IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1624 OF 2018

Abhishek Avinash Kulkarni & Anr. ...Applicants
Vs.
State of Maharashtra ...Respondent

- Mr. Ranjeet Sangle alongwith Mr. Sushant Valimbe, Mr. Virendra Vikram, Mr. Chaitanya Kulkarni, Advocate for the Applicants.
- Mr. Tushar Sonawane, Advocate for Intervener.
- Mr. Prashant Jadhav, APP for the State.
- Mr. Sanjay Bombale, PI, EOW, Nasik City.

CORAM : SARANG V. KOTWAL, J.
DATE : 26th AUGUST, 2019

P.C. :

1. The applicants are seeking anticipatory bail in connection with CR No. I-271/18 dated 11th July 2018 registered at Upanagar Police Station, Nasik, under sections 420 and 406 read with Section 34 of the IPC.

2. The FIR is lodged by one Amit Kalamkar. He has stated in his FIR that in January 2017 both the applicants met him. The applicant no. 1 was his friend. They represented to him that if all of them together started a business of resort, they would earn at least rupees five to ten lakhs per month. Initially the first

informant refused and did not join their business. The applicant continued pursuing him. The applicant no. 1 told him that his mother Asha Kulkarni was working with Bank of Maharashtra on the post of Foreign Exchange Manager and therefore, it would be easy to get foreign fundings for their project. On their insistence, the informant met applicant no. 1's mother at their house. The applicant no. 1's mother told him that if the bank account showed Rupees Two Crores to Three Crores balance, they would get Rupees Fifeen Crores to Twenty Crores as funding to start their business. She assured that their money was safe. On their representation, the informant and his brother decided to join their business by investing Rupees One Crore. For that purpose, they sold their land at Niphad and deposited Rupees Ninety Seven Lakhs Seventy Nine Thousands Five Hundred in the account of Shivantha Venture Private Limited in the Bank of Maharashtra, Janmangal Tilak Road, Nasik. In addition to that, the informant gave Rupees Two Lakhs Fifty Thousand to the applicant no. 1. It is mentioned in the FIR that both these applicants were directors of the said company and they were having authority to withdraw the money from the company's account. After the informant had deposited this amount, in September 2017 he contacted both the applicants and asked about further progress. Both of them avoided him. They gave some excuse or the other. The informant was convinced that he was cheated and his money was misappropriated. The informant approached the informant no. 1's parents. They assured to make some payment. The applicant no. 2 threatened him. The applicant no. 1 could not be contacted. The applicant no. 2 gave a cheque of Rupees One Crore dated 14th February 2018, but it was dishonoured. The applicant no. 1's father gave a few cheques, they were also dishonoured and therefore, the informant lodged this FIR.

3. Heard, Mr. Ranjeet Sangle, learned counsel for the applicant as well as Mr. Tushar Sonawane, learned counsel for the intervener and Mr. Prashant Jadhav, learned APP for the State.

4. Learned counsel for the applicants submitted that the informant was taken on board of directors of M/s Shivantha Venture Private Limited, therefore, he could not claim that he was not aware about the transaction. He further submitted that money

was transferred to another account in HDFC Bank of the same company and thereafter it was given to one consultant Moses. He submitted that the said person did not bring the Foreign investments as assured by him and because of him the company went in financial difficulty. He, therefore, submitted that not the present applicants, but the said Moses is the main offender.

5. Learned APP pointed out that the applicants are absconding and inspite of they being under interim protection, they could not be contacted. The learned counsel for the intervener submitted that the applicants did not invest any amount in the company as promised and it is only the present informant, who had invested and had lost money. Thus, they have misappropriated the informant's money. This is clearly made out in the FIR itself.

6. I have considered all these submissions. Before referring the merits of the case, there is one important aspect which needs to be adverted to. This application was filed in August 2018. On 27th March 2019, the learned counsel for the applicants made a statement that, on instructions, without prejudice to their rights, to show their bonafides, the applicants would deposit the amount of

Rupees Ninety Seven Lakhs Seventy Nine Thousand Five Hundred with the Registrar of this court by 30^{th} April, 2019. The time to deposit was extended by the order dated 2^{nd} May 2019. It was made clear that if the amount was not deposited till the extended date i.e. 15^{th} May 2019, the interim order would stand revoked. The amount was not deposited and therefore, the interim order operating in favour of the applicants automatically lapsed. Since then the applicants are not traceable, neither any amount was deposited in court as was assured to this court. Therefore, this conduct of the applicants itself dis-entitled them from any relief in this matter.

7. However, even on merits the applicants have failed to make out any case for grant of protection of anticipatory bail. The FIR clearly mentions that both the applicants had represented to the first informant that if he invested Rupees One Crore, they would be in a position to bring foreign investments. They all assured that the other amount to the tune of Rupees One Core each would be deposited by the applicants, this amount was never deposited. The applicant no. 1's mother was working in the bank. She had also

represented the same thing to the informant. On their representation the informant sold his land and deposited his money. That money was transferred to another bank in the name of the said company. Though the informant was director of the company, he was not given any powers to deal with this amount and the money was transferred to one Moses. Thus, it is a well planned conspiracy and the amount invested by the first informant is misappropriated. The offence is clearly made out. The applicants are absconding since long. They have not cooperated with the investigation. No case is made out for grant of anticipatory bail. Hence, the application is rejected and is disposed of.

(SARANG V. KOTWAL, J.)