IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2035 OF 2017

Ayub Ibrahim Kapadia & Anr. ….Applicants.

Vs.

The State of Maharashtra & Anr. ….Respondents.

Mr. A.P. Mundargi, Senior Advocate I/by Swapna Kode for the Applicant.
Ms. J.S. Lohokare APP, for the Respondent-State.
Ms. Priyanka Dubey for the Respondent No.2.
Mr. Bhandari, P.I., Oshiwara Police Station.

CORAM : A. S. GADKARI, J.
DATE : 27th MARCH, 2019.

P.C.:-

This is an Application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in C.R. No. 155 of 2017 dated 10th May, 2017 registered with Oshiwara Police Station, Mumbai under Sections 420, 467, 468, 471, 120(b), 406, 506(II), 504, read with Section 34 of the Indian Penal Code.

2 Heard Mr. Mundargi, the learned senior counsel for the Applicants, the learned counsel for Respondent No.1, informant and the learned APP. Perused the record of investigation.

By an Order dated 21st November, 2017, the Applicants were granted interim relief by this Court.

3 The first information report dated 10th May, 2017 is lodged by Mr. Sajid Bhajikhada.

The prosecution case in brief is that, the niece of the first informant is married with the Applicant No. 2 herein. The Applicant No.1 was introduced by the brother-in-law of the informant with him. The Applicant No.1 represented himself to be a trader in sale and purchase of rice and has various other businesses. The Applicant No.1 also represented that, he was having a license to send devotees/pilgrims to the Holy Pilgrimage of Haj and he is a reputed personality in the city of Surat.

4 In due course of acquittance, the Applicant No.1 represented the first informant that two flats bearing Nos. 802 and 803 situated in Perls Height Housing Society, Main Road, Adajan Patiya, Surat (State of Gujarat) are for sale and the said flats will be made available at concessional rate. The informant along with his father and brother-in-law visited the said premises in the month of June, 2014. The Applicants told them that, the owner of the said flats has gone out of station and therefore, the key of the said flats was not available. However, the Applicant No.1 showed the flat situated on

the 11th floor of the said building and further represented that, the flats bearing Nos. 802 and 803 are similar in nature.

Subsequently, the Applicants showed a bungalow allegedly owned by his friend namely Mr. Mohammnad Rizwan Abdul Kadar Bombaywala situated at Shilpiraj Row House, opposite to Sardar Tapan Hall, at Surat and told the cost of the said bungalow as Rs.1 crore 60 lakhs. The Applicant also told the informant that, the price of the aforestated two flats is Rs.1 crore 65 lakhs in toto. When the informant expressed his inability to purchase the said bungalow, the Applicant further represented him that, the said bungalow can be purchased in partnership of 50% each and for that, the informant will have to pay Rs.80 lakhs. That, the informant subsequently paid an amount of Rs.1 crore 65 lakhs. Out of the said amount, Rs. 30 lakhs were deposited in the account of Mr. Mohammad Natik Kapadia and the balance amount was deposited in three installments in the account of M/s. N.S. Textiles.

It is the further prosecution case that, in the month of July, 2014, the Applicant No.1 had been to the house of the informant at Mumbai and showed photocopies of power of attorney given by Mr. Mohammnad Rizwan Bombaywala in favour of the Applicant No. 1

pertaining to the afore-stated bungalow. The informant therefore, paid a sum of Rs.77 lakhs in cash to the Applicant No.1 in presence of his wife Mrs. Shifa, his father Abubakar and brother-in-law Mr. Maqsood Doodhwala. The Applicant No.1 subsequently, informed the informant that the renovation work of the said bungalow has been undertaken and therefore, it will take some time for handing over possession.

It is the further prosecution case that, the Applicant No.1 also represented the informant that, the Applicant is in the process of getting a licence for importing scrap material from abroad and in the said business, there is substantial profit. It was represented that a sum of Rs.1 crore 70 lakhs was needed for the said purpose. It was also represented to the informant that, the said business can be conducted in partnership. Getting lured to the said representation, the first informant transferred a sum of Rs.64 lakhs by way of RTGS in the account of Applicant No.2. It is stated that, despite consistent pursuation by the informant, the Applicants did not give possession of the said immovable property nor they gave license of the said scrap material business. It is the specific prosecution case that, the Applicants after accepting a sum of Rs.3 crore 6 lakhs from the informant for the afore-stated purposes, neither complied with their part of obligation nor refund that amount to the informant despite repeated reminders and/or demands. It is also stated that, on one occasion the Applicant No. 2 threatened the informant by showing a fire-arm and asked him to forget about the money paid by him.

5 Mr. Mundargi, the learned Senior counsel for the Applicants submitted that, the Applicants have nothing to do with Mr. Mohammad Natik Kapadia and/or his firm M/s. N.S. Textiles. He submitted that, the deposit of the amounts by the first informant in the accounts of Mr. Mohammad Natik Kapadia and/or M/s. N.S. Textiles is an independent transaction between the informant and the said Mr. Mohammad Natik Kapadia and for which, the Applicants cannot be held responsible. He further submitted that, the amounts which were deposited in the account of Applicant No.2 to the tune of Rs.64 lakhs by the informant are further transferred in the account of M/s. N.S. Textiles and therefore, the Applicant No.2 cannot be said to be beneficiary of the said amount. He further submitted that, the letter dated 12th September, 2014 annexed to the Affidavit of the first informant is neither executed nor signed by the Applicant No.1 and the said document is a manufactured document by the first informant.

He submitted that, the Applicants are nowhere concerned with the said M/s. N.S. Textiles and therefore, what is stated in the said letter that, the Applicant No.1 is the proprietor of the said M/s. N.S. Textiles, itself falsify the claim of the informant. He lastly submitted that, as the Applicants are not beneficiaries of the money involved in the present crime, their custodial interrogation for further investigation is not necessary. He, therefore, prayed that, the Applicants may be protected by pre-arrest bail by allowing the present Application.

6 Per contra, the learned APP and the learned counsel for the informant vehemently opposed the Application.

The learned APP produced before me the record of investigation and submitted that, the Applicant No.1 is the mastermind behind the present crime and is the beneficiary of the amounts along with the Applicant No. 2. They, therefore, prayed that the present Application may be rejected.

7 I have perused the record of investigation. The record indicates that, though the said firm namely M/s. N.S. Textiles is a propitiatory concern of Mr. Mohammad Natik Kapadia, it is at the directions of the Applicant No.1, the said co-accused accepted deposits

from the first informant in his account and the said amounts have been further siphoned off and/or defalcated. Likewise, the amount of Rs. 64 lakhs which was deposited by the informant in the account of Applicant No. 2 has been further diverted in the account of M/s. N.S. Textiles and the same has been further siphoned off.

The record of investigation further indicates that, the power of attorney allegedly executed by the owner of the said bungalow namely Mr. Mohammnad Rizwan Bombaywala, is a bogus document. The said Mr. Mohammnad Rizwan Bombaywala has not signed the said document. The investigation so carried out reveals that, it is the Applicant No.1 who is instrumental in manufacturing the said document. The original document is still in the possession of the Applicant No.1 and is yet to be recovered by the police. As far as the Applicant No.2 is concerned, as noted earlier, the amount of Rs. 64 lakhs was deposited in his account, which he further transferred it in favour of M/s. N.S. Textiles.

8 Thus, the record of investigation indicates clear *prima facie* complicity of the Applicants in the present crime. It further appears from the record that, the Applicants in a pre-planned manner, deceitfully induced the informant to part with the afore-stated huge

amount of Rs.3 crores 6 lakhs by afore-stated various representations and after the first informant parted with the said amount, the Applicants have defalcated it for their personal wrongful gain and benefit.

9 In view of the above and after taking into consideration the gravity of the offence and the serious allegations against the Applicants, this Court is of the opinion that, the Applicants do not deserve to be protected by pre-arrest bail.

Application is accordingly rejected.

10 At this stage, Mr. Mundargi, the learned senior counsel for the Applicants submitted that, by an Order dated 21st November, 2017 the Applicants were granted interim relief and the same is in force till today. He further submitted that, the Applicants intend to challenge the present Order before the Hon'ble the Supreme Court and therefore, the interim relief may be continued for a further period of three weeks from today.

In view of the above, the interim relief granted by an Order dated 21st November, 2017 to remain in force for a further period of three weeks from today.

(A.S. GADKARI, J.)