PMB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.232 OF 2020

Vishnu Pandurang Dalvi and ors. .. Applicants
vs.
The State of Maharashtra .. Respondent

WITH
INTERIM APPLICATION NO.2223 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.232 OF 2020

Deepali Dattaram Natuskar and anr. .. Applicants

IN THE MATTER BETWEEN

Vishnu Pandurang Dalvi and ors. .. Applicants
vs.
The State of Maharashtra .. Respondent

Sana Raees Khan a/w Anima Mishra i/b. Hulyalkar and Associates for the applicants in ABA/232/2020.

Mr. Rohan Mahadik, Mr. Amit Kamble, Miss. Rachana Karad i/b. The Juris Partners for the Intervernor in IA/2223/2021.

Smt. M.R. Tidke, APP for the State.

Mr. P.M. Kadam, API, EOW, Navi Mumbai Police Station.

CORAM : M. S. KARNIK, J.

DATE : DECEMBER 10, 2021

P.C.:-

1. Heard learned counsel for the parties.

2. This is an application for pre-arrest bail in respect of an offence registered vide C.R. No.447 of 2019 with Vashi Police

Station for alleged offence punishable under Section 420, 34 of Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositers (In Financial Establishments) Act, 1999.

3. Briefly stated it is the allegation in the complaint dated 23.12.2019 filed by the complainant-investor that the applicants/ their company persuaded him and others to invest various amounts in the investment plan through their company and after maturity of the alleged investment in the company promised that he will get good returns, however, neither the company of the applicants nor the applicants could return his money as promised to him after maturity of date and therefore, the offence.

4. It is the contention of learned counsel for the applicants that there is no intention to cheat or defraud any of the investors and/or complainant and in fact they are always ready to return the amount to the customers as agreed. It is on account of the market which was down that the applicants suffered losses.

5. This Court while granting interim protection to the applicants on 13.03.2020 has observed thus :-

> "Learned counsel for the applicants submits that they have furnished details of the property which is available for attachment under the provisions of MPID Act. Applicants are also willing to deposit an amount of Rs.20,00,000/-. It is submitted that in the event the

property is attached, the amount of investors would be secured. Learned APP seeks time to take instructions with regards to the steps taken by the investigating officer for attaching the property, in accordance with provisions of MPID Act.

2. Hence, stand over to 26th March, 2020. To be listed on Supplementary Board.

3. Till then, the applicants shall not be arrested."

6. Accordingly, on 21.02.2020 an affidavit is filed by the applicant No.1 placing on record the properties owned by the applicant as available for disposal which could be sold, either under guidance of the Court or otherwise to fetch the best possible price.

7. When the matter was heard on the last date, this Court had called upon the applicants as to the manner in which the amounts of the investors could be secured by the applicants. An undertaking/affidavit has been filed on behalf of all the applicants dated 09.12.2021 stating thus :-

"1) We say that without prejudice to our rights and contentions in the matter, we have already furnished details of the property which is available for attachment under the provisions of MPID. The Government value of the said property is approximately 69,00,000/- and claim raised in the C R No. 447 of 2019 is Rs.46,95,500. But as per the progressing report submitted by the Investigating Officer the Total Balance amount is 1,17,89,400/- and from which we already paid 11,49,213/- now the Remaining amount is 1,06,55,675/- after deducting the amount of the attached property value, Final Total balance amount is 37,55,675/-.

2) Therefore, we undertake to deposit/pay the amount of Rs.20,00,000 in treasury of this Hon'ble Court by way of DD within 25 days from the order. We further undertake that we will deposit the Rs.17,55,675/- will be paid after 3 months.

3) That, the Invervener Application No.2223 of 2021 is neither in the FIR nor in the list of investors submitted by the Investigating Officer, even if his application does not sustain, we are ready to do Out of Court settlement with the said Invervener.

8. Learned APP on instructions of the Investigating Officer submits that the procedure for attaching the properties of the applicants is underway.

9. The undertaking is taken on record and marked as Exhibit 'X' for identification. So far as paragraph 2 of the affidavit is concerned, in the last line it is mentioned that the applicants undertake to deposit a sum of Rs.17,55,675/-, will be paid after three months. Learned counsel for the applicants however on instructions states that the said amount of Rs.17,55,675/- will be deposited within a period of four months from today. Statement made on instructions is accepted.

10. In the undertaking it is stated that the amounts will be deposited in the treasury of this Court. However, the said

amounts be deposited instead with the treasury of the Sessions Court, Thane and which will abide by the order passed by the MPID Court.

11. So far as Clause (3) of the undertaking is concerned, the interveners in Interim Application No.2223 of 2021 have an objection. It is made clear that Clause (3) will not prejudice the rights and contentions of either of the parties. It is open for the applicants to settle the claim with the interveners. It is equally open for the interveners to pursue their complaint dated 08.07.2021 with the Investigating Officer. All contentions of both the parties in that regard are kept open.

12. In this view of the matter, the following order is passed :-

O R D E R

(i) In the event of arrest of the applicants in C.R. No.447 of 2019 with Vashi Police Station, they shall be released on bail on furnishing P.R. Bond of Rs.25,000/- each with one or more sureties in the like amount.

(ii) The applicants to co-operate with the investigation and report to the Investigating Officer as and when called.

(iii) So far as the applicant No.1 is concerned, it is pointed out that he is facing severe medical ailments and finds it difficult to move out of the house. The Investigating Officer may verify this aspect.

(iv) The applicant No.1 may be called absolutely when necessary.

(v) Applicant Nos.2 and 3 to attend the Investigating Officer on 27th, 28th and 29th December, 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called.

(vi) The applicants to furnish their contact and residential details to the Investigating Officer.

(vii) It is made clear that if the applicants do not co-operate with the investigation and fail to attend the police station, liberty to apply.

13. The Anticipatory Bail Application is disposed of.

14. In view of the disposal of the Anticipatory Bail Application, nothing survives for consideration in the Interim Application. The Interim Application is disposed of accordingly.

(M.S. KARNIK, J.)