IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 123 OF 2018

Mr. Alnesh Akil Somji & Ors. .... Applicants
Versus
The State of Maharashtra & Ors. .... Respondents

Mr. Shirish Gupte, Senior Advocate for the Applicants i/b. Satyam Nimbalkar a/w. Mr. Dynaneshwar More a/w. Rohan Hogle a/w. Abhishek Patil for the applicants.
Mr. S. H. Yadav, APP for the State/Respondent No.1
Mr. Satyavrat Joshi, Advocate for the Respondent No.2.
Mr. Ravindra M. Rasal, ACP, Lashkar (Cantonment) Division, Pune, present.

CORAM : SARANG V. KOTWAL, J.
DATE : 18th SEPTEMBER, 2019

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No. 107 of 2013 registered with Koregaon Park Police Station, under sections 403, 406, 420, 467, 468, 469, 201, 109, 504 and 506(2) of the Indian Penal Code.

2. The FIR is lodged pursuant to a private complaint filed by one Iqbal Shaikh against one Hanif Somji. The order for

investigation U/s.156(3) of the Cr.p.c. was passed by the learned Magistrate on 03/09/2013, pursuant to which the present FIR was lodged. The FIR is lodged at Koregaon Park police station. At the outset, it needs to be mentioned that the investigation in this offence is complete and the charge-sheet is already filed. At this stage, the applicants have approached this court for the relief of anticipatory bail. Learned APP, on instructions of Investigating Officer, at the outset, made a categorical statement that the investigation officer does not want custody of the present applicants for the custodial interrogation for the purpose of carrying out investigation. The investigation is already over. The main accused Hanif was granted anticipatory bail by this court (Coram : Mrs. Mridula Bhatkar, J.) dated 05/03/2014 in A.B.A.No.1364 of 2013. The present applicant No.1 is the nephew of the main accused Hanif. The applicant No.2 is Hanif's father and applicant No.3 is Hanif's wife.

3. The private complaint filed by Iqbal mentions that the accused Hanif had committed offence of forgery and

misappropriation of funds. He had threatened the complainant and had cheated him for nearly Rs.14 to 15 crores. At the time of filing of charge-sheet the offences U/s.467, 468, 469, 201, 504 and 506 of IPC are dropped and charge-sheet is filed only U/s.120B, 403, 406, 420 and 109 r/w. 34 of IPC. It is the case of the complainant that he was authorized to file the complaint on behalf of M/s. Zero Start Trading Pvt. Ltd. and Nashik Agro Trading Pvt. Ltd. According to him, these companies were owned by Mr. Nijar Mavani and his wife Noorjahan Mavani. They were residents of Canada and they wanted to conduct business in India. The accused Hanif was a friend of Nijar Mavani. It is alleged that, Hanif induced Nijar to invest money in the business. It was suggested that they could start a business of purchasing lands for manufacturing agricultural implements. The accused Hanif accepted the responsibility for acquiring lands for their business. It is alleged that an account was opened in Ratnakar Bank, Nana Peth, Pune in the name of Zero Start Trading Pvt. Ltd. company. The accused Hanif and his power of attorney holders applicant Nos.1 and 2 had taken money from the company's account in

Ratnakar Bank. The lands were purchased in the names of present applicants and accused Hanif. It was alleged that Hanif was appointed as one of the Directors. Mr. and Mrs. Mavani trusted accused Hanif completely, however, accused Hanif misused that trust. On this basis, the complaint was filed, resulting in the instant FIR. The investigation was carried out and the charge-sheet is already filed. As pointed out earlier, the main accused Hanif was granted anticipatory bail by this court vide order dated 05/03/2014 passed in ABA No.1364 of 2013.

4. I have heard Mr. Shirish Gupte, learned Senior Counsel for the Applicants, Mr. S. H. Yadav, learned APP for the State/Respondent No.1 and Mr. Satyavrat Joshi, learned counsel for the Respondent No.2.

5. Shri. Gupte relied on the observations made by this court in the order dated 05/03/2014 in ABA No.1364 of 2013. He submitted that, the main allegations were directed against the accused Hanif who is already protected by anticipatory bail. He

relied on the observation made in that order, wherein, it was essentially observed that the nature of dispute between accused Hanif and Mr. and Mrs. Mavani was in respect of exercising control over the aforesaid two companies. On the basis of such observation, the main accused Hanif was granted protection.

6. Shri. Satyavrat Joshi, on the other hand, appearing for the respondent No.2 submitted that the present applicants are not innocent and the investigation shows that huge amounts were transferred in their names and the properties were purchased in their names. He based these submissions on the averments made in the affidavit in reply filed on behalf of the State. Learned APP, on the other hand, on instruction of the I.O., has already made a categorical statement that Investigating Agency does not want to arrest the applicants for the purpose of custodial interrogation. The charge-sheet is already filed.

7. I have considered all these submissions. In the context of the case, the order passed by this court (Coram: Mrs. Mridula

Bhatkar, J.) dated 05/03/2014 in ABA No.1364 of 2013 is very important. The order was passed protecting the main accused Hanif by granting him relief of anticipatory bail. The said order refers to an order dated 28/08/2013 passed by a single Judge of this court in Appeal from Order No.283 of 2013. It was observed that the company by name Zero Start Trading Pvt. Ltd. was incorporated on 07/06/2006. It was started by the accused Hanif and applicant No.3. Thereafter, Mr. Mavani was made Additional Director on 10/08/2006. It was observed in the same order passed by Mrs. Mridula Bhatkar, J. that the dispute had travelled to Company Law Board, in which, an order was passed on 13/06/2013. It was observed that a sister concern i.e. company by name Purnima Agro Projects Pvt. Ltd. was run by Mr. Mavani. However, the order was passed by Single Judge of this court in the Appeal from Order No.283 of 2013 on 28/08/2013 i.e. after the order was passed by the Company Law Board. I was informed by the learned Senior Counsel for the applicant that the dispute is still pending before N.C.L.T. as on today and it has not attained finality.

8. It was clearly observed in para 6 of the order dated 05/03/2014 passed in ABA No.1364 of 2013 that it was difficult at that stage to decide who was the real Director and it was not within the jurisdiction of this court to decide this issue (in ABA No.1364 of 2013). It was further observed that, it was to be ascertained, whether such amounts allegedly withdrawn from the account of the company were withdrawn by the accused Hanif without any authority. The parties were litigating before the appropriate forum to establish their rights. It was further observed in para 7 that prima facie it appears that the accused Hanif had some authority in the said company. Finally, it was observed that apparently the parties had business claims against each other. On the basis of such observation, the anticipatory bail was granted to the main accused Hanif.

9. The role of the present applicants is much lesser. As per the allegations, these applicants were used by the main accused Hanif to transfer the money in their account and for purchasing property. The offence, if at all, was attributed to the main accused

Hanif. The applicants, at the highest, had acted at his behest. The order granting anticipatory bail to the main accused Hanif is neither challenged nor is set aside. It still holds the field. Therefore, on the ground of parity and in the background of the statement made by learned APP that Investigating Agency does not want to arrest the present applicants, there is no reason as to why such protection cannot be extended to the present applicants, as well. It is clarified that all these observations are made only for the purpose of deciding this anticipatory bail application. All the questions are left open to be decided at the appropriate stages in the appropriate proceedings. The applicant No.2 is stated to be 90 years of age and the applicant No.3 is a lady, therefore, only applicant No.1 is directed to attend the concerned police station.

10. Hence, the following order :

ORDER

(i) In the event of their arrest in connection with C.R. No. 107 of 2013 registered with Koregaon Park 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 applicant No.1 is directed to attend the office of A.C.P., Lashkar (Cantonment Division), Pune as he is investigating the offence, from 03/10/2019 to 10/10/2019 between 10.00a.m. to 01.00p.m.

(iii) Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)