IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 753 OF 2016

Taheri Mustan Mudriswala & Anr. ... Applicants.

V/s.

The State of Maharashtra & Anr. … Respondents.

WITH
CRI. APPLICATION NO. 495 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 753 OF 2016

Tabrez Munir Khan … Applicant/Intervener.

In the matter between :

Taheri Mustan Mudriswala & Anr. ... Applicants.
V/s.
The State of Maharashtra … Respondent.

WITH
CRI. APPLICATION NO. 509 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 753 OF 2016

Irfana Arshad Shaikh … Applicant/Intervener.

In the matter between :

Taheri Mustan Mudriswala & Anr. ... Applicants.
V/s.
The State of Maharashtra … Respondent.

Mr. Sachin S. Punde, Advocate for the Applicants.
Mr. Deepak Thakre, A.P.P. for the Respondent – State.

Mr. Vikas B. Shivarkar, Advocate for the Intervener in APPP No. 495/2016.
Mr. Kayanat V. Shaikh i//by P. M. Dabade, Advocate for the Intervener in APPP No. 509/2016.

CORAM : A. M. BADAR, J.
DATE : 29th JULY, 2016

P.C. :

1 Father and son, duo by this application are seeking pre-arrest bail in Crime No. 352 of 2015 registered against them with Kondhwa Police Station, Dist. Pune at the instance of informant - Tabrej Munir Khan, for the offence punishable u/s. 420 r/w. 34 of the Indian Penal Code.

2 Heard the learned counsel appearing for Applicants /accused. In his submission, the moneys were invested in the business of import and export of motorcycles and element of cheating since inception is missing. Learned counsel further argued that the informant had filed a criminal complaint under section 138 of the Negotiable Instruments Act for recovery of the part of amount mentioned in the FIR on the pretext of dishonour of the cheques. My attention is also drawn to the complaint filed by applicant no.2/accused with the Police Inspector, alleging a threat for recovery of the amount. It is argued that during pendency of the similar application before the Additional Sessions Judge, there was settlement between the parties.

3 Learned APP opposed the application by arguing that present applicants/accused were in cement business and they had cheated several persons by painting pictures of rosy return on the investments. Learned APP draws my attention to the certificate issued under the Maharashtra Shop and Establishment Act, 1948, showing that applicant no.1-Taheri is dealing with gypsm cement and steel trading. Similarly, my attention is drawn to the licence issued by the Foreign Trade Development Officer in favour of applicant no.1 - Taheri.

4 Learned counsel appearing for the interveners argued that the offence is serious and intention to cheat is reflected in FIR and such an intention was since inception. It is argued that one more crime under section 420 of the Indian Penal Code is registered against applicant no.1 with the Lashkar Police Station, Pune.

5 I have considered the rival submissions and perused the papers of investigation including the FIR. In the case in hand the recitals in FIR are very material. Informant - Tabrez Munir Khan in no unclear terms has stated in his FIR that applicant no.1-Taheri accompanied by accused no.3 -Daruwala met him. Applicant No.1 Taheri informed him that he is doing a business of import of motorcycles and their sale in India. Applicant no. 1- Taheri also informed the informant that if moneys are invested in this business then the informant

will be benefited. Informant Tabrej, as seen from the FIR, has not relied merely on representation of applicant no.1 Taheri. He ascertained whether representation of Taheri and his dealing in import and sale of motorcycles is correct or not. FIR reveals that the informant came to know that the information so given by applicant no.1 Taheri is correct. FIR further reveals that upon ascertaining the truthfulness of the representation of applicant no.1 Taheri, informant-Tabrej Khan decided to invest moneys in this business. Not only this but the informant appears to have had contacted co-accused - Daruwala by paying commission of Rs. One lakh to him for guarantying refund of the money. On this background, thereafter, it is averred by the informant that he is cheated by the applicant and co-accused-Ali Mohammad Daruwala. The informant averred that in all five persons are cheated by extracting amount of Rs. 36.86 lakhs from them.

6 Bare perusal of the FIR as such shows that the transaction in question is predominantly of civil nature. Business proposal for investing moneys emanated from applicant no.1 Taheri and the informant ascertained its viability and truthfulness and thereafter, the decision to invest money in the said business was taken by the informant.

7 So far as applicant no.2 is concerned, he is father of applicant no.1 Taheri. Allegations against him are to the

effect that he agreed to refund the amount invested by the informant but he failed to do so. The learned APP has pointed out the certificate of import and export trading in favour of Alif Trading Company owned by the present applicant no. 1-Taheri Mustan, who is Managing Director of the said Company. As such it does appear that applicant no.1 is permitted to import the articles. This also indicates that there was prima facie, no intention on the part of applicants to deceive the informant as applicant no.1 Taheri was permitted to import the articles in India.

8 For the above reasons, no case for custodial interrogation of applicants is made out and, therefore, the order :

ORDER

i. The anticipatory bail application is allowed.

ii. In the event of their arrest, Applicants/accused in Crime No. 352 of 2015 registered against them with Kondhwa Police Station, Dist. Pune at the instance of informant-Tabrej Munir Khan for the offence punishable under section 420 r/w. 34 of the Indian Penal Code, be released on bail on executing PR Bond in the sum of Rs. 10,000/- each and on furnishing solvent surety in the like amount by each of them.

iii. As a condition of this order, Applicants/accused should attend the Kondhwa Police Station, Pune on 14th August, 2016 and 21st August, 2016 in between 11 a.m. to 1 p.m. and they should co-operate with the Investigation Officer.

iv. In addition, Applicants/accused are directed that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that applicants/accused shall not tamper with the prosecution evidence in any manner.

v. The application is disposed of accordingly.

In view of disposal of main application, intervention applications filed therein being Cri. Application Nos. 495 of 2016 and 509 of 2016 also stand disposed of.

(A. M. BADAR, J.)