IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

923 ANTICIPATORY BAIL APPLICATION NO.300 OF 2021

1. Mayur s/o Subhash Kanwade.
2. Subhash s/o Bhaguji Kanwade. **... Applicants**

VERSUS

The State of Maharashtra. **... Respondent.**

...

Advocate for Applicants : Mr. N. B. Narwade.
APP for Respondent : Mr. V. M. Kagne.
Advocate for assist to APP : Mr. Bhide Vinod Y.

CORAM	**:**	**MANGESH S. PATIL, J.**
DATE	**:**	**25.06.2021.**

PER COURT :

The applicants are seeking bail in the event of arrest in connection with Crime No. 41/2021, registered with Akole Police Station, District Ahmednagar, for the offences punishable under Section 384, 385 of the Indian Penal Code.

2. The informant is an architect and engineer by profession and undertakes construction activities since last 10 years. He along with the applicants, the third accused and one Sagar Anil Ambadekar were the directors of a Private Limited Company. Since a dispute arose amongst the directions of the company the matter reached National Company Law Tribunal (hereinafter 'NCLT') and is still pending. He was paid his dues and ceased to be the director of the company since 2017.

3. It is alleged that after his exit from the company he established his own firm and started development activity at Rajgurunagar and Akole by investing crores of rupees. However, the applicants started creating

obstacles in his activities and even started blackmailing him. A complaint was lodged with the Chief Officer of the Municipal Council Rajgurunagar and Collector by the applicant No. 2, alleging about the construction being illegal/unauthorized and there being some encroachment. Pursuant to such objections the Chief Officer had asked him to stop the construction. He further alleges that when he prepared a layout in respect of some construction to be carried out by one Dhumal and Naikwadi in Survey No. 162 and 163, the applicants and the third accused created obstacles in that construction as well and started blackmailing him.

4. He then alleges that in order to settle the dispute a meeting was held during Diwali of 2019 in presence of one Pravin @ Raju Godase, Sachin Sandip Shete, Mahesh Navale, Shivaji Dhumal, applicants and the informant. Since the projects worth crores of rupees had dragged, the informant agreed to pay to the applicants and the third accused an amount of Rs. 47,00,000/- against their demand for an amount of Rs. 55,00,000/-. It was agreed that they would withdraw their complaints in lieu of such money. He then alleges that he paid an amount of Rs. 4,25,000/- in cash to them on 12.06.2019 whereupon the applicant No. 1 withdrew his application filed with the Municipal Council Rajgurunagar. He then alleges that he thereafter paid further amounts by way of different cheques and thus an amount of Rs. 30,00,000/- was extorted from him by the applicants and still they continued to harass him and are still trying to extort the remaining amount. He lodged the F.I.R. on 02.02.2021 and the offence was registered.

5. Learned advocate Mr. Narwade for the applicants would submit that the applicants are being falsely implicated. Though there was a private limited company in which they and the informant were the directors the dispute between them has been pending before the N.C.L.T. The applicants had invested huge amount of Rs. 54,50,000/- in that company during the period 2012-2015. However they were not given any share in the profit nor were they given equivalent shares. He would submit that while quitting the

firm the informant was owing an amount of Rs. 40,00,000/- and it is towards satisfaction of that liability the amount of Rs. 30,00,000/- was paid to the applicants. He would further submit that no ransom would be paid and received by way of cheques. The learned advocate would further submit that in fact the applicants were apprehending that they would be harassed by the informant and had from time to time written letters to the Police regarding their apprehension of false implication at the hands of the informant and his wife.

6. The learned advocate would then submit that even before registration of the crime the applicants were served with a notice under Section 161 of the Code of Criminal Procedure and their statements were recorded by the Police. They were protected by ad interim anticipatory bail by the learned Sessions Court. They have cooperated the Investigating Officer. Their custodial interrogation is not necessary. There is a long delay in lodging the F.I.R. They would be put to irreparable loss and avoidable defamation if they are arrested without assurance of bail.

7. The learned A.P.P. duly assisted by the learned advocate for the original informant would strongly oppose the application. He would submit that after having officially taken exit from the company by receiving money, there was no reason for there being any dispute between the applicants and the informant, still they indulged in the act of harassing him and causing his projects to be stalled by the Municipal Authorities. In order to get himself relieved from the pressure he agreed to pay the money in presence of independent persons who in fact had acted as mediators in the dispute between them. He was made to agree to part with huge money in lieu of assurance by the applicants regarding withdrawal of the complaints lodged by them. It would amount to extortion within the meaning of Section 384 of the Indian Penal Code which is a non bailable offence.

8. He would submit that the statements of all these persons/mediators

have been recorded. They have specifically stated as to how the informant had agreed to pay the money not towards any liability but to get rid of the harassment being faced. There are witnesses also to the effect that the third accused Ganesh had even conveyed to the witness to inform the informant to pay him ransom else he would see to it that the projects would not be completed. He would further submit that when admittedly the informant had taken exit from the company, there should have been some concrete material to demonstrate if at all he owed anything to the company or to the applicants. It is therefore a clear case of extortion of money which needs to be investigated by resorting to applicants' custodial interrogation.

9. I have carefully gone through the papers of the investigation as also the papers filed by the applicants and by the original informant in their respective applications.

10. As can be appreciated from the averments in the application and the F.I.R. that there was a private limited company in which the applicants, the third accused and the informant as also one more person were the directors. Even it stands admitted that the informant took legal exit from the company in the year 2017. If this is so, the applicants ought to have prima facie demonstrated as to how and where from any liability could have been incurred by the informant so as to part with a huge sum of Rs. 30,00,000/-. In spite of my precise query to the learned advocate in this regard, he was unable to point out any concrete material to prima facie show any liability of the informant to the applicants towards which the money can be said to have been paid.

11. It is in the backdrop of such state of affairs, the statements of the persons who have been specifically named in the F.I.R. who have acted as mediators would be relevant. Shivaji Rambhau Dhumal, Mahesh Ramesh Navale, Dr. Ravindra Gorde and Pravin @ Raju Godase are these persons who apparently are independent persons having no axe to grind. They have

come with a consistent version as to how the informant was made to agree to shell of Rs. 47,50,000/- to the applicants. They have specifically mentioned that the meeting was arranged in the office of Bhau Patil Bhimaji Navale, r/o Akole. In that meeting the dispute between the applicants and the informant pertaining to the business was discussed wherein the applicant No. 1 insisted that the informant owed him an amount of Rs. 55,00,000/- and the latter agreed to pay Rs. 47,50,000/-. It is by virtue of some settlement that the money was agreed to be paid.

12. Pertinently, in the statement of Mahesh Navale he has specifically stated that in the meeting which he had attended on 12.09.2019 the applicants declared that they would withdraw the complaints filed against the construction projects being carried out by the informant only if the money was paid. He has further stated that in order to streamline the projects the informant agreed to pay Rs. 47,00,000/-. Similar are the statements of witness Shivaji Rambhau Dhumal and Dr. Ravindra Jaywant Gorde.

13. It thus appears that the applicants have been alleging that they were made to invest in the company which had run into rough weathers and were unable to get back the investment. The dispute has been going on between the other director Sagar Anil Ambadekar and the applicants and the informant in the N.C.L.T. The applicants perhaps were expecting the informant to pay money as they had made the investment because of his insistence. Whereas he was refusing to pay saying that he had taken exit from the company and it would be a dispute between Mr. Ambadekar and the applicants without there being any legal liability on him.

14. Whatever may be the reason, without there being any concrete material/record regarding existence of any dues by the informant to the applicants, he was made to part with money. May be by way of a pressurizing tactics, the applicants raised objections with the Municipal

Authorities in respect of some other projects undertaken by him independently. They even agreed to withdraw those complaints if the money was paid. Meaning there by that the money was extorted from him within the meaning of the provision of Section 384 of the Indian Penal Code. If that be so, there is a prima facie material to reveal complicity of the applicants in commission of the crime, the investigation in which would not be complete except by resorting to their custodial interrogation.

15. Though the offence is punishable up to a maximum of three years imprisonment and triable by a Magistrate, in my considered view those cannot be the decisive considerations while entertaining the application for anticipatory bail. Taking into consideration all the aforementioned facts and circumstances, the applicants are not entitled to derive any benefit from the decision of the Supreme Court in the case of ***Sushila Aggarwal and others V.s State (NCT of Delhi) and another, 2020(5) Supreme Court Cases, 1*** .

16. The Application is rejected.

(MANGESH S. PATIL, J.)

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