

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.264 OF 2017

Sarvan Bachhi Jha and another	Applicant
versus	
State of Maharashtra and another	Respondents

Mr.Subhash Jha with Ms.Sanjana Pardeshi i/by Law Global for Applicant.

Mr.R.M.Pethe, APP, for State.

PSI Jayesh Baddu Chavan, Malabar Hill Police Station, present.

CORAM : PRAKASH D. NAIK, JJ.

DATE : 27th June 2017

PC :

1. The Applicants are seeking relief under Section 438 of Code of Criminal Procedure, 1973 in connection with CR No.20 of 2017 registered with Malbar Hill Police Station, Mumbai for offence under Section 408 read with section 34 of Indian Penal Code.

2. The prosecution case is that the Applicants were employees of Surendra Agarwal. The complainant reported the incident to police on 6th December 2016 against both the Applicants and the FIR was registered on 6th February 2017. According to him, on 12th November 2016 the complainant was busy in his daughter's marriage. He asked his wife to hand over Rs.3 lakh to the Applicants and sent them to the office of complainant as the amount was to be deposited in the bank due to demonetization. It was further alleged that the first informant and his wife handed over Rs.3 lakh to

Applicant no.1 and sent Applicant no.2 with Applicant no.1 to hand over the amount to first informant. It is alleged that in stead of approaching the complainant with Rs.3 lakh, they misappropriated the said amount. The complainant was busy in distributing the marriage cards and, therefore, could not ask the wife whether she had sent the amount. On 14th November 2016 the wife of complainant asked him whether he had received the amount. At that time he told her that he had not received the said amount. Thereafter they tried to contact the Applicants but they did not respond. On 15th November 2016 the Applicant no.1 had allegedly told the wife of first informant that he does not want to do the work with first informant. When he was asked to return the money, he denied of having received any such money. Hence, first information report was lodged on 6th February 2017.

3. The Applicant preferred an application for anticipatory bail before the Sessions Court which was rejected by order dated 8th February 2017. Learned advocate for Applicants submitted that the Applicants are falsely implicated in the said crime. They did not receive any amount, as alleged. It is further submitted that the Applicants were working with the complainant for more than 10 years. There was no complaint against them in the past. It is further submitted that they have co-operated with the investigation and their custodial interrogation is not necessary.

4. Learned APP opposed the application. It is submitted that on the date of incident, Applicant no.1 had deposited Rs.1 lakh in his bank account. When his statement was recorded, he tried to give an explanation that he had received the said amount from his relative.

However, when the investigating machinery tried to track the relatives, they did not succeed. The prosecution has, therefore, drawn an inference that the Applicant no.1 had received the said amount out of which Rs.1 lakh was deposited in the account of Applicant no.1.

5. I have perused the FIR and investigation papers produced by learned APP. The alleged incident had occurred on 12th November 2016 and FIR was lodged on 6th February 2016. It is the prosecution case that on account of demonetization, cash was to be handed over to the Applicants by the wife of complainant. The explanation given by complainant for belatedly lodging the FIR is not convincing. Although an amount of Rs.1 lakh was found deposited on the date of incident in the account of Applicant no.1, no case for custodial interrogation is made out by the prosecution. The Applicants were directed to attend the police station and they have co-operated with the investigation. In the circumstances, the application can be granted.

6. Hence, I pass following order :

- (i) Anticipatory Bail Application No.264 of 2017 is allowed;
- (ii) Interim order dated 29th March 2017 passed by this Court is hereby confirmed;
- (iii) The Applicants are directed to attend Malbar Hill Police Station once in a fortnight on Sunday between 11.00 a.m. and 1.00 p.m. till filing of the charge sheet;

(iii) It is made clear that observations made in this order are for the purpose of deciding present application;

(iv) The application is disposed of;

(PRAKASH D. NAIK, J.)

MST