IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3577 OF 2017

Balaprasad s/o Gulabchand Toshniwal,
age 39 years, Occu. Business,
r/o Rangar Galli, Beed,
Tal & Dist. Beed. **... APPLICANT.**

VERSUS

The State of Maharashtra,
through Police Inspector,
Police Station, Shivaji Nagar,
Beed, Tal. & District Beed. **... RESPONDENT.**

...

Advocate for applicant : Mr.N.T. Tribhuwan.
PP for the State : Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

WITH
CRIMINAL APPLICATION NO.3917 OF 2017

Vaijinath s/o Eknath Nagargoje
age 56 years, Occu. Service,
r/o C/o Tonde Niwas, Opposite Police
Head Quarter, Indira Nagar Dhanora
Road, Beed. **... APPLICANT.**

VERSUS

The State of Maharashtra,
through Police Inspector,
Police Station, Shivaji Nagar,
Beed, District Beed. **... RESPONDENT.**

...

Advocate for applicant : Mr.G,D, Kale h/f Mr.Nagargoje Mahadeo V.
PP for the State : Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

WITH

CRIMINAL APPLICATION NO.3584 OF 2017

1. Ajay s/o Brijmohan Soni,
age 30 years, Occu. Tax Practitioner,
and Education, r/o Karimpura,
Beed, Tq. & Dist. Beed.

2. Sanjay s/o Brijmohan Soni,
age 39 years, Occu. Business,
r/o Karimpura,
Beed, Tq. & Dist. Beed. **... APPLICANT.**
(Ori. Accused / applicants)

VERSUS

The State of Maharashtra. **... RESPONDENT.**

...

Advocate for applicant : Mr. R.N. Dhorde, Sr. Counsel i/b Mr.V.R. Dhorde.
PP for the State : Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

WITH

CRIMINAL APPLICATION NO.3978 OF 2017

IN

CRIMINAL APPLICATION NO.3577 OF 2017

Ajay Shiramantrao Tandale,
age 44 years, Occu. Advocate,
r/o Jawahar Colony, Nagar Road,
Beed, Tq. & Dist. Beed. **... APPLICANT**
(Informant)

VERSUS.

1. Balaprasad s/o Gulabchand Toshniwal,
age 39 years, occu. Business,
r/o Rangar Gali, Beed,
Tq. & Dist. Beed.

2. The State of Maharashtra,
through Police Station Shivajinagar,
Beed, Dist. Beed. ... **RESPONDENTS**.

...

Advocate for applicant : Mr.Salunke S.J.
Advocate for R.No.1: Mr.N.T. Tribhuwan.
PP for State: Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

WITH
CRIMINAL APPLICATION NO.3979 OF 2017
IN
CRIMINAL APPLICATION NO.3584 OF 2017

Ajay Shiramantrao Tandale,
age 44 years, Occu. Advocate,
r/o Jawahar Colony, Nagar Road,
Beed, Tq. & Dist. Beed. **... APPLICANT**
(Informant)

VERSUS.

1. Ajay s/o Brijmohan soni,
age 30 years, occu. Tax Practitioner
and Education, Karimpura, Beed,
Tq. & Dist. Beed.

2. Sanjay s/o Brijmohan Son,
age 39 years, occu. Business,
r/o Karimpura, Beed,
Tq. & Dist. Beed.

3. The State of Maharashtra,

through Police Station Shivajinagar,
Beed, Dist. Beed. ... **RESPONDENTS**.

...

Advocate for applicant : Mr.Salunke S.J.
Advocate for R.No.1 & 2: Mr.R.N. Dhorde Sr.Counsel i/b Mr.V.R. Dhorde.
PP for State: Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

WITH

CRIMINAL APPLICATION NO.4405 OF 2017

IN

CRIMINAL APPLICATION NO.3917 OF 2017

Ajay Shiramantrao Tandale,
age 44 years, Occu. Advocate,
r/o Jawahar Colony, Nagar Road,
Beed, Tq. & Dist. Beed. **... APPLICANT**
(Informant)

VERSUS.

1. Vaijnath Eknath Nagargoje,
age 56 years, occu. service,
r/o Beed,
Tq. & Dist. Beed.

2. The State of Maharashtra,
through Police Station Shivajinagar,
Beed, Dist. Beed. ... **RESPONDENTS**.

...

Advocate for applicant : Mr.Salunke S.J.
Advocate for R.No.1: Mr.M.V. Nagargoje.
PP for State: Mr.A.B. Girase, PP with Mr.P.G. Borade, APP.

...

CORAM : V.L. ACHLIYA, J.

Dated: SEPTEMBER 01, 2017

ORDER:

1. The applicants herein apprehending their arrest in connection with CR No.0448/2017 registered against them with Police Station Shivaji Nagar, Beed u/s 406, 420 r/w. Sec. 34 of IPC, at the instance of Advocate Ajay S. Tandale presently working as Asstt. Public Prosecutor and A.P.P. At Beed, have filed these applications seeking anticipatory bail.

2. Heard learned Counsel for the applicants, Public Prosecutor and learned counsel representing the intervenor – complainant.

3. Perused the FIR, order rejecting the applications seeking anticipatory bail passed by the Additional Sessions Judge, Beed and report of Investigating Officer with copies of investigation carried out.

4. Learned Counsel representing the accused No.3 i.e. Balaprasad Gulabchand Toshniwal strenuously contended that the complaint filed by the complainant against accused is false and made with an ulterior motive. He has submitted that no act of criminal breach of trust as well as cheating has been committed on the part of accused No.3. He submitted that accused No.3 had cordial relations with the complainant. In the month of March, 2017, the complainant approached him and requested to avail hand-loan of Rs.50,000/-. He assured to return the amount within one month. He gave Rs.50,000/- as a hand-loan to complainant. However, he did not return the amount within one month as agreed. Since the accused No.3 was in need of money, he met the complainant in the court premises and asked him to return the amount. Since the accused No.3 demanded amount in presence of colleagues of the complainant, he got annoyed. He issued a cheque in favour of the applicant and gave threats to see the accused by using his position as Additional Public Prosecutor. It is

contended that the complaint in question is the outcome of grudge the complainant carrying against him. The complainant cooked a false story and filed false complaint against accused. Learned Counsel submitted that whatever amount received for the purpose of court fees stamps, the accused No.3 has transferred the amount in the government account by making On-line transfer. He has generated the “e” challan in the name of respective persons as instructed by such persons and issued them 'e' challan to collect the court fees stamp from treasury. In support of the submissions advanced, learned Counsel placed on record the extract of Bank account of accused No.3 with S.B.I. for the period 1st April, 2017 to 27th June, 2017.

5. Mr. Dhorde, learned Counsel appearing for accused Nos.1 and 2 i.e. applicants in Criminal Application No.3584 of 2017 strenuously contended that there is absolutely no case against them. By referring copy of FIR, it is submitted that though the

complainant has made allegations that all the accused acted in furtherance of common intention in committing alleged act of criminal breach of trust and cheating, but there is no material to support such allegations. He submitted that as per the allegations made in the complaint, the complainant and other persons alleged to have directly credited the amount in the Bank account of accused No.3. It is no one's case that the amount was credited in the account of accused Nos.1 and 2. Only allegation made against accused Nos.1 and 2 that they initially approached accused Nos. 1 and 2 but they instructed them to approach accused No.3 and credit amount in the account of accused No.3. He submitted that the applicants are no way concerned with the accused No.3. The premises owned by their mother has been given on monthly rent Rs.10,000/- to accused No.3. In support of the submissions, learned Counsel has relied upon the agreement dated 25.3.2015 entered in between mother of the applicants and accused No.3 as well as copies of income tax assessment order of the year 2015-16 and

2016-17 reflecting receipt of rent.

6. Learned Counsel representing the applicant in Criminal Application No.3917 of 2017 i.e. accused No.4 strenuously contended that even if the entire allegations made in F.I.R. are taken into consideration, still no case is made out to register offence under Sections 406, 420 r/w 34 of IPC against accused No.4. He submitted that in discharge of duty as a clerk posted in Government Treasury, the role of applicant confines to issue court fees stamps / papers on production of 'e' challan. He submitted that without production of 'e' Challan, the applicant was not supposed to issue court fees stamps. It is pointed out that it is case of complainant himself that the accused No.3 has not issued 'e' challan in spite of depositing amount in his account. In this view, in absence production of On-line generated 'e' Challan, the applicant was justified in refusing to issue court fees stamp papers. He further submitted that during the month of March, 2017, there was shortage of court fees stamp papers. The indent letter to supply court fees

stamp papers was sent to the Chief Superintendent of Stamps at Mumbai vide letter dated 3.4.2017 by the Treasury Officer at Beed.

7. Learned Public Prosecutor has opposed the applications with contention that there is prima facie case to connect the applicants with the offences registered against them. By referring the complaint lodged and material gathered during the course of investigation, learned Prosecutor submitted that there is prima facie evidence to show that the complainant and four other persons had deposited Rs.16,95,800/- in the account of Balaprasad s/o Gulabchand Toshniwal i.e. accused No.3 for the purpose of seeking judicial court fees stamps. Accused No.3 was expected to have immediately credited the amount in the account of Government and to hand over 'e' Challans to them so as to receive the court fees stamp papers from the treasury. When the complainant and other advocates approached the accused No.3, falsely told them that he has transferred and credited the amount

in the Government account. Whenever the complainant and other advocates approached him to get the 'e' Challan he avoided to issue them on one or the other pretext. In short, it is contended that though the accused No.3 has accepted Rs.16,95,800/- from the complainant and other witnesses for the purpose of issuance of court fees stamp papers, the accused has not deposited the same in the Government account and misappropriated the amount and thereby committed offence punishable under Sections 406, 420 r/w 34 IPC. It is contended that accused Nos.1 to 4 acted in furtherance of their common intention in committing the act of criminal breach of trust as well as cheating.

8. In order to appreciate the submissions advanced, I have throughly perused the copy of the FIR, report of the Investigating Officer and statements of witnesses recorded during the course of investigation. Considering the overall allegations against accused, I am of the view that case is made out to entertain the request for grant of anticipatory bail to accused Nos.1, 2 and 4. No case is made out to entertain the request

of accused No.3 to grant anticipatory bail to him.

9. In the case of ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and others***[1], the Apex Court has considered the purport of section 438 of Cr.P.C. and laid down broad principles to be borne in mind while dealing with application seeking anticipatory bail. It is observed that no inflexible guidelines or straight-jacket formula can be provided for grant or refusal of anticipatory bail. It is further observed that grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. By referring the decision of the Constitution Bench in the case of ***Gurbaksh Singh Sibbia Vs. State of Punjab***[2], the Apex Court has observed that High Court or Court of Sessions has to exercise jurisdiction u/s 438 of Cr.P.C. by a wise and careful use of their discretion. In para 112 of the Judgment, the Apex Court has listed out certain factors

1 (2011) 1 SCC 694;
2 (1980) 2 SCC 565;

and parameters to be taken into consideration while dealing with application seeking anticipatory bail which read, as under :

> "112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:
>
> i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
>
> ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
>
> iii. The possibility of the applicant to flee from justice;
>
> iv. The possibility of the accused's likelihood to repeat similar or the other offences.
>
> v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
>
> vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
>
> vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which

accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

10. It is further observed in said judgment that the arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. While dealing with the application seeking anticipatory bail, the court must

carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and also examine whether such allegations are corroborated by other material and circumstances on record. It is also clarified that the factors as quoted above are not exhaustive but, they are illustrative in nature and ultimately, it is the Court concerned to exercise a wise discretion on due consideration of the entire material on record in the light of plea raised in favour of grant or refusal of bail. It is also observed that the discretion vested in the court should be exercised with care and circumspection depending upon facts and circumstances justifying such exercise.

11. Keeping in mind the factors and and parameters quoted above and broad principles laid down to deal with application seeking anticipatory bail, I have examined the overall allegations appearing in the FIR against accused and statements recorded during investigation and other material. It is nobody's case

that the amount was credited in the account of accused Nos.1 and 2 and they have misappropriated the amount. Similarly, there are no specific allegations of misappropriation and cheating on the part of accused No.4. As per the complainant and other witnesses, the amount of Rs.8,50,000/- has been credited in the bank account of accused No.3 for the purpose of receiving court fees stamps. It is further alleged that two other persons have directly paid an amount of Rs.8,45,800/- in cash to accused No.3 for the purpose of securing court fees stamps. Thus, it is no one's case that the amount was paid to accused Nos.1, 2 and 4. The only allegations made against them that the offence was committed by all accused acting in furtherance of their common intention to cheat the complainant and others and misappropriate the amount deposited by them for receiving court fee stamp papers.

12. If, we consider the overall allegations, and evidence as gathered, there is no material to support such allegations against accused Nos.1, 2 and 4. If,

we consider the FIR, then it is the case of the complainant that prior to 3rd April, 2017, the amount was credited in the account of accused Nos.1 and 2 for securing 'e' challans and he has received the 'e' challans and also received the court fees stamp papers. The grievance confines to amount paid to accused No.3. Only for the reason that accused No.3 was operating his business from the premises owned by mother of applicants - accused Nos.1 and 2, it cannot be inferred that they acted in hands in gloves with accused No.3.

13. So also, there is no *prima facie* evidence to establish the complicity of accused No.4 in commission of offence. As per the responsibility of accused No.4 in the discharge of his duty as a Clerk working in the Stamps Department, the accused No.4 was expected to have issued court fees stamp papers to complainant and others only after production of on-line 'e' challan. On due verification of receipt of payment through 'e' challan and defacing such challan the accused No.4 is

expected to issue court fees stamps to such persons. Admittedly, they had not produced such 'e' Challan before accused No.4. Thus, considering the overall allegations and material relied against the accused Nos.1, 2 and 4, I am of the view that case is made out to entertain the applications moved by accused Nos.1, 2 and 4.

14. The reasons recorded by the learned Additional Sessions Judge in rejecting the application moved by the accused Nos.1,2 and 4 are not convincing and justified in the facts and circumstances of the case as well as the broad principles of law laid down in the case of ***Siddharam Satlingappa Mhetre*** (supra). Except the allegation made in the complaint that the accused Nos.1, 2 and 4 acted hand-in-gloves with accused No.3, there is no supporting material to prima facie show their involvement in the commission of offence. As discussed, the complainant and other witnesses have specifically stated that earlier they had credited the amount as per the direction of accused Nos.1 and 2

and they had received the 'e' challans and also received court fees stamp papers. According to the complainant, initially he approached to accused Nos.1 and 2 for court fees stamps. At that time, accused No.1 and 2 told the complainant that as there are heavy transactions in their account and closing of year they are not in a position to provide service and asked them to approach accused No.3. It is the case of the complainant as well as other witnesses that they credited the amount in the account of accused No.3, who in turn, alleged to have misappropriate alleged amount. Thus, in the light of allegations made in the complaint and overall evidence on record, I am of the view that case is made out in favour of accused Nos.1, 2 and 4 for grant of anticipatory bail.

15. During the pendency of the applications, the applicants were directed to appear before the Investigating Officer and cooperate in investigation. Accordingly, they appeared before investigating officer. However, no incriminating material found against

them. Even the statements of accused Nos.1, 2 and 4 were not recorded though they made themselves available for interrogation by Investigating Officer. Thus, grant of anticipatory bail to accused Nos.1, 2 and 4 will not affect conduct of further investigation. I am, therefore, inclined to allow Criminal Application No.3584 of 2017 filed by accused Nos.1, 2 and 5. Criminal Application No.3917 of 2017 filed by accused No.4.

16. I am not inclined to entertain the appication moved by accused No.3 i.e.Balaprasad s/o Gulabchand Toshniwal for the reason that the complaint is basically made against him. If, we consider the overall complaint filed by the complainant, then the complainant and other witnesses credited the amount in the Bank Account of accused No.3 to secure court fees stamp papers which is alleged to be misappropriated by him.

17. In order to overcome the incidence of preparation and circulation of fake stamp papers the government

introduced the system of 'e'-payment and issuance of 'e'-challan for the purpose of securing judicial and non-judicial court fees stamps. The person requiring such stamps is required to visit the portal of State Government. After opening the portal and visiting the site of department of Registration, the person is required to fill in requisite information and to credit the amount in the account of the government through bank. On crediting the amount in the government account, he has to take out the “e” Challan generated through on-line process and to produce the same. in Government treasury office for securing the Stamp papers. On tendering 'e'-challan generated through On-line process, the treasury officer after making necessary verification and crosschecking the information that amount is credited in government account and 'e' challan is genuine, required to deface the Challan and then to issue government stamp papers in physical form to such person.

18. It appears that though the system can be

operated individually, some people including the advocates, find it difficult to operate the system. Therefore, such persons used to approach the person, well versed in operating such system. Accused No.3 appears to be one of such persons dealing with business of rendering such services by charging commission. It appears from the record that the complainant had deposited Rs.50,000/- with the accused No.3. The fact to that effect finds support from the statement of account of complainants account issued by Priydarshini Mahila Nagari Sahakari Bank Ltd., which reflects that on 6.4.2017 the account of the Complainant was debited with Rs.50,000/- towards clearing of cheque issued in the name of accused No.3. Thus, the fact stated by complainant as to entrustment of the amount to accused No.3 is fortified by the entry in the bank account of the complainant. The statement of account of accused No.3 also reflects receipt of such amount. However, said amount was not credited into government account to to facilitate the issuance of 'e' challan to complainant. The explanation as put forth by accused No.3 that he has given back Rs.50,000/- in cash to the complainant requires investigation.

19. Similarly, there is no dispute as to the fact that Advocate Bangar had deposited Rs.3 lakhs in the account of accused No.3 for securing stamps. In the statement of accused recorded during the course of investigation, accused No.3 has admitted receipt of Rs.3 lakhs from Shri Bangar by two different cheques of Rs.1,50,000/- each. He has offered explanation that as against receipt of said amount he has issued stamp papers to seven different persons as per the instructions of Shri Bangar. The persons named by accused No.3 in his statement contradicted the statement of accused No.3. They have categorically stated that they themselves deposited the amount with accused No.3 and received stamp papers. Similarly, Advocate Mr.S.G. Pisure deposited Rs.3,50,000/-on 18.3.2017 finds support from the material placed on record. The accused No.3 has offered explanation that

as against the receipt of amount from Pisure, he has issued stamp papers in the name of Advocate V.S. Misal on 15.3.2017 and refunded Rs.50,000/- to him appears to be not convincing and require investigation. Shri V.S. Misal in his statement denied receipt of stamp papers on the instructions of Shri Pisure.

20. Learned APP has pointed out that though accused No.3 has claimed that he has received Rs.2 lakhs on 10.3.2017 and Rs.50,000/- on 18.3.2017 and issued stamp papers in favour of the Advocate Mr.V.S. Masal on the instructions of Shri Pisure, the treasury account reflects that the stamp papers were issued to Shri Misal much prior to credit of amount in government treasury i.e. on 15.3.2017. Thus, evidence on record contradicts the explanation put forth by accused No.3. The material placed on record, prima facie, makes out the case that accused No.3 has received an amount to the tune of Rs.8,50,000//- through cheque from Advocate Shri Ajay Tandale, Advocate Shri Bangar and Advocate Shri Pisure. Although he has received the amount in his

account, he has not transferred said amount in government account.

21. Besides the amount received through cheque, there are allegations that accused No.3 also received Rs.3,50,000/- in cash on 31.3.2017, Rs.4,00,000/- in cash on 18.4.2017 from Advocate Sanap. He has also received in cash Rs.95,800/- from Advocate Misal. He has acknowledged receipt of amount of cash from them by issuing receipts under his signature. He has not credited said amount in the Government Treasury so as to generate the 'e' challan and to issue court fees stamp papers.

22. Thus, there is prima facie case to establish the complicity of accused No.3 in commission of alleged offence. The accusation against accused No.3 cannot said to be without basis. So also there appears to be no strong motive on the part of complainant and other advocates to make false accusation against accused No.3. Thus, considering the overall facts of the case,

nature of offence, seriousness of the allegations, the amount involved, the role of accused, I am of the view that application filed by accused No.3 deserves no consideration and is liable to be rejected.

23. It is clarified that the observations as made above are made for limited purpose of deciding the application. Same shall not be treated and used as observations made as to merits of case.

24. It is further clarified that rejection of the bail application shall not lead to arrest of accused No.3 without complying with the requirement of law. It is needless to observe that in case the Investigating agency is of the view that arrest of accused is necessary for proper investigation, they are bound to follow the statutory provisions contained in Chapter V of the Code of Criminal Procedure required.

25. In the result, the following order is passed:

: **ORDER** :

i) Criminal Application Nos.3978/2017, 3979/2017 and 4405/2017 seeking intervention are allowed;

ii) Criminal Application No.3577/2017 filed by accused No.3 Balaprasad s/o Gulabchand Toshniwal is rejected.

iii) Criminal Application No.3584/2017 filed by accused Nos.1 and 2 namely, Ajay s/o Brijmohan Soni and Sanjay s/o Brijmohan Soni, and Criminal Application No.3917/2017 filed by accused No.4 Vaijinath s/o Eknath Nagargoje are allowed.

iv) In the event of arrest of accused Nos.1 ,2 and 4 namely, Ajay s/o Brijmohan Soni, Sanjay s/o Brijmohan Soni, and Vaijinath s/o Eknath Nagargoje respectively, in connection with CR No.0448/2017 registered at Shivaji Nagar Police

Station, Beed on 21.6.2017 for offences punishable u/s 406, 420 r.w. 34 of IPC, they be enlarged on bail on their furnishing bail in the sum of Rs.50,000/- each with one or two sureties in the like amount and on condition that accused Nos.1,2 and 4 shall appear and cooperate with the Investigating Officer as and when required and directed by the Investigating Officer.

v) The Criminal Applications stand disposed of in the above terms.

(V.L. ACHLIYA, J.)

kadam/*