IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1497 OF 2016

Akshay Tapeshwar Tyagi .....Applicant
V/s.
The State of Maharashtra ....Respondent

WITH
CRIMINAL APPLICATION NO. 806 OF 2016
IN
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1497 OF 2016

Balraj Singh Agru Singh ….Intervener

IN THE MATTER BETWEEN

Akshay Tapeshwar Tyagi .....Applicant
V/s.
The State of Maharashtra ....Respondent

WITH
CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1527 OF 2016

Himmat Bhanudas Raut ….Applicant
V/s.
The State of Maharashtra ….Respondent

Mr. Aniket U. Nikam i/b Mr. Aashish Satpute
Advocate for the Applicant in ABA 1497 of 2016
Mr. Akshay Petkar Advocate for the Applicant
in ABA 1527 of 2016
Mr. Balraj Singh Agru intervener in person
Mr. Prashant Jadhav a/w Mr Vinod
Chate APP for the State.
Mr. Sainath K. Mali, A.P.I. Nashik City Police Station.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : 26th SEPTEMBER, 2016.

PC :

1) These are applications under section 438 of the Code of Criminal Procedure, 1973. Applicant in Criminal Anticipatory Bail Application No. 1497 is apprehending his arrest in crime no. 12 of 2016 registered at Upnagar Police Station, district: Nashik for offence punishable under section 420 r/w 34 of the Indian Penal Code.

2) It is the case of the prosecution that on 07/01/2016, BalrajSingh Panvar (Parmar) lodged a report at Upnagar Police Station that he has retired from Armed Forces. According to him, in the year 2014, Mr. Parmar met Deepak Tiwari. They got acquainted with each other. In the month of May 2015, Deepak had told the first informant that he is a merchant of one yellowish colour substance which is used in satellites. He then introduced the first informant to Naresh Gandhi as a scientist in the company and one more person namely Tapeshwar Tyagi as the managing director of the company. Tapeshwar Tyagi happens to be the father of the present applicant. Deepak, Naresh and Tapeshwar Tyagi had informed Mr. Balraj Singh that if he invests

in the said yellowish colour metal substance, he would yield good returns. They had explained to Mr. Balraj the manner in which this could be a lucrative returns. Mr. Balraj had invested Rs. 75,00,000/-. Mr. Balraj has further alleged that in the month of January 2015 they all had halted at hotel Dhanashree at Karmala road. There they had allegedly met Metallurgist, Mr. Mathur, Mr. Gupta and others and at that time, they had taken Rs. 20,00,000/-. One Mr. Ganesh Ithape @ Firoz Ramjan Shaikh was introduced as the owner of the yellow metallic substance. The first informant had again parted with Rs. 5,00,000/- in favour of Ganesh Ithape and original accused no. 5. They had further extorted huge amounts from the first informant. On 16/08/2015, original accused no. 1 Deepak Tiwari called upon the first informant to meet Tapeshwar Tyagi at hotel Utsav, Nashik and had informed him that he would give three times amount of Rs. 75,00,000/-. Thereafter, the alleged accused persons had never met the first informant. On verification, the first informant had learnt that he has been cheated. The first informant had also learnt that several other persons have been chated by all the accused by using the same *modus operandi*. In the course of investigation, investigating agency had recorded the statements of several people who had admitted to have been cheated by the accused persons.

3) The learned counsel for the applicant submits that there is a delay in lodging F.I.R. and there is no plausible explanation for the same. It is seen from the records that in fact, the report was lodged on 27/10/2015 and not on 07/01/2016. It is pertinent to note that the first informant had also informed the Commissioner of Police that P.S.I. S. B. Munde is not conducting investigation properly. The first informant had approached P.S.I. Munde in the month of October 2015. He had not registered the offence. The first informant had to approach the Commissioner of Police, Nashik in the third week of October 2015. The Commissioner had directed the Crime Branch to investigate the matter and only then the offence was registered on 27/10/2015. In January 2016, P.S.I. Yevala had asked the first informant to register a fresh case against the accused. On the basis of the said report, crime no. 12 of 2016 was registered on 07/01/2016. The first informant had personally led the police to Delhi on 16/04/2016 and there accused Deepak Tiwari and Naresh Gandhi were arrested. Applicant Akshaykumar Tyagi had accompanied his father Tapeshwar Tyagi to Ahmednagar on 13/08/2015 to meet the first informant. He had entered into negotiations. The first informant had

persistently insisted upon the Investigating Officer to inquire with Akshaykumar Tyagi, however, Investigating Officer had not taken any coercive steps against him.

4) The learned APP submits that Tapeshwar Tyagi had furnished fake sureties and fake passports and the possibility that he would abscond cannot be ruled out. The papers of investigation would clearly indicate the involvement of Akshaykumar Tyagi in the said case. The first informant had identified him. It is in these circumstances that the applicant is apprehending his arrest.

5) The learned counsel for the applicants submit that except the statement of the first informant, there is no material against the present applicants. The first informant had furnished material to the Investigating Officer. The first informant was also present in the court and has submitted that he apprehends that the present accused are members of organized syndicate and therefore they do not deserve to be granted pre-arrest bail. It is pertinent to note that a similar offence was also registered against accused Nareshkumar Gandhi at Kishtwada Police Station at Jammu and Kashmir State. The fact that present applicant and his father were seen in the company of Nareshkumar Gandhi

and had met the complainant and lured him to part with huge amounts by showing some spurious substance and cheated the first informant.

6) On 28/06/2016, the first informant had also requested the Commissioner of Police to transfer the investigation of the said offence to Economic Offences Wing, however, he had not received any reply. The papers of investigation would reveal that father of Akshay Tyagi had posed as an agent of French Company namely 'Eurisy' dealing in purchase and sale in satellite and space. He had informed that his friend wanted to sell copper iridium at at throw away price and that they could buy rice puller for a few crore and sell it to NASA for one thousand crores. They had given the first informant a piece of yellow metal. Nareshkumar Gandhi had certified it as a genuine metal. The first informant was gullible. The possibility that the applicant has cheated several people along with his father cannot be ruled out. Hence, application seeking pre-arrest bail deserves to be rejected and stands rejected.

7) As far as Criminal Anticipatory Bail Application No. 1527 of 2016 is concerned, the learned counsel for the applicant submits that there is no direct evidence against the applicant and that there has been recovery of the said

substance. The learned counsel for the applicant submits that applicant herein is resident of Fakkarabad Jamkhed and is an agriculturist. There is no sufficient material to indicate that the applicant is an associate of Deepak Tiwari and Nareshkumar Gandhi.

8) Papers of investigation would show that police had recorded the statement of Dheeraj Barje who had disclosed that on 05/08/2015 when the accused had been to take Rs. 5,00,000/- Akbar Ramjan Shaikh, Chagan Kapare had been to the house of the first informant. Dheeraj Barje had identified the present applicant. Other persons present were Himmat Bhanudas Raut, Ganesh Ithape @ Firoz Shaikh. Applicant has been identified by the witnesses. Applicant was the accomplice of Deepak Tiwari and Nareshkumar Gandhi. Papers of investigation also include the copy of an agreement executed between Ajay @ Ganesh Dabhade and Narayan Patil, resident of Beed. Ajay Dabhade had executed an agreement to the effect that he is the owner of antique substance copper weighing about 1.850 kgs. It is of four layer chemical packing with Teflon seal. He has inherited the said substance and since it is of no use to him, he desires to sell the same. It is stated in the agreement that the said substance was to be purchased by BMW

Company but the possessor of the substance did not wish to give it to BMW Company. The said agreement was executed at Beed. The applicant had prepared false identity cards.

9) Taking into consideration the papers of investigation and the role attributed to the applicant, he does not deserve the discretionary relief under section 438 of the Code of Criminal Procedure, 1973. Hence, application stands rejected.

10) Intervention application is heard, allowed and disposed of.

(SMT. SADHANA S. JADHAV, J.)