IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 187 OF 2019

1. Rajesh Narendra Mewawalla
2. Rakhi Rajesh Mewawalla … Applicants

Vs.

State of Maharashtra … Respondent

WITH

CRIMINAL APPLICATION NO. 138 OF 2019

IN

ANTICIPATORY BAIL APPLICATION NO. 187 OF 2019

Aarti V. Anjaria … Intervenor

1. Rajesh Narendra Mewawalla
2. Rakshi Rajesh Mewawalla … Applicants

Vs.

State of Maharashtra … Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 185 OF 2019

Ms. Masumi Rajesh Mewawalla … Applicant

Vs.

State of Maharashtra … Respondent

WITH

CRIMINAL APPLICATION NO. 137 OF 2019

IN

ANTICIPATORY BAIL APPLICATION NO. 185 OF 2019

Aarti V. Anjaria … Intervenor

Ms. Masumi Rajesh Mewawalla … Applicant

Vs.

State of Maharashtra … Respondent

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Mr. Aashish Dubey for the applicant in both applications.

Mr. R.M. Pethe, APP for the Respondent-State in ABA No. 185 of 2019.

Mr. A.R. Kapadnis, APP for the Respondent-State in ABA No. 187 of 2019.

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CORAM : PRAKASH D. NAIK, J.
DATE : 30th JANUARY, 2019.

P.C.

1. Applicants are apprehending arrest in connection with C.R. No. 614 of 2018 registered with Mulund Police Station for the offence punishable under Sections 406, 420 read with 34 of Indian Penal Code and Section 3 of M.P.I.D Act. First Information Report was lodged on 20th December, 2018.

2. It is alleged that in April, 2016, the applicant Rajesh Mewawalla and Shri Jayesh Thakkar had visited the residence of the complainant. Shri Mewawalla had stated that he has two companies namely Fountain Spring Water Pvt. Ltd. and Fountain Dry Fruit through which he is conducting business. Thereafter he had frequently visited the residence of complainant. In April, 2016 Mr. Mewawalla stated that he is accepting the money on interest basis and if the complainant invest the amount he would provide interest of 18% p.a. Considering the status of Shri Mewawalla, the complainant believed his representation. On 29th April, 2016, Mr. Mewawalla, his wife Rakhi and daughter Masumi had visited the house of complainant. All of them represented that in the event of investment in their concerned 18% interest would be provided to the complainant. It was also stated that Mr. Rajesh Mewawalla

and wife are Directors of Fountain Spring Water Private Limited, Fountain Dry Fruit and Masumi Mewawalla is a Director of Pink Peacock. They further represented that if the complainant invested an amount of Rs.12.5 lakhs in their concern by providing interest of 18% p.a. she would get an amount of Rs.15,00,000/- in April, 2017. Being influenced by the representations, the complainant parted an amount of Rs.12.5 Lakh in the presence of her husband and other relatives for the purpose of investment in their concerns. Thereafter, said persons frequently visited the house of the complainant. On enquiry with regards to the amount receivable by the complainant she was informed that same would be provided to her in April, 2018 with interest and she would be entitled to receive an amount of Rs.18 Lakhs. The complainant demanded her amount in April, 2018 but the said amount was not returned to her. Thereafter, said persons have refused to contact the complainant. Complainant then realized that several other persons were also duped by the accused to the tune of Rs. 3,04,50,000/-. Hence, the First Information Report was lodged on 20th December, 2018.

3. Applicants had preferred an application for anticipatory bail before the Sessions Court which was rejected vide order dated 19th

January, 2019.

4. Learned advocate for the applicant submitted that applicants are falsely implicated in this case. The dispute is purely of civil nature. The complainant has suppressed the vital facts. The offence of criminal breach of trust or cheating is not made out. The provisions of M.P.I.D Act are not applicable. Applicants are willing to co-operate with the investigation. Custodial interrogation of the applicants is not necessary. It is submitted that missing complaint was filed for loss of cheques. Applicants wrote letters to the bank to intimate them about missing of cheques. It is submitted that the bank has confirmed about the receipt of stop payment instructions. Cheques which were stolen were presented for clearance between the period 2010 to 2018. The missing cheques presented for clearance on 22nd May, 2018 and 26th June, 2018 were returned with the remarks payment stopped by the drawer. Later on applicants received notice under Section 138 of Negotiable Instrument Act. Notices were replied through the advocate for the applicant. Drawee sent rejoinder to the reply given by the advocate for the applicants. Subsequently, summons was received from the Court for the offence punishable under Section 138 of the Negotiable Instruments Act. Applicants

had also filed complaint with the police giving details about the missing of cheques. However, no action was initiated by the police. Applicants then filed private complaint under Section 156(3) of the Code of Criminal Procedure before the Court of Metropolitan Magistrate. On receipt of the complaint filed with the Mulund Police Station, the applicants were summoned by the police and their statements were recorded. The applicants also appeared before the Malabar Hill Police Station in respect to the complaint filed by the same person. Later on complainant did not turn up. It is submitted that some of the people were involved in the proceedings under Sections 138 of the Negotiable Instrument Act as well as the persons claiming to be defrauded by the applicants indicate that they are connected with Mr. Jayesh Thakkar. Cheques were distributed by Mr. Thakkar. It is submitted that entire matter relates to the documents and hence custodial interrogation of the applicants is not necessary. It is submitted that applicant No.1 in ABA No. 187 of 2019 had sought information through RTI from Malabar Hill Police Station with regards to the status of the complaint filed against him and the reply was received on 14th December, 2018 from Malabar Hill Police Station stating that complaint was verified and it was noticed that the complainant had paid the amount in cash as investment with Fountain Spring Water Pvt. Ltd. and Fountain Dry Fruit and the dispute is of civil nature. Learned counsel for the applicant relied upon the decision of the Hon'ble Supreme Court in the case of *Bhadresh Sheth Vrs. State of Gujarat & Anr.* delivered by Hon'ble Supreme Court in Criminal Appeal No. 1134-1135 of 2015. Said decision deals with the principles underlying grant of anticipatory bail. It is also submitted that there is no involvement of the applicant in Anticipatory Bail Application No.185 of 2017 and she has been unnecessarily dragged into proceedings.

4. Learned APP submitted that there is sufficient materials against the applicants showing their involvement in the crime. FIR clearly assigned role played by the applicants. There are about 32 witnesses and huge amount of more than 3 crores were involved in the transaction. Several accounts were held by the applicant's company. Filing of complaint by the applicants were afterthought and only to create the defence. It is submitted that applicants are Directors of Fountain Spring Water Pvt. Ltd. and Fountain Dry Fruit. False representations were made to the complainant and others and huge amount was collected by the accused. Contention that the cheques were missing and they were misused is false and

afterthought. Learned counsel for the intervenor supported the arguments of prosecution. Applicants were not found at their addresses when the notice was served under Section 41A of Code of Criminal Procedure. Applicant did not co-operate with the investigation. Applicants had accepted the amount and had given assurance of 18% p.m. interest. Applicants are also Directors of Pink Peacock Quarter.

5. I have perused the FIR and other documents tendered by the parties. First Information Report depicts the role played by the applicants. Accused induced the complainant and others to part with the amount. Complainant invested about 12.5 lakhs. The contentions that the cheques were misplaced/stolen/misused appears to be afterthought. The matter is under investigation. There is substance in the submissions advanced by the learned APP. The amount involved Rs.3,04,50,000/-, statements of 25 witnesses were recorded. From the statement of the witnesses and telephonic conversation between the accused and Jayesh Thakkar, it appears that deposits were accepted with assurance of 18% interest. Accused had defaulted in repayment. Major role is played by the applicants in ABA No. 187 of 2019 and therefore ABA No. 187 of 2019 deserves to be rejected. Considering the role

played by the applicant in ABA No. 185 of 2019, I do not find that her custodial interrogation is necessary. She is daughter of applicants in ABA No. 187 of 2019. Hence, I pass the following order.

ORDER

i. Anticipatory Bail Application No. 185 of 2019 is allowed;

ii. In the event of arrest of applicant Masumi Mewawalla in connection with CR No. 614 of 2018 registered at Mulund Police Station, she be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

iii. Applicant Masumi Mewawalla shall report to the Investigating Officer of the concerned Police Station as and when called for till filing of chargesheet;

iv. Anticipatory Bail Application No. 187 of 2019 is rejected;

iv. Anticipatory Bail Application No. 185 of 2019, Anticipatory Bail Application No. 187 of 2019, Criminal Application No. 137 of 2019 and Criminal Application No. 138 of 2019 stand disposed off.

(PRAKASH D. NAIK, J.)