IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2605 OF 2018

Madhavi Achut Bandekar] … Applicant

Versus

The State of Maharashtra] … Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO.2606 OF 2018

Achut Ghanshyam Bandekar & Anr.] … Applicants

Versus

The State of Maharashtra.] … Respondent

Mr. Sanjeev Kadam i/b Mr. Jayendra Khairnar a/w Mr. Shashikant Gaikwad for Applicants.
Mr. Prashant Jadhav, APP for State/Respondent.
Mr. Mandar Goswami for Intervener/Respondent No.2.

CORAM :- SARANG V. KOTWAL, J.
DATE :- 06 JUNE, 2019.

P. C. :-

1. In both these applications these applicants are seeking anticipatory bail in connection with C.R.No.I-569/2018 registered with Ambad Police Station, District Nashik u/sec. 420, 406, 447, 448, 465, 468, 471, 473 read with Section 34 of I.P.C.

2. The FIR is lodged by one Dinesh Sharma on 22/11/2018. According to him, his father is an aged person and he had given him authority to file the FIR. The first informant has further mentioned that his father owned a proprietary firm by the name and style as M/s.DIN Engineering Corporation. It is mentioned in the FIR that in the past, on two occasions, i.e. in the year 2016 and 2017 one Raju Shankar Pawar had got Power of Attorney executed in his favour from the first informant's father Subhashchandra Sharma. On both these occasions it was agreed that said Raju Pawar would pay Rs.5,70,00,000/- for consideration of such execution of Power of Attorney. However, on both these occasions, the money was not paid. Inspite of that one Power of Attorney was in fact executed in favour of Raju Pawar by the first informant's father on 12/04/2018. However, said Raju Pawar had not made any payment and therefore that Power of Attorney was cancelled by another registered document dated 31/08/2018. Thus, in short, according to first informant, said Raju Pawar had no authority to deal with the property of first informant's father and in particular, in respect of the property in the name of M/s.DIN Engineering Corporation.

3. It is further case of the first informant that in September 2018 when he visited his company's plot in MIDC, he found that it was occupied by the applicants in ABA No. 2606/2018. On further inquiry made by the first informant with the applicants in ABA No.2606/2018, they told him that they had purchased the property of M/s.DIN Engineering Corporation in the name of the applicant in ABA No.2605/2018. It is also his case that machinery belonging to the company was taken away by the applicants. It is further mentioned that the applicants subsequently told the first informant that even they are cheated by Raju Pawar and pleaded with him not to lodge the FIR. It is his further case that the first informant then employed his own security personnel on the company. But after a few days even he was threatened and driven away by the present applicants. Based on these allegations the FIR is lodged.

4. Heard Mr. Sanjeev Kadam, Ld. Counsel for the Applicants in both the applications, Mr. Prashant Jadhav, Ld. APP for the State/ Respondent No.1 and Mr.Mandar Goswami for Intervener/ Respondent No.2.

5. Mr. Sanjeev Kadam, Ld. Counsel for the Applicants submitted that payments were made by the applicants in the account of M/s.DIN Engineering Corporation either by cheques or through RTGS. In all, he has paid Rs.1 Crores 60 Lakhs. He further submitted that applicants had no reason to suspect that Power of Attorney produced by said Raju Pawar was a forged document and that he had no authority to deal with the said property.

6. On the other hand, Mr. Prashant Jadhav, Ld. APP for the State/ Respondent No.1 and Mr.Mandar Goswami, Ld. Counsel for Intervener/Respondent No.2 submitted that Memorandum of Understanding was executed in the name of applicant in ABA No.2605/2018 by Raju Pawar on the basis of purported Power of Attorney executed in the year 2012. They submitted that in that year no Power of Attorney was executed and said documents are forged documents. They further submitted that Memorandum of Understanding executed on the basis of forged documents was a result of fraud which has caused heavy financial loss to the first informant and his father. They therefore submitted that applicants do not deserve the relief of anticipatory bail.

7. On instructions, Ld. APP also makes a statement that main accused Raju Pawar is already released on regular bail by the order passed by the Sessions Court in connection with this offence.

8. It is also important to note that said M/s.DIN Engineering Corporation has large outstanding taxes due and payable to the Sales Tax Department and therefore property could not be transferred in the name of the present applicants without the NOC from MIDC. It can be seen that the applicants had paid large sum of money through RTGS or Cheques. Ld. APP as well as Mr.Mandar Goswami, Ld. Counsel for Intervener/Respondent No.2 submitted that account of M/s.DIN Engineering Corporation was also a fake account. It was opened fraudulently and therefore collusion between Raju Pawar and present applicants is apparent. A copy of Power of Attorney purportedly executed in the year 2012 is annexed to this application. Perusal of such Power of Attorney shows that Raju Pawar was given power to accept the sale proceeds of the property of Shri. Subhashchandra Sharma on his behalf. Considering this aspect, I find force in the submission of Mr. Kadam, Ld. Counsel for the applicants that the applicants had no reason to believe that the Power of Attorney was

forged. It was not incumbent upon them to verify the genuineness of such Power of Attorney in the ordinary course of such transaction.

9. Thus, considering all these aspects, in my considered view ; the applicants have made out a case for grant of anticipatory bail. Their custodial interrogation is not necessary. The amounts are paid through RTGS or cheques. The property is not yet finally transferred in their names. The entire transaction may give rise to different civil proceedings between the parties. At this stage, the custodial interrogation of the applicants is not necessary. Hence, the following order.

ORDER

1. In the event of their arrest in connection with C. R. No. I-569/2018 registered with Ambad Police Station, District Nashik the Applicants be released on bail on their executing P.R. Bond in the sum of Rs.1,00,000/- (Rupees One Lakhs Only) each with one or two sureties each in the like amount.

2. The applicants in ABA No.2606 of 2018 shall attend Ambad Police Station, District Nashik every Saturday between 3.00 p.m. to 6.00 p.m. till filing of the charge-sheet.

3. Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)