IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.76 OF 2021

Mrs.Anita Manmohan Didwania Applicant
versus
The State of Maharashtra Respondent

WITH
INTERIM APPLICATION NO.130 OF 2021

Hemant Devendra Tibrewala Intervenor

In the matter between :

Mrs.Anita Manmohan Didwania Applicant
versus
The State of Maharashtra Respondent

Mr.A.M.Saraogi for original applicant.
Mrs.Anamika Malhotra, APP, for State.
Mr.R.R.Dube Patil i/by Jay & Co for intlervenor.
PSI Tanaji Patil, DCB, CID Unit-XI, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 18th January 2021

PC :

1. This is an application for anticipatory bail in CR No.711 of 2020 registered with Bangur Nagar Police Station, subsequently transferred to DCB, CID Unit-XI vide CR No.166 of 2020. Initially the offences were registered under Sections 420, 506(II), 34 Indian Penal Code. Subsequently Section 406 was added.

2. The case of the complainant spelt out in the FIR is that he got acquainted with co-accused Manmohan Didwania in 2010. He was

known to his father. He is owner of Didwania Spinning Mill Pvt.Ltd. The complainant used to give financial assistance to Manmohan. The complainant had financially assisted him from time to time. In August-2013 the accused Manmohan Didwania and his wife (applicant) had approached the complainant at his residence and requested for financial help for business in their company namely Didwania Spinning Mills Private Limited. The amount was taken in the name of company and himself. It was represented that shares of Didwania Spinning Mills Pvt.Ltd or profit share would be given to the complainant. The relationship between the complainant and the accused was cordial since long. Complainant did not execute any documents regarding investment. The complainant had parted the amount by way of financial assistance from 2013 to 2016.. The first transaction took place on 28th August 2013. The last transaction reflected in the FIR is of 2015. It is further alleged that from 2013 to 2016 the complainant had parted an amount of Rs.2,69,50,000/- for business of company. On various occasions complainant requested Manmohan to transfer company shares in his name. Shares or profit share was not transferred in his name nor interest as agreed @ 12% was given to him on demand and complainant was threatened. The FIR was lodged on 14th December 2020.

3. Learned counsel for applicant submitted that the dispute is purely of civil nature. There is inordinate delay in lodging the FIR. First transaction is of 2013 and the last transaction reflected in FIR is 30th May 2015. The FIR also refers to the date of occurrence of incident as August-2013 to July-2017. However, the FIR was lodged in 2020. The applicant is house wife. She has been falsely implicated in this case. It is submitted that the applicant has not

participated in any business transactions. The custodial interrogation of the applicant is not necessary. The applicant's husband is arrested on 21st December 2020 and he is in custody. No offence of cheating is made out in the complaint. The company is facing insolvency proceedings. Company is facing proceedings before NCLT. The question of issuing shares of company does not arise. The claim of complainant is time barred. The FIR is lodged on 14th December 2020 and on the next day it is transferred to DCB, CID. The husband of applicant is arrested and he is in custody. The applicant is house wife. The transactions were executed by her husband. The applicant's custodial interrogation is not necessary. He also referred to the minutes of meeting of the committee of creditors of M/s.Shree Hanuman Texfab Pvt.Ltd held on 11th October 2020 through video conferencing.

4. Learned APP submitted that the applicant has participated in the crime. She is not merely a house wife. She has made false representations along with co-accused husband to the complainant. The amount which was credited to the account of applicant was supposed to have been transferred to the account of company which is not done. The FIR clearly stipulates that the amount of Rs.1,29,00,000/- was deposited into the bank account of applicant. It is further submitted that offence of cheating is made out as right from inception there was dishonest intention to cheat. Two other investors have also made their grievances against accused and their statements are recorded. The applicant and her husband are only two persons who are the Directors of company. Prior to lodging of FIR, several complaints were made by the complainant to police. Hence, there is no delay in lodging the FIR. The amount of

misappropriation is to the tune of Rs.3,40,05,000/- including two other investors.

5. Learned counsel for intervenor adopted arguments of learned APP. He submitted that complicity of applicant is apparent from the record. Amount was credited into the account of applicant.

6. On perusal of FIR it is apparent that the alleged representations were made in 2013. It is alleged that complainant was requested to financially assist the company of applicant and her husband. The amount was allegedly credited by way of financial assistance to the company M/s.Didwania Spinning Mills Pvt.Ltd of Rs.2,69,50,000/- in the bank accounts of applicant and husband in Indian Overseas Bank. It The last transaction reflected in the FIR is of 2015. The complainant has alleged that either shares were promised to be given or share in profit was to be given. The interest has not been paid. It is apparent that transactions were from 2013 to 2016. The FIR has been lodged thereafter in the year 2020. The husband of applicant has been arrested on 31st December 2020. Remand application dated 1st January 2021 in respect to seeking custody of Manmohan Didwania i.e. husband of applicant states that accused is involved in cheating and misappropriation of amount. The amount was collected by way of financial assistance to Didwania Spinning Mills Pvt.Ltd and further custody of co-accused (applicant's husband) is necessary. The FIR also highlights that the husband of applicant was supposed to transfer the shares or pay interest. He continued to be in custody. It is not necessary to interrogate applicant in custody since documents are same and applicant's husband is subjected to custody. Hence, case for granting this

application is made out.

7. Considering the factual aspects of matter as reflected in the FIR and also considering the fact that applicant's husband is in custody, the applicant need not be subjected to custodial interrogation. Hence, I pass following order :

ORDER

(i) Criminal Anticipatory Bail Application is allowed and disposed of;

(ii) In the event of arrest of applicant in connection with CR No. CR No.166 of 2020 registered by DCB, CID, Unit-11, Kandivali, the applicant be released on bail on executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount;

(iii) The applicant shall report the Investigating Officer on 27th, 28th and 29th January 2021 between 11 am and 1 pm, and thereafter as and when called by the Investigating Officer;

(iv) Interim Application No.130 of 2021 also stands disposed of.

8. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or e-mail of a digitally signed copy of this order.

(PRAKASH D. NAIK, J.)

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