IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1389 OF 2021

1. Shri Bavaji Sattar Saheb S/o. Sattar Saheb

2. Guramkonda Noorjahan Saheb

3. Guramkonda Sattar Saheb ... Applicants

versus

The State of Maharashtra .... Respondent

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Mr. Ashwin Thool i/b. Mr. Ayush Singh, for the Applicants.
Mr. Ajay Patil, APP for State- Respondent.

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CORAM : SARANG V. KOTWAL, J.
DATE : 16th JUNE, 2021
(Through Video Conferencing)

P.C. :

. The applicants are seeking anticipatory bail in connection with C.R. No.21/2021 registered at M.I.D.C. Kupwad Police Station, Sangli on 1st February 2021 under Sections 406, 420 read with 34 of Indian Penal Code (for short 'I.P.C.').

2. Heard Mr. Ashwin Thool, learned Counsel for the applicant and Mr. Ajay Patil, learned APP for the State.

3. The F.I.R. was lodged by one Kadarvalli Husssain Saheb Nagur. He has stated that, since 2013, he was in the business of selling raisins by the name M.S. Traders. That firm was in his wife's name. In the year 2016, applicant No.1 contacted him and told him that he wanted to purchase raisins from him. Applicant No.1 started Kaba Traders which was a proprietary firm in the name of applicant No.2 who was his mother. Initially, when the applicant No.1 used to purchase raisins, the payments were made on time. In 2017, applicant No.1 started another firm by the name Kaba and Company. Applicant No.1 was its proprietor. That firm had transactions with the first informant's firm. In the year 2018, applicant No.1 started another firm by the name King Traders and in that applicant No.3 who is his father was shown as the proprietor. All these firms were having business transactions with the informant's firm. All these firms used to purchase raisins worth around Rs.1 Crores per month. Every time some dues were kept pending and it was promised that the dues would be cleared subsequently. The F.I.R. mentions that between the year 2016 to 2019, all these firms had purchased raisins and the unpaid dues

mounted to Rs.6,12,91,047. The F.I.R. has given break up of these figures from those three firms. The informant was given cheques which were dishonoured. Since October 2019, all these firms stopped purchasing raisins from the informant. Applicant No.1 started avoiding making the payment. He stopped receiving the informant's calls. The informant and his accountant Kishor Govind Mulik went to applicant No.1's firm's office but they found that it was closed. Informant then went to his house. The House was also closed. The F.I.R. goes on to mention allegations against other accused. As far as the applicants are concerned, these are the allegations against them.

4. Learned Counsel for the applicants submitted that it was purely a business transaction. The applicants had purchased raisins worth Rs.40 Crores and in comparison the dues were only to the tune of Rs.2.76 Crores. The figures of dues in the F.I.R. are exaggerated. He submitted that considering the large payments made by the applicant, it is clear that the applicants had no intention to cheat the informant. Criminal proceedings cannot used for recovery of the business dues. He submitted that the

applicant Nos.2 and 3 had initiated insolvency proceedings on 11th January 2021 in which the informant is respondent No.1. He submitted that in those insolvency proceedings, these two applicants have explained as to why the due amount cannot be paid. There is a reference to the allegation that these two applicants were threatened by the creditors. Shri Thool, submitted that the F.I.R. is lodged by the first informant on 1st February 2021 and before that these two particular applicants had initiated insolvency proceedings. According to Shri Thool, the dispute was of civil and not of criminal nature.

5. Learned APP opposed this application and submitted say of the Police. The copy of that say is taken on record and marked “X” for identification. According to the investigating agency, applicant No.1 had switched off his mobile phone from 1st September 2020 and since then, he was not available; which shows his clear dishonest intention. There is a reference that one Shyamsundar Begraj Zanvar had also suffered because of the non-payment to the tune of Rs.1.5 Crores at the hands of applicant No.1 and therefore, he had committed suicide. Learned APP

submitted that the Police had visited applicant No.1's residential address but he was not found at that place. Shri Patil, learned APP stressed on the fact that during the pendency their anticipatory bail application before the Sessions Court, the applicants had submitted a medical certificate showing that they were suffering from COVID-19. However, the investigation revealed that the certificate was forged and the concerned Medical Officer had not put his signature on that certificate. His signature was forged.

6. I have considered these submissions. The conduct of the applicants needs to be taken into consideration. As far as applicant Nos.2 and 3 are concerned, they are parents of the applicant No.1. In the F.I.R. itself, it is mentioned that applicant No.1 had started two firms in the names of applicant Nos.2 and 3. The F.I.R. does not mention any inducement made by these two applicants to the first informant directly. They have also initiated insolvency proceedings. Taking into account these factors, I am inclined to grant relief of anticipatory bail order in favour of the applicant Nos.2 and 3.

7. As far as, applicant No.1 is concerned, there are clear allegations against him. He had made fraudulent representation. His subsequent conduct shows that it was not merely a business transaction but his intentions were not honest right from the inception. Applicant No.1 had made himself unavailable since September 2020 without telling anything to the informant. He was not found at his residence or at his place of business. He had not contacted the informant at all. This clearly establishes his dishonest intention. Learned Additional Sessions Judge, Sangli in his order dated 29th April 2021 has referred to the stand of the prosecution that the applicants had submitted forged medical certificate. The order also mentions that the applicant had not made himself available for investigation purposes. Shri Thool submitted that the applicant was informed belatedly therefore, he could not remain present. Shri Thool submitted that applicant No.1's statement is already recorded by the Police.

8. Considering the entire conduct of the applicant and the allegations against him, this does not appear to be mere a civil dispute. The applicant No.1's conduct shows that his intention

were fraudulent. Initially he won the informant's trust by paying some amount but ultimately the informant suffered huge loss. This was directly attributable to the applicant No.1 who suddenly became unavailable. Therefore, custodial interrogation of the applicant No. 1 to find out modus-operandi and disposal of the raisins supplied by the informant is necessary. He does not deserve protection of anticipatory bail order.

9. Hence, the following order.

ORDER

(i) In the event of their arrest in connection with C.R. No.21/2021, applicant No.2 Guramkonda Noorjahan Saheb and applicant No.3 Guramkonda Sattar Saheb are directed to be released on bail on their executing P.R. bond in the sum of Rs. 50,000/- (Rupees Fifty Thousand Only) each with one or two sureties each in the like amount.

(ii) These applicants shall attend the concerned Police Station as and when called and shall co-operate with the investigation.

(iii) If they do not attend the Police Station and do not co-operate with the investigation, the State is at liberty to move an application for cancellation of reliefs granted to them.

(iv) The prayer for anticipatory bail in respect of the applicant No.1 is rejected.

(v) Application is disposed of.

(SARANG V. KOTWAL, J.)