IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION No. 1477 OF 2016

1. Vinod Lalta Mishra
2. Ranjana Vinod Mishra ... Applicants

Vs.

Union of India ... Respondent

WITH
CRIMINAL APPLICATION NO. 766 OF 2016
IN
ANTICIPATORY BAIL APPLICATION No. 1477 OF 2016

Swatantra Sadashiv Tiwari … Intervener

in the matter between

1. Vinod Lalta Mishra
2. Ranjana Vinod Mishra ... Applicants

Vs.

Union of India ... Respondent

Mr. Murtaza Najmi i/b. Mr. D.H. Shukla, Advocate for the Applicant.
Mr. P.H. Kantharia, Advocate for respondent no. 1.
Mr. Y.M. Nakhwa, APP for the State.
Mr. Jagdish Choudhary i/b. Raj Legal, Advocate for the Intervener.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **23rd February, 2017.**

P.C.:

Not on board. Upon mentioning, taken on board.

2. This Application is moved by the applicants/accused under section 438 of Cr. P.C., as the applicants/accused are apprehending arrest in C.R. No.8 of 2016 registered at Silvassa Police Station at

the instance of one Swatantra S. Tiwari on 26.4.2016. The applicants/accused are prosecuted for the offences punishable under sections 418, 419, 420 r/w section 34 of the Indian Penal Code. It is the case of the complainant that the applicant no.2 was his classmate and they were childhood friends. She alongwith her husband i.e., the applicant/accused No.1 contacted him at his residence at Silvassa and in the talk, it was decided that they will start a joint venture business of sale of LED lamps and thus, they formed a partnership. By way of capital, from time to time, he paid Rs.29,53,500/- either by cheque or R.T.G.S. or by depositing the amount in the bank account of applicant No.2 out of which Rs.8,10,000/- was paid in cash to her. However, subsequently, he found that the applicants/accused have not invested this amount for buying LED lamps nor did they fix any LED lamps anywhere and, therefore, he gave complaint on 26.4.2016.

3. The learned Counsel for the applicants/accused has submitted that the applicants/accused are granted interim bail and they have produced agreement between the complainant and applicant No.2. The learned counsel for the applicant/accused has submitted that the applicants/accused have not committed any offence. It is a financial

dispute in the partnership and so it is a matter of civil nature and the applicants/accused have put Rs.29,07,000/- in the partnership to purchase LED lights. He further submitted that the amount given to the applicant no. 2 in the partnership by the complainant is Rs.29,53,500/- and the said amount was not paid in lumpsum but in piecemeal, i.e., from 5th March, 2015 to 29th March, 2016. He relied on 3 receipts dated 7th April, 2015, 1st December 2015 and 14th February, 2016 signed by the complainant where he has received Rs.2 lakhs, Rs. 6 lakhs, Rs.9 lakhs and also gold worth Rs.7,50,000/-. He submitted that the applicants/accused are falsely implicated in this case. Applicant No. 2 has given FIR against the complainant, which is registered at C.R. No. 394 of 2016 with Mira Road Police Station for the offences punishable under section 354 of Indian Penal Code. He submitted that applicant No. 1 is the husband and he has never received any amount in his account. He was not a partner with the complainant. So, both the applicants are to be granted pre-arrest bail.

4. Learned APP and learned counsel for the Intervener both opposed this Application. It is submitted by the learned Prosecutor that the applicant Nos. 1 and 2 did not attend the police station

though they were on interim pre-arrest bail. She further submitted that the receipts which are at Page nos. 37, 38 and 39 of this Application are bogus though the signature of the complainant appearing on it is genuine. The contents in the receipts are bogus. Applicant nos. 1 and 2 are not giving any information as to how the funds were raised and from where they got the money to pay the complainant. It is further submitted by the learned counsel for the intervener that not a single instances of sale of LED lights has taken place. No business was started but he has suffered loss of Rs.29,53,500/-.

5. Heard the submissions and considered the facts of the case. Though it is argued that it is a case of civil nature and between the two partners, *prima facie* there is offence of cheating committed by applicant no. 2. There are also three receipts which are allegedly fake documents created by applicant no. 2. It is also to be noted that FIR given by applicant no. 2 in C.R. No. 394 of 2016 under section 354 of the Indian Penal Code is on 26th May, 2016, i.e., one month after the present offence was registered by the police against the applicants/accused at C.R. No. 82 of 2016 with Silvassa Police Station. Thus, considering the submissions and facts, I am of the

view that custodial interrogation of applicant no. 2 is necessary. Hence, pre-arrest bail is not granted to applicant no. 2-Ranjana Vinod Mishra.

6. Considering the role attributed to applicant no. 1 Vinod Mishra, pre-arrest bail is granted to him on the following terms and conditions:

O R D E R

i) In the event of arrest, the applicant/accused Vinod L. Mishra shall be released on bail upon furnishing P.R. Bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;

ii) The applicant-accused shall cooperate with the Investigating Officer and attend the concerned police station as and when called by the Investigating officer.

iii) The applicant/accused shall not tamper with the evidence.

iv) The applicant/accused shall not indulge into any criminal activity;

v) The applicant/accused shall not abscond or leave India without prior permission of the trial Court and furnish his permanent address to the Investigating Officer alongwith documentary proof.

vi) In the event of breach of any of the above conditions, the prosecution will be at liberty to move the Court for cancellation of pre-arrest bail.

7. The learned counsel submitted that applicant no. 2 wants to challenge this order before the Hon'ble Supreme Court, hence the order be stayed for three weeks.

8. Learned APP and learned counsel for the intervener opposed this prayer.

9. In view of this, the operation of this order is stayed till 9th March, 2017 to enable the applicant no. 2 to approach the Hon'ble Supreme Court.

10. Anticipatory Bail Application is disposed of on above terms. Criminal Application no. 766 of 2016 is disposed of accordingly.

(MRIDULA BHATKAR, J.)