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Order in ABA no. 1114/24

MHCC020083442024



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

ANTICIPATORY BAIL APPLICATION NO. 1114 OF 2024

IN

C.R. NO.32 OF 2024

**Kamal N. Agarwal** ]  
Suspended Director of Supreme Transport ]  
Organization Private Limited. ]  
Having address as 901, Bikaner Bhawan, ]  
Opp. Jain Temple, J. B. Nagar, ] *Applicant/*  
Andheri (E), Mumbai-400059. ]... *Accused*

**Versus**

**The State of Maharashtra** ]  
(Through EOW, Mumbai) ]... *Respondent*

**Appearances:-**

Ld. Advocate Ponda a/w Ld. Advocate Yash Jain i/b M/s. Halai and Company for the Applicant.

Ld. SPP Suryawanshi for the State/ Respondent.

Ld. Advocate Utkarsh Tiwari i/b Apoorv Shrivastava for First Informant / Intervenor.

**CORAM : HIS HONOUR JUDGE  
N. P. MEHTA,  
(Court Room no. 7)**

**DATE : 31<sup>st</sup> August, 2024.**

**ORAL ORDER**

1. This is an application filed under Section 438 of The Code of Criminal Procedure, 1973 by the applicant for grant of pre-arrest bail in connection with C.R. No.32 of 2024 registered with EOW,

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Mumbai (C.R. No.464 of 2024 registered with Sahar Police Station) against the present Applicant for the offences punishable under Sections 409, 420, 465, 467, 468, 471 r/w Section 34 of the Indian Penal Code, 1860 (hereinafter referred as “IPC”).

2. Application is resisted by the Prosecution by filing its say at Exhibit Nos.04 & 05. The intervention application filed by the intervenor is allowed vide order dated 29.05.2024.

3. **Prosecution case in nutshell is as under :-**

On 08.08.2018, Cessna Grand Caravan Aircraft bearing registration no. VT-UDN, owned by Supreme Transport Organization Pvt. Ltd., met with an accident at Ganganagar Airport, Rajasthan. Complainant Mishell got to know about it from news report. At that time, complainant contacted accused Ammeet Agarwal via e-mail and also on phone and enquired about sale of the said damage aircraft. At that time, accused Ammeet Agarwal agreed to sale the said aircraft to complainant and negotiation in that regard took place between them.

4. Complainant requested Ammeet Agarwal to de-register the said aircraft which was having Indian Registration number. On 13.05.2022 accused Ammeet Agarwal de-registered the said aircraft and supplied its certificate to complainant. On 20.07.2022, Aircraft Purchase Agreement in respect of Cessna Grand Caravan aircraft bearing no.VT-UDN was entered between complainant and Supreme Transport Organization through its director Ammeet Agarwal. The price of aircraft was fixed at 5,50,000/- US \$ to be deposited with Escrow account of Powel

Aircraft Title Services, USA known to both complainant and Ammeet Agarwal. Ammeet Agarwal was liable to reimburse loan plus penalty charges of the bank to which aircraft was hypothecated. The seller had right to specify the bank account in which sale money was to be transferred by buyer. As per agreement, complainant transferred 5,50,000/- US \$ in Escrow account on request of seller.

5. In Company application no.625/22 dated 05.12.2022 arising out of CP No.88/(MAH)/2015 National Company Law Tribunal directed parties to maintain status quo concerning to the properties owned by Supreme Transport Organization Pvt. Ltd. On 10.12.2022, Ammeet Agarwal forwarded invoice of the aircraft to complainant in which Sumit Agarwal requested him to pay airport charges of 68,000 US\$. On 10.01.2023, complainant transferred money in the bank account of Supreme Transport Organization Pvt. Ltd. having account with Band of Baroda, Sakinaka branch, Mumbai with prior knowledge to Escrow. On 07.02.2023, Mishell transported Aircraft in container from Jaipur Airport to Mundra Port. On that day accused Ammeet Agarwal informed complainant to transfer 4,90,000 US \$.The said amount was transferred to the bank account of Shorelite Company Ltd., London belonging to Natwarlal Tiparewal and his wife Lata. On 07.02.2023, complainant instructed it to Escrow account, who transferred 4,90,000 US \$ in bank account of Natwarlal and Lata. On 04.05.2023, complainant received e-mail of Axis Bank, Worli Branch, Mumbai informing therein that the aircraft is hypothecated to Axis Bank towards repayment of loan of March

2017.

6. It is further the case of prosecution that, the Directors of Supreme Transport Organization Pvt. Ltd. breached the status quo order of NCLT, Mumbai dated 05.12.2022. On 08.09.2023, Supreme Transport Organization Pvt. Ltd. was declared insolvent. All the properties of accused Company were attached and vested with IRP. Complainant demanded his money back from Ammeet Agarwal, who refused to repay the said amount, which was transferred in the account of Natwarlal and Lata. On the report of complainant, crime came to be registered against present applicant and other Directors of Supreme Organization Pvt. Ltd. bearing No.464 of 2024 dated 08.05.2024, under Sections 409, 420, 465, 467, 468, 471 r/w Section 34 of the Indian Penal Code, 1860 (hereinafter referred as "IPC").
7. From the documents on record, it appears to this Court that, there was Aircraft Purchase Agreement dated 20.07.2022 entered into between complainant and accused Ammeet Agarwal on behalf of Supreme Organization Pvt. Ltd. The aircraft was agreed to be purchased in complete – as is where is-condition with clear title. It is the case of prosecution that complainant paid full purchase price of aircraft VT-UDN. Ammeet Agarwal promised to remain present to handover the said aircraft but he never turned up. The purchase amount was transferred to Escrow account that was set up and on the direction of Ammeet Agarwal the purchase amount was diverted to the bank account of his relatives Natwarlal and Lata, who are resident of London. It is accused Ammeet Agarwal, who instructed and accepted the payment

made to the account of Shorelite Ltd. It is the case of prosecution that, accused induced complainant to purchase the aircraft, which was hypothecated with Axis Bank towards repayment of loan which said fact was not informed to complainant at the time when negotiation with regard to purchase of aircraft were going on and in this way complainant was deceived wherein wrongful loss of 5,50,000 US \$ was caused to him.

8. On 12.04.2022, consent was accorded by all Directors of Supreme Transport Organization Pvt. Ltd. to de-register the said aircraft from DGCA Aircraft register wherein applicant was one of the signatory. On 07.02.2023, Ammeet Agarwal and applicant had returned to Jaipur International Airport ltd. authorising them to exist from the airport. Their aircraft VT-UDN which was damaged in a container was loaded on a trailer bearing no. RJ - 14 GH 7100.
9. It is matter of record that, accused Ammeet Agarwal was arrested in the instant crime. He was subjected to custodial interrogation by Investigating Machinery. Thereafter he was sent to judicial custody. It is informed to this Court that accused Ammeet Agarwal was released on bail by Metropolitan Magistrate Court, Mumbai.
10. It is submitted by prosecution that, custodial interrogation of applicant is necessary to unearth the trail of money which was paid by complainant on the instructions of accused Ammeet Agarwal. As per the case of prosecution, the money was transferred in the bank of account of Shorelite Ltd. and since that

bank account is beyond limits of India, it is not possible to recover the same.

11. Applicant Kamal Agarwal role is limited to granting consent for de-registration of the Cessna Grand Caravan VT-UDN Aircraft, which is subject matter of Aircraft Purchase Agreement dated 20.07.2022. Another document cited by prosecution is the loan agreement entered into between Axis Bank on one side and borrower Supreme Transport Organization Pvt. Ltd. Vide said agreement, Cessna Grand Caravan Aircraft is hypothecated with the bank towards repayment of term loan wherein applicant Kamal stood as a guarantor along with other four directors including Ammeet Agarwal. Applicant was having knowledge that, the aircraft which their company is owning, is mortgage with Axis Bank towards repayment of term loan, despite that he along with other directors consented for de-registration of aircraft.
  
12. There is no written document on record to show that applicant along with other directors by resolution authorized Ammeet Agarwal to enter into Aircraft Purchase Agreement in favour of complainant on dated 20.07.2022. In the statement of complainant, pivotal role is attributed to accused Ammeet Agarwal wherein he agreed to sell damaged Company aircraft to complainant and instructed him to transfer the sale money in the bank account of Shorelite Ltd. based in London. There is no whisper in the statement of complainant and in the whole F.I.R. that present applicant had shared ill intention with accused Ammeet Agarwal with regard to diversion of sale price to

Shorelite Ltd. London from Escrow account. Applicant cannot *prima facie* be held vicariously liable with the act of accused Ammeet Agarwal in entering into Aircraft Purchase Agreement, which was hypothecated with Axis Bank towards repayment of term loan and diversion of sale amount outside India. From the aircraft purchase agreement dated 20.07.2022, all the terms of the agreement were incorporated at behest of complainant and Sumeet Agarwal. At that time applicant is nowhere in picture. The term regarding delivery and payment of purchase money was also dictated by accused Ammeet Agarwal on whose request complainant paid sale money to Shorelite Ltd., London which came to be diverted from Escrow account which was created with consent of both complainant and accused Ammeet Agarwal. It is alleged by prosecution that along with Ammeet all the directors of Supreme Transport Organization Pvt. Ltd are vicariously liable for committing criminal breach of trust, cheating and forgery. In that regard it will be fruitful to refer the judgment of Hon'ble Supreme Court in the case of **Shiv Kumar Jatia Vs. State of NCT of Delhi in (2019) 17 SCC 193**, wherein it is held as under :

*'If a Company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the Company. At the same time it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless a statute specifically provides therefor, by specifically incorporating such a provision. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions for attaching vicarious liability. Penal Code, 1860 does not contain any provision for attaching vicarious liability on the part of*

*the Managing Director or the Directors of the Company, when the accused is a Company.*

*If there is no such provision specifically providing for vicarious liability, an individual either as Director or Managing Director or Chairman of the Company can be made an accused, along with the Company, only if there is sufficient evidence to prove his active role coupled with the criminal intent. The criminal intent alleged must have direct nexus with the accused.'*

13. Further, in case of **R. Kalyan Vs. Janak C. Mehta reported in (2009) 1 SCC 516** wherein it is held as under :

*32 Allegations contained in the FIR are for commission of offences under a general statute. A vicarious liability can be fastened only by reason of a provision of a statute and not otherwise. For the said purpose, a legal fiction has to be created. Even under a special statute when the vicarious criminal liability is fastened on a person on the premise that he was in charge of the affairs of the Company and responsible to it, all the ingredients laid down under the statute must be fulfilled. A legal fiction must be confined to the object and purport for which it has been created.'*

14. Thus, from the aforesaid there is no specific role attributed to applicant of he having induced and deceived complainant of his valuable money and committed criminal breach of trust by forging documents. From alleged criminal act of accused Ammeet Agarwal, present applicant, who is also one of the director of Supreme Transport Organization Pvt. Ltd. cannot be held vicariously liable.

15. In view of above referred discussion, this Court is of the opinion that custodial interrogation of applicant / accused is not required. Hence, this Court is inclined to grant anticipatory bail in his favour. order :-

**ORDER**

1. The present Anticipatory Bail Application No. 1114 of 2024 is allowed and disposed off.
2. In the event of arrest of the applicant **Kamal N. Agarwal** in connection with C.R. No.32 of 2024 registered with EOW, Mumbai (C.R. No.464 of 2024 registered with Sahar Police Station) against the present Applicant for the offences punishable under Sections 409, 420, 465, 467, 468, 471 r/w Section 34 of the Indian Penal Code, 1860, he be released on furnishing PR bond of Rs. 1,00,000/- (Rupees One Lakh only) on following conditions:-
  - i. The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the fact of the accusation against him so as to dissuade them from disclosing such facts to the Court or EOW.
  - ii. That the applicant shall mark his presence with concern EOW every week preferably on Monday between 11.00 a.m. to 2.00 p.m. for a month and thereafter to appear before concern EOW as and when called upon to do so until charge-sheet is filed.
  - iii. He shall not contact complainant in any way whatsoever.
  - iv. He shall not tamper with evidence collected during the course of investigation. He shall not threatened prosecution witnesses
  - v. The applicant shall not leave India without prior permission of the Trial Court and Investigating Officer.
  - vi. The Applicant shall not alienate any immovable property in his name or in the name of his family members or any other concern person if any, without permission of the Court.
  - vii. The Applicant shall furnish his contact number and residential address and contact number plus residential proof of his two near relatives to the Investigating Officer and shall keep him

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updated, in case there is any change.

viii. The Applicant shall attend the dates of trial regularly.

**(Dictated and pronounced in the open Court.)**

**Date: 31/08/2024**

**Mumbai**

**(N. P Mehta)**  
Designated Judge under  
The Maharashtra Protection of  
Interest of Depositors Act, 1999,  
for Gr. Bombay

Dictated on : 31/08/2024  
Draft given on : 02/09/2024  
Signed by HHJ on : 02/09/2024

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"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT /ORDER"	
02.09.2024 at 5.36 p.m. UPLOADED DATE AND TIME	Ms. R. D. Tari NAME OF STENOGRAPHER

Name of the Judge (with Court Room no.)	H.H.J. N. P. Mehta C.R. No.07
Date of Pronouncement of Judgment/Order	02.09.2024
Judgment /Order signed by P.O. on	02.09.2024
Judgment/Order uploaded on	02.09.2024