IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1619 OF 2017

Nilesh Bhagwan Sambare ….Applicant.

Vs.

1 The State of Maharashtra
2 Manjeet Singh T. Anand ….Respondents.

WITH

CRIMINAL APPLICATION NO. 870 OF 2017
IN
ANTICIPATORY BAIL APPLICATION NO. 1619 OF 2017

Manjeet Singh T. Anand ….Applicant.

IN THE MATTER BETWEEN-

Nilesh Bhagwan Sambare ….Applicant.
Vs.
The State of Maharashtra ….Respondents.

WITH

ANTICIPATORY BAIL APPLICATION NO. 1646 OF 2017

1 Mrs. Nita Vinod Nandgawali
2 Manohar Manikrao Nandgawali
3 Mrs. Chitra Manohar Nandgawali ….Applicants.

Vs.

1 State of Maharashtra
2 Manjit Singh Trilok Singh ….Respondents.

WITH

ANTICIPATORY BAIL APPLICATION NO. 1666 OF 2017

1 Madan Khananpal Tyagi
2 Reetu Madan Tyagi ....Applicants.

Vs.

1 State of Maharashtra
2 Manjitsingh Triloksingh Anand ....Respondents.

Mr. Niranjan Mundargi I/by O.P. Mulekar for the Applicant in ABA No. 1619 of 2017.
Mr. Mahesh Kotian for the Applicants in ABA No. 1646 of 2017.
Mr. S.V. Marwadi for the Applicants in ABA No. 1666 of 2017.
Mr. Ghanshyam Upadhyay I/by Law Juris for the Intervenor/ Respondent No.2.
Ms. J.S. Lohokare APP, for the Respondent-State.
Mr. Rajesh Padvi, P.I. Andheri Police Station.

CORAM : A. S. GADKARI, J.
DATE : 19th JULY, 2018.

P.C.:-

The aforesaid Applications under Section 438 of the Code of Criminal Procedure are for pre-arrest bail in C.R. No. 407 of 2017 dated 28th July, 2017 registered with Andheri Police Station, Mumbai under Sections 406, 409, 420, 465, 467, 468, 471, 385, 506 (II), 120-B read with Section 34 of the Indian Penal Code.

2 Heard Mr. Mundargi, the learned counsel appearing for the Applicant in ABA No. 1619 of 2017, Mr. Kotian, the learned counsel appearing for the Applicants in ABA No. 1646 of 2017, Mr.

Marwadi, the learned counsel appearing for the Applicants in ABA No. 1666 of 2017, Mr. Upadhyay, the learned counsel appearing for the first informant/Respondent No.2 and the learned APP at length. Perused the record of investigation. Also perused the affidavit filed by the Investigating Officer Mr. Rajesh Padvi, dated 22nd September 2017, placing on record the progress of investigation.

3 The Applicants will be hereinafter termed as per their accused numbers mentioned in the first information report and Complaint dated 11th July, 2017 lodged by the Respondent No.2, i.e. applicant Mr. Nilesh Sambare as accused No.9, Mrs. Nita Nandgawali as accused No.3, Mr. Manohar Nandgawali as accused No.4, Mrs. Chitra Nandgawali as accused No. 5, Mr. Madan Tyagi as accused No.6 and Mrs. Reetu Tyagi as accused No. 7.

4 The record indicates that, the first informant Mr. Manjeet Singh T. Anand had lodged a Complaint dated 11th July, 2017 with the Andheri Police Station, Mumbai. The police, after conducting preliminary inquiry in that behalf, has lodged the present crime on 28th July, 2017.

The first information report dated 28th July, 2017 itself mentions that, the Complaint dated 11th July, 2017 is an integral part of the said first information report. The record further discloses that, while forwarding the copy of the first information report to the concerned Magistrate as contemplated under Section 157 of the Code of Criminal Procedure, the police have also annexed the copy of the said Complaint dated 11th July, 2017 to it, as a part/annexure of the said first information report.

5 It is stated in the complaint that, the informant is a businessman and is engaged in the business of providing Ready Mix Concrete (RMC), batching plant and other construction equipments/machineries on hire/contract basis to the concerned persons and carries on his business under the name and style of '*M/s. M.G. Construction Co.*' and '*M/s. Victor Infra*'. In the said firms, the brother of informant Mr. Sukhbir Singh T. Anand is a partner.

It is stated that, in the regular course of business transactions, sometime in the month of December 2016, the accused No.2-Mr. Vinod Nandgawali came in contact with the informant. Subsequently, the accused No. 2-Mr. Vinod Nandgawali along with accused Nos. 3, 4 and 6 approached the informant at his office and the accused No. 2 initially made representation that, for about last 20 years, he along with his other family members i.e. accused Nos. 3, 4 and 5 are in the business of stone crushing, road construction and all the incidental and related works thereto and they carry on business in the name and style of '*M/s. Radhakrishna Stone Crushing Co.*' and '*M/s. Vinod Enterprises*'. They also represented that, they are also having a business in the name and style of '*M/s. V4 Con-Tech*' (Accused No.1), wherein accused Nos. 6 and 7 are also partners.

The accused No. 2, thereafter, expressed his desire to requisition of the batching plant of the informant about which he claimed to have knowledge from the accused No.9-Mr. Nilesh Sambare. The accused persons, thereafter, represented that, they are having huge road contracts and are likely to get further road contracts worth about Rs.100 crores from the accused No.9 of Jijau Infrastructure Private Limited. It was further represented that the accused No. 9 was having sanction of Rs.9 crores from Vasai Janata Sahakari Bank Limited. That, for execution of works of the accused No.9, the accused persons intended to purchase batching plant of Apollo Company and for that purpose, they in fact, have made initial payment of Rs.52 lacs. But, the accused No. 9 has made it clear to them that, for executing the said contract, he wants the Ready Mix Concrete (RMC) to be produced with Schwing Stetter batching plant only and hence, they need M1 Ready Mix Concrete batching plant of Schwing Stetter and 3 Silos with accessories and so also various other construction equipment machineries on hire basis.

Accused Nos. 2 and 6 claimed that, they have learnt from the accused No.9 about the M1 Ready Mix Concrete batching plant of Schwing Stetter made and 3 Silos with accessories of the informant fitted at L & T site at Valsad, State of Gujarat and in the process they desired to requisition the said batching plant on hire basis for the purpose of executing the work concerning the contracts awarded/to be awarded to accused No.1 i.e. M/s. V4 Con-Tech, by accused No.9 Nilesh Sambare. Accused No.2, thereafter visited the said batching plant and expressed his desire to hire it. The accused No.2, thereafter, arranged meeting with the accused No.9 by making a representation that, accused No. 9 is politically well connected and an influential person and the said meeting of first informant with him would provide various opportunities of carrying out huge business/projects with him. The accused Nos. 2 and 6 projected the image of accused No.9 larger than life. The accused No.9 represented that, he is politically well connected and claimed that, he has been running various NGOs/ Schools/ Colleges at his own cost for poor and blind people and he is also involved in various social activities. The accused No. 9 also represented that, he will be getting huge contracts from Government and praised accused Nos. 2 to 7 in helping him when he was in great difficulties. The accused No.9 also spoke very high about the integrity and honesty of accused Nos. 2 to 7 and convinced and induced the first informant to transact with accused Nos. 2 and 6 in providing with the said batching plant on hire basis and also other equipments/machineries such as transit mixer vehicles, excavator, concrete pump, tippers, wheel loaders etc. as are required by the accused No.1 in completing of the contract of road construction.

It is stated that, the accused persons in a well-planned manner own over the confidence of the first informant. The accused No.2 thereafter, represented the informant that even after shifting of the batching plant, it will take some time for its commissioning and the accused No. 9 was pressing the accused persons to start the work. It was decided between the parties that, the informant will be made as a Director in M/s. V4 Con-Tech along with other accused persons. In the interregnum period, it was decided that the accused No. 1 will pay rent for the said batching plant on dry run basis from 1st January 2017 at the rate of Rs.3,50,000/- per month, excluding statutory charges and taxes. It is alleged that, the accused No.9 also promised and made similar representation as were made by the other accused persons. As the first informant was busy in his domestic matters, the accused Nos. 2, 6 and 9 dodged formation of the said company on some or the other pretext by adopting different ingenious methods. Accused Nos. 2 and 6 kept on making representations and giving assurances to the informant that, they will form the said company in short duration and for the purpose of providing the said various construction equipments, the informant availed financial assistance from different banks/the financial institutions, worth crores of rupees. It is alleged that, the accused No.2 instead of forming the company, with a view to protract the matter, made a further representation and inducement to the informant to purchase a plot of land admeasuring about 50 acres by depicting a rosy picture, that if the said land is purchased jointly by the accused No.2 and informant, they will earn huge profits to such an extent that, their future generations would be also enriched as the said land was having a great potential with regard to the business of aggregator in which, the accused No.2 claimed to be in the said field for last 20 years. It was further represented by the accused No.9 that, he had secrete information from the Government that on account of certain notification which the Government of Maharashtra was likely to issue very soon, most of the quarries nearby Mumbai and adjoining areas from where the aggregate was being supplied to Mumbai are bound to be closed and resultantly, there will be huge demand of the said aggregates for ongoing projects in Mumbai and so also newly launched projects of Metro Railways. Upon making inquiry with accused No.9, the accused No.9 asserted the said fact and advised the informant to not to lose the said opportunity. It is alleged that, the accused Nos. 2, 6, and 9 in conspiracy with each other, had made the said representation with the informant. That, during the intervening period, the accused Nos. 2 and 6 expressed their likings towards the Mercedes Benz car, which the informant had recently booked, however, its delivery was not given to the informant. It was represented to the informant that, the informant should give the said Mercedes Benz car to the accused No.2, as he needed the same to maintain his status in the market so that, he can be in a position to create impact on the parties from whom the said land was to be purchased and even from the parties from whom the contracts can be obtained in the name of the said company. As the accused persons had own confidence and faith of the informant and had influenced him, the informant gave the delivery of the said Mercedes Benz car directly from the show room to the accused No.2 at his residence at Boisar.

It is stated that on demand by accused No.9, the informant also provided his Duster car to the accused No. 9 for visit to his Wada site and the same is in use and possession of accused No.9. That, in furtherance of the representations made by the accused Nos. 2, 6 and 9, the informant provided about 80 items, a list whereof is given in the complaint, to the accused No.2 on hire basis for their business. That the accused Nos. 2 and 6 kept on avoiding the formation of the said company by extending various excuses. The informant provided various machineries to the accused Nos. 2 and 9 for the business purpose and as per the agreement, the accused Nos. 2 and 9 were suppose to pay the hire charges However, the accused No. 9 despite receiving the payments from the Government, did not pay the agreed charges to the Applicant. It is alleged that, the accused Nos. 2 and 9 on various pretext accepted an amount of approximately Rs.44 lakhs from the informant, by giving false promises of making him a Director/ partner of the said M/s. V4 Con-Tech.

The first informant subsequently realized that, the accused

Nos. 2, 6 and 9 by making false representations, have made the informant to provide large number of machineries for their construction business, did not pay rent of the same and subsequently retained the property of the informant without giving any monetary benefits to him. The informant realized that, the accused persons in a pre-planned manner has committed the act of criminal breach of trust and cheating against him. As a last recourse, the informant approached the accused No.9 seeking his intervention in the matter, as the accused No. 9 is politically well connected and highly influential person from the locality. The accused No. 9 expressed his inability to resolve the matter.

The informant therefore firmly realized that, the accused persons by conspiring with each other to cheat and defraud him, not only in respect of his legitimate dues, but also the said batching plant and Mercedes Benz car, have gone to the extent of creating forged and fabricated documents in the form of agreement/contract/delivery challens and have committed the act of criminal breach of trust and cheating against him. The informant, thereafter, desired to remove the said batching plant from the site of the accused No.2 and so also to take possession of remaining equipments/machineries, Mercedes

Benz car and Duster Car, when the accused Nos. 2 and 9 refrained him from doing so, not only refused to give possession thereof but also, by threatening the informant that, they would break his hands and legs in the event he visits their site or even enters into the locality. They also threatened him to implicate in some serious offence by using influence with police department and political connection. The accused No.9 further threatened the informant that, he would damage his equipments/machineries/cars by putting sugar/chemical in the engines/parts thereof and would render the same useless causing irreparable loss/damages to the informant.

In the premise, the complaint/first information report is lodged against the accused for their aforesaid acts of omission and commission, causing wrongful loss to the informant and his partnership firm thereby gaining wrongful benefit to themselves and have committed the offences punishable under Section 406, 409, 420, 465, 467, 468, 471, 385, 506(II) and 120-B read with Section 34 of the Indian Penal Code.

6 Mr. Mundargi, the learned counsel appearing for the accused No.9 submitted that, the accused No.9 has nothing to do in the present crime, except the fact that the accused No.9 was

introduced by the accused No.2 with the first informant and the first informant had sought his help when disputes between the parties inter-se arisen. He further submitted that, most of the machineries mentioned in the complaint has been seized by the police. He further submitted that, the accused No.2 Vinod Nandagawali has already been arrested by the Police and he is in judicial custody. He submitted that, the accused No.9 has no role to play in the present crime and the present crime is registered against him only because of the political rivalry. He submitted that, with a view to tarnish the image of the accused No.9, the present crime is registered at the behest of his political rivals. He, therefore, prayed that the Applicant may be granted pre-arrest bail.

The learned counsel appearing for the accused Nos. 3, 4 and 5 submitted that, except making general allegations against them, no overt act is attributed to the said accused persons. He submitted that, the said accused persons have been implicated in the present crime only because they are wife, father and mother of the accused No. 2 Vinod Nandagawali and therefore, they may be protected by pre-arrest bail.

Mr. Marwadi, the learned counsel appearing for the accused Nos. 6 and 7 submitted that, except the presence of accused No. 6 on certain occasions with the accused No.2 Vinod Nandagawali, no other overt act is attributed to him by the informant. He submitted that, the accused No.6 has been implicated in the present crime because he is friend of accused No.2 and nothing more than it. He further submitted that, it is a matter of fact that accused Nos. 6 and 7 are not partners of the accused No.1 M/s. V4 Con-Tech headed by accused No.2 Vinod Nandagawali and thus, the Applicants have been falsely implicated in the present crime. He therefore, prayed that the Applicants may be protected by pre-arrest bail.

Mr. Upadhyay, the learned counsel appearing for the first informant vehemently opposed the Application and took me through the various documents which are on record and submitted that the Applications may be rejected.

The learned APP supported the arguments of Mr. Upadhyay and further, on instructions, submitted that as a matter of fact, the accused No. 6 Mr. Madan Tyagi and accused No. 7 Mrs. Reetu Tyagi are not partners of M/s. V4 Con-Tech. He submitted that the Applications may be rejected.

7 The complaint dated 11th July, 2017 and the first

information report dated 28th July 2017 are self eloquent and makes out a strong prima facie case against the accused Nos. 6 and 9. A bare perusal of the Complaint dated 11th July, 2017 and the first information report dated 28th July, 2017 would make it apparently clear that the accused Nos. 2, 6 and 9 i.e. MR. Vinod Nandgawali, Mr, Madan Tyagi and Mr. Nilesh Sambare in a well organized and pre-planned manner, hatched the conspiracy by making false representation to the informant that, if he provides his plant and machineries to accused No.2, he will be made Director/partner in the said M/s. V4 Con-Tech company and induced him to deliver the said large number of plant/machineries and other related articles to accused No.2. The accused No. 6 also induced the informant in providing a Mercedes Benz Car to the accused No.2 and the Duster Car to the accused No.9. The accused Nos. 2 and 6 represented the informant that, the accused No. 9 is a highly influential and politically well connected person and is in a position to procure contracts from the Government of Maharashtra worth of Rs.100 crores and for execution of the said contracts, the plant and machineries of the informant is necessary and by providing the said plant and machineries, the informant will get huge monetary benefits. By making such false representations, the informant was induced to part with his valuable machineries worth crores of rupees and when the first informant demanded his legitimate dues, the accused Nos. 2 and 9 have threatened him with dire consequences.

The record, *prima facie*, indicates that, the accused Nos. 6 and 9 are conspirators along with the accused No. 2 and have indulged into the act of cheating the informant under the pretext that the informant will be made Director/partner of the M/s. V4 Con-Tech company. The material available on record clearly indicates the complicity of the accused Nos. 6 and 9 in the present crime as apparent.

8 It is to be further noted here that, the accused No.9 Nilesh Sambare after getting interim relief from this Court on 15th September 2017, has issued a press note thereby commenting on the merits of the case and making a statement that, he has been falsely implicated by his political rival parties. The record further indicates that, the accused No.9 is also an accused in a crime registered with Wada Police Station, District Thane (Rural) bearing No. I-55 of 2013 under Sections 397, 307, 326, 325, 341 read with 120-B and other allied Sections of the Indian Penal Code.

9 It is submitted by the learned counsel for the Respondent No.2 that, when the informant had been to Andheri Court to attend a matter, the supporters of the accused No. 9 threatened him with dire consequences, if the informant fails to withdraw the present complaint lodged against the accused No.9. A non-cognizable offence bearing No. 1777 of 2017 dated 31st August, 2017, has been registered with Andheri Police Station, Mumbai, in that behalf.

10 After taking into consideration the entire material available on record, including the affidavit filed by the Investigating Officer thereby placing on record the progress of investigation, this Court is of the considered view that, the accused No. 6 Mr. Madan Tyagi and accused No.9 Mr. Nilesh Sambare have played a vital role in the present crime and as noted earlier, their complicity in the present crime is apparent and for unearthing the entire truth behind the crime it is necessary that thorough interrogation of the accused Nos. 6 Madan Tyagi and 9 Nilesh Sambare is imperative and therefore, their pre-arrest bail Applications are rejected.

11 As far as the accused No.3 Mrs. Nita Nandgawali, accused No.4 Mr. Manohar Nandgawali, accused No. 5 Mrs. Chitra Nandgawali and accused No.7 Mrs. Reetu Tyagi are concerned, the

record clearly indicates that, they have no active role to play in the present crime except the fact that they are close relatives of accused Nos. 2 and 6 respectively. No role is attributed to them of making any false representations or inducement to the informant and therefore, they are entitled to be protected by pre-arrest bail.

12 Hence the following order-

a) Anticipatory Bail Application No. 1619 of 2017 of accused No.9 Mr. Nilesh Sambare and Anticipatory Bail Application No. 1666 of 2017 of accused No. 6 Mr. Madan Tyagi are hereby rejected.

b) Anticipatory Bail Application No. 1646 of 2017 of accused No. 3 Mrs. Nita Nandgawali, accused No. 4 Mr. Manohar Nandgawali and accused No. 5 Mrs. Chitra Nandgawali and Anticipatory Bail Application No. 1666 of 2017 of accused No. 7 Mrs. Reetu Tyagi are allowed in the following terms and conditions-

   a) In the event of arrest in C.R. No. 407 of 2017 registered with Andheri Police Station, Mumbai the accused No. 3 Mrs.

Nita Nandgawali, accused No. 4 Mr. Manohar Nandgawali, accused No. 5 Mrs. Chitra Nandgawali and accused No. 7 Mrs. Reetu Tyagi, shall be released on bail on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

b) The accused No. 3 Mrs. Nita Nandgawali, accused No. 4 Mr. Manohar Nandgawali, accused No. 5 Mrs. Chitra Nandgawali and accused No. 7 Mrs. Reetu Tyagi shall not tamper with the evidence and/or pressurize the prosecution witnesses.

13 In view of disposal of Anticipatory Bail Application No.1619 of 2017, the Criminal Application No. 870 of 2017 does not survive and the same is also disposed of.

(A.S. GADKARI, J.)