IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 2362 OF 2018

Dr.Archana Rajesh Patil & Anr. ... **Applicants**
V/s.
The State of Maharashtra ... **Respondent**

Mr.Ashok Mundargi, Senior Advocate a/w. Mr.Nitin Gangal for Applicants.
Mr.Amit Palkar, A.P.P. for Respondent-State.
Mr.Jatin P. Shah a/w. Ms.Snehankita Munj & Mr.Kapil Bheda for Intervenor.

CORAM : A.S. GADKARI, J.

DATE : 23rd April 2019.

P.C. :

1] This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in connection with C.R. No. I-340 of 2018, dated 06/09/2018, registered with Nerul Police Station, Navi Mumbai, for the offence punishable under Section 420, 406 read with 34 of the Indian Penal Code.

2] Heard Mr.Mundargi, the learned Senior Counsel for the applicants, Mr.Shah, the learned counsel for the first informant and

Mr.Palkar, the learned APP for the State. Perused the record of investigation.

3] The first information report is lodged by Dr.Rajesh Badiyani.

It is stated that, the informant was working with the applicants hospital, by name, Manak Hospital situated at Nerul, Navi Mumbai, as visiting doctor. In the year 2011, the applicants gave a proposal to the informant that, they will redevelop the building of the said Manak Hospital and would construct a fully equipped multi-specialty hospital at the same place. It is also represented that, the applicants and the informant would form a Company, by name, M/s.Green Apple Health and Pharma Private Limited and under the flagship of the said Company, the said hospital will be constructed and operated. It was further represented to the informant that 50% of the share of the said company along with profit therein will be given to the informant. That the applicants represented that, the then prevailing market value of the Manak Hospital was Rs.11 crores and the applicants induced the informant to pay a sum of Rs.5 crores at the inception. A Memorandum of Understanding (MOU) was, accordingly, executed on 27th September 2011. It is stated that, the informant has paid substantial amount of Rs.4,41,00,000/- in cash to the applicants and the amount of Rs.33,00,000/- by way of bank transfer. It is stated that the informant in all paid Rs.5,50,00,000/- to the applicants towards establishment of the said enterprise. It is stated that, though infact the said company, by name, M/s.Green Apple Health and Pharma Private Limited, was floated, it was a defunct company and the informant did not get any benefit out of the same. It is the allegation against the applicants that, the applicants after accepting Rs.5,50,00,000/- from the informant neither transferred the 50% shares of M/s.Green Apple Health and Pharma Private Limited in favour of the informant nor demolished the old building of Manak Hospital and constructed new building and has ultimately defalcated said sum of Rs.5,50,00,000/- paid by the informant to the applicants.

4] Mr.Mundargi, the learned Senior Counsel appearing for the applicants submitted that, it is a pure and simple monetary transaction between the applicants on one side and the first informant on the other side and therefore, the Memorandum of Understanding dated 27th September 2011 has been executed in that behalf. He submitted that, there is inordinate delay in lodging the present crime. He submitted that, as the informant has lost the remedy as contemplated under the Civil Law, as an afterthought the present crime has been registered. He submitted that, most of the documents on record are allegedly signed by the applicant No.2 Dr.Rajesh Patil and not by the applicant No.1 Dr.Archana Patil and therefore, the applicant No.1 Dr.Archana Patil cannot be held responsible for the transaction in-question between the applicants and the first informant. He submitted that, the allegations of acceptance of cash amount of Rs.4,41,00,000/- cannot be accepted, as there is no material available on record to show the source of availability of such a huge cash by the informant. He, therefore, prayed that the applicants may be protected by pre-arrest bail by allowing the present application.

5] The learned counsel for the first informant and the learned APP vehemently opposed the application.

The learned counsel for the first informant submitted that, after failure of the earlier enterprise i.e. redevelopment of Manak Hospital, the applicants and the first informant have entered into a separate "Agreement of Assignment" dated 14th August 2012, wherein the applicants have admitted the acceptance of money in cash and has issued receipt of payment of Rs.4,41,00,000/-. He further submitted that, subsequently the applicants represented the informant that they will form another entity, namely, Manak Hospital LLP for conducting business, wherein the amount paid by the informant will be adjusted and accordingly, a separate entity, by name, Manak Hospital LLP has been registered on 14/07/2017. He further submitted that, in the month of December 2017 the applicants have agreed for repayment of Rs.5,50,00,000/- by executing a 'promissory note' in favour of the informant and therefore, it is a continuous cause of action giving rise for lodgment of the present crime on 06/09/2018. He, therefore, prayed that the present application may be rejected.

The learned APP supported the arguments of the learned counsel for the first informant and produced before me the record of investigation for perusal.

6] The first information report is itself self eloquent. It is a matter of fact on record that, on 14th August 2012 another “Agreement of Assignment” was executed between the applicants and the first informant wherein the applicants have admitted receipt of Rs.4,41,00,000/- from the informant. The said receipt is duly signed by the applicants herein. Though, it is contended by the learned counsel for the applicants that, the signatures appearing therein are not genuine and are forged signatures, it is a matter of investigation by the police.

Prima-facie, it appears that the applicants have signed the said document. The record further indicates that, as the applicant failed to honour their part of obligation, i.e. redevelopment of Manak Hospital, and or to give 50% of the shares along with profit in the said M/s.Green Apple Health and Pharma Private Limited, the applicants have further induced the informant to enter into a partnership and infact a partnership firm under the Limited Liability Partnership Act, 2008 has been registered, by name, Manak Hospital LLP on 14/07/2017. The record further indicates that, the applicants have also executed a 'promissory note' and receipt of acceptance of Rs.5,50,00,000/- from the informant.

7] A useful reference at this stage can be made to the decision of the Hon'ble Supreme Court in the case of *Rajesh Bajaj Vs. State NCT of Delhi and Others, reported in (1999) 3 SCC 259,* wherein the Hon'ble Supreme Court has observed that, infact many cheatings were committed in the course of commercial and also money transactions.

Prima-facie, it appears that, the case in hand is an example of the said observation made by the Hon'ble Supreme Court. The amount involved in the present crime is yet to be recovered by the police.

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

9] Application is, accordingly, rejected.

10] At this stage, the learned Senior Counsel for the applicants submitted that, the applicants intend to challenge the present order before the Hon'ble Supreme Court and therefore, the stay to the operation of the present order for a period of four weeks may be granted.

The learned counsel for the first informant and the learned APP strongly opposed the said prayer.

11] After taking into consideration the gravity of the offence and need of expeditious investigation, the said prayer is rejected.

[A.S. GADKARI, J.]