application that he is the Chairman of the Board of Directors of M/s. N.K. Proteins Limited and he is engaged in the business, inter alia, of manufacturing, processing and marketing of vegetable edible oils, viz. Washed Cotton Seed Oil, Crude Palm Oil, Crude Degummed Soyabean Oil, Crude Sunflower Seed Oil, Groundnut Oil, Crude Corn Oil and other vegetable Oils etc. As such, it can not be said that applicant might not be aware of the business affairs of N.K. Proteins. When there is contrary statement of brother of applicant, who is co-director of N.K. Proteins and co-accused, then it is necessary to have custodial interrogation of present applicant to unfold the truth.

10] This might be one of the instance wherein custodial interrogation of applicant is necessary. There may be several others factors which may revel to the Investigating Officer, which, in my view is possible only under the custodial interrogation of the applicant. Hon'ble Apex Court in the case of State Represented by CBI V/s. Anil Sharma (1997 Supreme Court Cases (Cri.) 1039) has held that, custodial interrogation is qualitatively more elicitation-oriented when questioning a suspect who is well ensconced with a favourable order u/sec.438 of the Court and such interrogation is of

Re

tremendous advantage in any disinterring many useful information/s and also materials which would have been concealed. Though counsel for applicant contended that the case relied by the Prosecution of Hon'ble Bombay High Court in the case of Harshad S. Mehta V/s. Union of India (1992 Cri.L.J. 4032), is not applicable to the present facts, but I find that, as to the purpose for which interrogation is necessary, it is squarely applicable to the case of applicant. Hon'ble High Court in Mehta's case cited Supra has held that, interrogation while applicant is at liberty will not serve any useful purpose, the petitioner can then take recourse of stonewalling tactics and keep the game going indefinitely. As against this, if he is in custody the officers of ED will be better able to force him to concentrate on the issues and put pointed questions to him and extract relevant information. The technique of interrogation also involves confrontation either with a person or documents or that is possible at least more effective when the person being interrogated is in custody. The Hon'ble Bombay High Court while striking the balance of liberty of a citizens and his custodial interrogation in further words held that, the liberty of the citizen is desirable but also desirable is the need of detect, investigate and prosecuted those guilty of any offence not excluding economic offences.

11] Hence, I am of the view that applicant is not entitled for the liberty claimed. Moreover, the Hon'ble Bombay High Court in the same crime in respect of co-accused Maneesh Pande has rejected the same/similar relief though applicant Maneesh Pandey was working as

see

Manager business development in one of the co-borrower company. Whereas, the present applicant is Chairman of Board of Directors the largest defaulter borrower of NSEL to the tune of Rs.969 Crores. The Hon'ble Bombay High Court, while rejecting Anticipatory Bail of Maneesh Pandey has held that his custodial interrogation is necessary.

12] In the case in hand there is substance in the allegation against applicant also and at present it can not be said that he is innocent and has not played any role in fabricating the false warehouse receipts, without there being stock of huge commodity in the accredited warehouse of NSEL, that too in connivance of the officials of NSEL.

13] More so over, when the statement of co-accused brother of applicant Nilesh Patel is contrary to I.O. and E.D., as regards the flow of money is concerned, it is necessary that applicant should be confronted on the said facts to unfold the truth, without which the investigation in respect of trail of huge amount by N.K. Proteins will not be possible. Hence, I am of the view that application deserves to be rejected. As such, I proceed to pass following order.

ORDER

Application stands rejected.

Date : 19/11/2014.

(D.P. Surana)

Special Judge, M.P.I.D. Act. &
Addl. Sessions Judge,
City Civil & Sessions Court,
At Bombay.

CERTIFIED

Dated this 21st

day of Nov 2014

By: [Signature] 19/11/2014