

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 913 OF 2017

1.	Shri Rajesh Nanalal Shah,	)	
2.	Smt. Krishna Rajesh Shah	)	
3.	Shri Divya Rajesh Shah	)	
4.	Kumari Yashvi Rajesh Shah	) ...	Petitioners
Vs.			
1.	The State of Maharashtra	)	
2.	Pinak N. Shah	) ...	Respondents

Mr. P.K.Dhakephalkar, Senior Counsel i/b. Mr. A.R.Gole, Advocate for the petitioners.

Mr. A.H.H. Ponda i/b. Ms. Pravina A. Thakker for respondent No.2.

Ms.A.M.Malhotra, APP, for the State.

CORAM: SMT.SADHANA S.JADHAV, J.

DATE : 29th March, 2017.

P.C.

Heard. Rule. Rule made returnable forthwith with the consent of the parties.

2. The petitioners herein are accused in Crime No.56 of 2017 registered at Mira Road Police Station for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code and Sections 103 and 104 of the Trade Marks Act, 1999. In the present case, the petitioners had filed an application under Section 438 of Cr.P.C. before the Sessions Court. The learned Sessions Court had issued notice on 14.2.2017 without granting any interim orders. Being aggrieved by the same, the applicants herein had filed an application under Section 438 of Cr.P.C.

before this Court.

3. On 16.2.2017, this Court was apprised of the fact that the hearing of application was scheduled on 20.2.2017 and hence this Court had directed the learned Sessions Court to decide the interim application on 20.2.2017.

4. On 20.2.2-17, the application seeking interim relief was allowed and the applicants were directed to attend the police station on 22nd and 25th of February, 2017 and co-operate with the investigating agency to the best of their capacity.

5. It appears from the records that the petitioners had attended the police station even after 22.2.2017 i.e. 23rd, 26th and 27th February, 2017.

6. The learned APP had filed an application i.e. Anticipatory Bail Application No.443 of 2017 before the learned Sessions Court submitting therein that the petitioners had committed serious offences of cheating which includes Rs.103 crores and that they are enjoying the interim order sitting at home and upon considering the gravity of the offence and strong chances of absconding the applicants be directed to remain present before the Court at the time of final hearing.

7. It is seen from the records that the petitioners had joined the investigation. Civil Suit No.1017 of 2014 is pending in this Court wherein

the complainant and the directors of the applicant-company are the plaintiffs. This Court is of the opinion that custodial interrogation, in all probabilities, may not be imperative. It was submitted before this Court that the learned Sessions Judge has allowed the application filed by the prosecution mechanically without application of mind. In fact, at that stage, it was not necessary to pass a reasoned order. In view of the above observations, it is hereby directed that in the eventuality the learned Sessions Judge comes to a conclusion that custodial interrogation is imperative and the application under Section 438 of Cr.P.C. is rejected, the said order shall not be executed or acted upon for a period of two weeks to enable the petitioners to approach the higher Court. In the eventuality the application is rejected, the petitioners shall deposit their passports with the investigating agency till their applications are decided by higher Court.

8. It is made clear that this order shall not be construed as a restraint on fair investigation. The learned Sessions Judge shall decide the application on its own merits without being influenced by any of the observations made hereinabove.

9. Rule is made absolute. The Petition stands disposed of.

(SMT. SADHANA S.JADHAV, J.)