IN THE HIGH COURT OF JHARKHAND AT RANCHI
A. B. A. No. 8779 of 2019

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1. Nahid Parween @ Nahid Praween, wife of Shamsad Alam
2. Md. Mumtaz Ansari @ Mumtaz Ansari, son of Abdul Jabbar Ansari

Both resident of village Gulam Toli, Itkitakurgaon, PO&PS Itki, District Ranchi **.... ..... Petitioners**

Versus

1. The State of Jharkhand
2. Subodh Kumar Sinha, Branch Manager, Jharkhand Rajya Gramin Bank, Itki Branch, PO&PS Itki, District Ranchi

.... Opp. Parties

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioners : Mr. Gaurav, Adv.
For the Gramin Bank : Mr. Faisal Allam, Adv.

05/**20.05.2020** Hearing of this anticipatory bail application has been convened and conducted through Video-Conferencing.

2. The petitioners, namely, Nahid Parween @ Nahid Praween and Md. Mumtaz Ansari @ Mumtaz Ansari are apprehending their arrest in connection to Itki P.S. Case No.49 of 2019 which has been lodged under section 420, 406 and 34 of the Indian Penal Code. The anticipatory bail petition filed by the petitioners in the court of Additional Judicial Commissioner-XIII, Ranchi was rejected vide order dated 11.11.2019 primarily on the ground that the petitioners have willfully misappropriated the loan amount tendered to them by the Bank.

3. At the outset, it needs to be recorded that the order dated 11.11.2019 suffers from serious infirmity in law, inasmuch as, though the anticipatory bail petitions of Shaista Ikbal, Nahid Parween and Md. Mumtaz Ansari were taken up for hearing together and have been disposed of by the common order dated 11.11.2019, in the said order there is discussion of the case relating to Shaista Ikbal only and merits of the other two anticipatory bail petitions have not been dealt with by the

learned Judge.

4. On the basis of a written complaint dated 30.08.2019, a First Information Report vide, Itki P.S. Case No.49 of 2019 was lodged on 01.09.2019 against the petitioners amongst others. The petitioner, namely, Nahid Parween @ Nahid Praween was granted term loan to the tune of Rs.71,250/- with cash credit facility of Rs.1,18,750/-. Similarly, the petitioner no.2, namely, Md. Mumtaz Ansari @ Mumtaz Ansari was granted a term loan of Rs.1,42,500/- with cash credit of Rs.1,42,500/-. According to the complainant, Jharkhand Rajya Gramin Bank the petitioners have failed to pay the loan amount which was given to them under Pradhan Mantri Rojgar Srijan Scheme and they have misappropriated the loan advanced to them by the Bank.

5. Mr. Faisal Allam, the learned counsel for the respondent-Bank referring to the counter-affidavit filed on behalf of the Bank submits that as on 31.12.2019 the total outstanding dues against the accused-Nahid Parween comes to Rs.2,42,577/- and against Md. Mumtaz Ansari the amount is to the tune of Rs.4,28,761 as on 31.12.2019. The learned counsel for the Bank submits that on the previous occasion a false statement was made on behalf of the petitioners that an agreement has been entered into between the accused and the Bank and in pursuance thereof the Bank has agreed to receive Rs.57,000/- from the petitioner no.1 and Rs.90,000/- from the petitioner no.2 as full and final settlement of the loan amount.

6. I find that it is the Bank's own case that after availing loan the accused persons have closed their business and misappropriated the loan amount. From such fact, it must be inferred that the petitioners had no intention to defraud the Bank at the initial stage. They were carrying on business and why they have closed their business and under what circumstances are the facts which shall be examined during the investigation. By now, it is well-settled that every breach of agreement would not amount to cheating or criminal misappropriation. In the present case, there is no allegation against the petitioners that they

have given any forged document or the address of their business was fictitious. In the counter-affidavit, the respondent-Bank admits that there was an effort of settlement at the National Lok Adalat. These facts would go to indicate that the dispute between the parties is primarily of civil nature.

7. I further find that co-accused- Shaista Ikbal has been granted privilege of anticipatory bail by a coordinate Bench of this Court vide order dated 05.12.2019 in A.B.A. No.8482 of 2019 on the condition that he shall deposit Rs.1,50,000/- with Jharkhand Rajya Gramin Bank, Itki Branch. The petitioners are similarly situated with the co-accused- Shaista Ikbal and while so, in my opinion, the petitioners also deserve grant of the same privilege. Another aspect in the matter is that vide order dated 18.12.2019 the petitioners were granted interim protection by a co-ordinate Bench of this Court and there is no allegation of misuse of privilege of the order dated 18.12.2019 granted in favour of the petitioners and in my opinion this is a relevant fact to be kept in mind while finally adjudicating the anticipatory bail application of the petitioners; their post-bail conduct.

8. Considering the aforesaid facts and the overall circumstances in the case, I am of the opinion that the petitioners have been able to make out a case for confirming the interim order dated 18.12.2019.

9. Ordered accordingly.

10. The petitioners, as ordered vide order dated 18.12.2019, shall be released on their arrest or surrender before the police or in the court concerned in connection to Itki P.S. Case No.49 of 2019, on furnishing bail bond of Rs.25,000/- (Twenty five thousand) with two sureties of the like amount each to the satisfaction of the court concerned. The court concerned may impose any further condition under section 438(2) of the Code of Criminal Procedure, as deem fit and in the event of violation of any of the conditions the court

concerned shall be at liberty to proceed against the petitioners in accordance with law [refer, *"P.K. Shaji Vs. State of Kerala"* reported in *(2005) 13 SCC 283*].

11. The petitioners shall also follow the following conditions:

(i) they shall not change their place of present residence without intimation to the investigating officer,

(ii) they shall provide proof of their present residence and Mobile Number to the investigating officer,

(iii) they shall observe the instructions/directives issued by the Central Government as well as the Government of Jharkhand for avoiding spread of COVID-19.

12. A.B.A No. 8779 of 2019 is allowed, in the above terms.

13. Let a copy of the order be transmitted to the Court concerned through FAX.

(Shree Chandrashekhar, J.)

R.K.