IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1886 OF 2015

Mr. Somnath Dattatray Thube & 6 Others … Applicants.

V/s.

The State of Maharashtra … Respondent.

WITH
CRI. APPLICATION NO. 59 OF 2016
IN
ANTICIPATORY BAIL APPLICATION NO. 1886 OF 2015

Anil Davane … Intervener.

In the matter between :

Mr. Somnath Dattatray Thube & 6 Ors. … Applicants.
V/s.
The State of Maharashtra … Respondent.

Mr. Aniket U. Nikam, Advocate for the Applicants.
Mrs. R. M. Gadhvi, A.P.P. for the Respondent – State.
Mr. Amol Joshi, Advocate for the Intervener in APPP-59/16.

CORAM : A. M. BADAR, J.
DATE : 08th JUNE, 2016

P.C. :

1 The Applicants/ accused in Crime No. 137 of 2015 for the offence punishable under sections 420, 406, 468, 120-B read with section 34 of the Indian Penal Code, registered with Vani Police Station, Dist. Nashik, at the instance of Anil

Madhavrao Davane, who is a member of the trust named as "Maharudra Hanuman Seva Samiti", by this application are seeking for release on bail in the event of their arrest.

2 Heard the learned counsel appearing for the Applicants as well as the learned APP for the State. Learned counsel for the applicants, by pointing out the affidavit filed by the applicants, has contended that for welfare of the citizens, a Scheme was floated by the applicants and an amount of Rs.650/- each was collected from 3670 members. However, because of the difficulties created subsequently, the entire amount to the tune of Rs. 23,85,500/- came to be refunded by the applicants to the entire members except an amount of Rs. 650/- payable to the son of the informant. This, according to the learned counsel could not be done, as the informant refused to accept said amount of Rs.650/-. Learned counsel for the applicants further argued that FIR itself reveals that Secretary of the Trust had authorized the applicants to use name and registration number of the Trust for starting the "lucky draw scheme" for welfare of the members and public at large. Learned counsel further argued that considering averments made in the FIR and the material collected during the investigation, it cannot be said that the intention of the present applicants was to cheat the public at large and that too since inception. Use of name of the trust was also permissive.

In the light of this, custodial interrogation of the applicants is not at all required.

3 Learned APP opposed the application by contending that the alleged offence is serious that affected the public at large. I have also heard the learned counsel appearing for the informant, who argued that successive complaints were made by the Trust but police authorities did not pay any heed. Ultimately with great effort the FIR came to be lodge. Learned counsel further argued that he is not aware of the refund of the amount by the applicants to the members of the lucky draw scheme.

4 Perusal of the FIR as well as record made available to me goes to show that the applicants have started "lucky draw scheme" in the name and title as "Shri Maharudra Hanuman Seva Samiti Multi Services" and used registration number of the existing public trust namely "Maharudra Hanuman Seva Samiti". It is seen that the applicants have collected an amount of Rs. 650/- from each individual with a promise that at the end of each week, the lucky draw will be opened / held and the winners will get price. However, it appears that after lodging the FIR applicants have refunded the amount of Rs. 23,84,850/- to all 3670 members except an amount of Rs. 650/- which is not accepted by the informant. There is no reason to dis-believe this contention which is

reflected in duly sworn affidavits to the effect by the applicant no.1-Somnath Dattatray Thube and others. The recitals in the FIR show that the Secretary of the Trust had permitted applicant nos. 1 to 6 to start lucky draw scheme. Prima facie, as such it cannot be said that the applicants were harboring intention of cheating every member of the trust or the public at large since inception. Because of the refund of the entire amount except a paltry sum payable to the informant now custodial interrogation of applicants is not at all warranted. Hence, the following order :-

ORDER

i. This application is allowed.

ii. The interim order, granting anticipatory bail to the applicants on 16th December, 2015 is confirmed on the same terms and conditions.

iii. In addition, the 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 shall not tamper with the prosecution evidence in any manner.

iv. As a condition of this order, the Applicants should attend the investigating officer as and when reasonably called by him.

v. The applicants should co-operate the trial court in expeditious disposal of the trial, in the event of filing of the chargesheet.

vi. The applicants shall not tamper with the prosecution evidence in any manner and they should not commit offence of similar nature in future.

vii. This anticipatory bail application is disposed of accordingly.

viii. In view of the disposal of the anticipatory bail application, criminal application no.59 of 2016 filed by the intervener does not survive and the same is disposed of as such.

(A. M. BADAR, J.)

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