

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**ANTICIPATORY BAIL APPLICATION NO.203 OF 2019
WITH
CRIMINAL APPLICATION NO.1145 OF 2019**

Vijay Manik Desai Applicant
Versus
The State of Maharashtra Respondent

**AND
ANTICIPATORY BAIL APPLICATION NO.211 OF 2019
WITH
CRIMINAL APPLICATION NO.1141 OF 2019**

Sangita @ Vijaya Vijay Desai Applicant
Versus
The State of Maharashtra Respondent

- Mr. Pradeep J. Thorat, Advocate for Applicants in both ABA's.
- Mr. Ranjeet Ghatge I/b. Sameer S. Kadam for Intervener in both APPP's
- Smt. A. A. Takalkar, APP for the State.
- Mr. Avinash Mane, API, Juna Rajwada P.S., present.

**CORAM : SARANG V. KOTWAL, J.
DATE : 28th AUGUST, 2019**

P.C. :

1. Both these applications are decided by this common order because they arise out of the same crime.

2. Both these applicants are the husband and wife and

they are referred to by their names for the sake of convenience. The applicant in ABA No.203/19 is Vijay Desai and applicant in ABA No.211/19 is Sangita @ Vijaya Desai. The FIR is lodged pursuant to the order passed U/s.156(3) of the Cr.p.c. in a private complaint filed by one Shahaji Karande who was the authorized officer of the complainant company GDK Foods Pvt. Ltd. It is the case of the prosecution that there were five directors in the GDK Foods Pvt. Ltd. i.e. Ranjitsinh Ghatge, Sumitradevi Ghatge, Sunetradevi Ghatge, Pratik Desai, Adarsh Jadhav and Vijaya Desai (applicant Vijaya @ Sangita Desai) in the year 2017. The applicant Vijay is Proprietor of Bahubali Rice Mills. The complaint mentions that the applicant Sangita @ Vijaya and applicant's son Pratik were taken on the Board of Directors because of their professional knowledge. It is alleged in the complaint that the applicants along with their sons Pratik and Digvijay have cheated the complainant company to the tune of Rs.1,85,86,722.13. The complaint mentions that Bahubali Rice Mills was supposed to conduct processing of paddy and sale the finished product further. It is alleged in the complaint that the accused did not submit the

details of their own transactions. The complainant has relied on the Audit report in respect of the audit conducted by Chartered Accountants F.M.Mulla Associates. Certain observations from the audit report are mentioned in the complaint. The basic allegations are that the accused had not given account of their business and the accused had misappropriated money unauthorisedly. According to complaint, the accused has acted against the interest of the complainant company and had caused loss. On this basis the complaint is filed. Though, the complaint mentions many other allegations, the basic allegations are that the applicant had used complainant company's money for their rice mill and had misappropriated that money.

3. Heard Mr. Pradeep J. Thorat, learned counsel for Applicants in both applications, Mr.Ranjeet Ghatge for Intervener in both criminal applications and Smt. A. A. Takalkar, learned APP for the State.

4. Learned counsel for the applicant submitted that the applicant's son Pratik was already arrested and is released on regular bail. Applicant Vijay was not concerned with the

complainant company as he was merely on the board of directors, but had no liabilities or responsibilities in respect of the complainant company. He submitted that the applicant Sangita is a housewife and she was taken on the Board of Directors of the company, however, she had no part to play in decision making process. He emphasized that there was no written document showing exact responsibilities of the applicants in the Proprietorship firm Bahubali Rice Mills and complainant company. Learned counsel for the intervenor submitted that Bahubali Rice Mills was supposed to purchase machinery for processing the paddy and sale finished goods and after receiving sale proceeds was supposed to give money to the complainant company. This was not done. Instead, false accounts were submitted and in many cases accounts were not submitted at all. He further submitted that though money was taken for purchase of machinery, machineries were not purchased in the name of the complainant company.

5. Learned APP has filed affidavit of investigating agency. In the said affidavit it is clearly mentioned that the investigating agency had made correspondence with the Chartered Accountant

F. M. Mulla Associates working for the complainant company, however, original papers were not submitted for investigation. This complainant company itself is not co-operating with the investigation. The affidavit does not show any connection of the applicant Vijay in the entire episode. Though, it is mentioned in the affidavit that raw rice was purchased by Bahubali Rice Mills on behalf of GDK company, there is no written document produced in that behalf.

6. I have considered all these submissions. The basic allegations against the applicants are that they had misappropriated the amount given by the complainant company by not utilizing it for the purpose for which it was given. The complainant in support of these allegations has not produced a single document showing written contract between the accused and the present complainant company. In absence of such document, it is difficult to observe that the accused had misappropriated the amount. Since there is no privity of contract between the complainant company and Bahubali Rice Mills, it is difficult to observe that applicants had misappropriated the

amount. It appears that the complaint is filed because there was some dispute between the Directors and complainant. The applicant Vijay was not even on the Board of Directors of complainant company. The applicant's son Pratik was already arrested and is released on bail. The applicant Sangita is a housewife and investigation has not revealed that she had taken any part in decision making process or had herself misappropriated any amount of complainant company. In this view of the matter, custodial interrogation of the applicants is not necessary. The investigation can go on and the applicants shall co-operate with the investigation.

7. Hence, the following order :

ORDER

- (i) In the event of their arrest in connection with C.R. No.321/18 registered with Juna Rajwada Police Station, the applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.25,000/- each (Rupees Twenty Five Thousand each Only) with one or two

sureties each in the like amount.

- (ii) The applicants shall attend the concerned Police as and when called.
- (iii) Both the applications stand disposed of accordingly.
- (iv) Both Criminal Applications also stand disposed of accordingly.

(SARANG V. KOTWAL, J.)