IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1286 OF 2021

Nagesh Pandurang Pawar ... Applicant

versus

The State of Maharashtra .... Respondent

WITH

INTERIM APPLICATION (STAMP) NO. 9390 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO. 1286 OF 2021

Vashdev Thakurdas Khithani ... Intervener

IN THE MATTER BETWEEN

Nagesh Pandurang Pawar ... Applicant

versus

The State of Maharashtra .... Respondent

…....

Mr. Priyal Sarda, for the Applicant.
Smt. J. S. Lohokare, APP for State-Respondent.
Mr. Sudeep Singh, for Intervener.

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CORAM : SARANG V. KOTWAL, J.
DATE : 08th JULY, 2021
(Through Video Conferencing)

P.C. :

. The applicant is seeking anticipatory bail in connection with C.R.No.48/2019 registered at Tilak Nagar Police Station, Mumbai under Section 420, 406, 506 read with 34 of Indian Penal Code, 1860 (for short 'I.P.C.').

2. Heard Mr. Priyal Sarda, learned Counsel for the applicant, Smt. J. S. Lohokare, learned APP for the State and Shri Sudeep Singh, for the intervener.

3. The F.I.R. (for short 'First Information Report) is lodged by Dr. Vashdev Khithani. He has stated that his two sons Dheeraj and Yogesh wanted to take Post Graduation courses in the medical field. However, they were not getting admission in spite of their efforts since 2014. In the year 2015, the informant was introduced to one Dinesh Kawa by Mahendra Kahar. Dinesh told the informant that he had contacts with the management of Smt. Kashibai Nawale Medical College at Pune and that he would get admission for both his sons. He had told the informant that, for that purpose, some amount will be required.

4. In June 2015, Dinesh demanded Rs.1,60,00,000/- as capitation fee and he assured that on such payment both his sons would get admission. The F.I.R. goes on to mention the efforts put in by the informant to raise that amount. He had mortgaged his property and he had obtained loan from finance company. He also collected some amount from his friends and relatives. In July 2015, he paid Rs.55,00,000/- in cash to Dinesh Kawa in presence of Mahendra Kahar. He paid Rs.5,00,000/- through cheque issued in favour of Dinesh's Company. Till September 2015, nothing was done by Dinesh Kahar. On 11th September 2015 at the say of Dinesh, the informant got a DD of Rs.7,00,000/- issued in favour of the said Medical College. The informant went to Global Hospital at Pune on Dinesh's instructions. At that time, they met applicant's uncle, who represented that he was a trustee of that College. That person asked the informant to handover that DD to him. Accordingly, the informant handed over that DD to him.

5. In October 2015, Dinesh asked the informant to make arrangement for the remaining amount of Rs.75,00,000/-. On 3rd October 2015 the informant, his sons, Mahendra and Dinesh went

to Navi Mumbai and met the applicant's wife. He was told that the money was to be handed over to the applicant's wife. It was represented to him that the applicant himself was working with RAW. The applicant's wife told the informant that he was well connected with senior influential politicians and that she was also well acquainted with management of the said Medical College. She assured the informant that his work of admission would be done by her. The applicant was present at that meeting. At that meeting, the applicant's wife obtained Rs.75,00,000/- in cash. The F.I.R. mentions that amount was accepted by the applicant and his wife. After that, there was no progress. The informant's sons did not get admission. He pursued the accused to return his money. The F.I.R. mentions that the applicant and his wife returned some amount, but majority of the amount was not returned. The F.I.R. mentions that the applicant's wife executed a document accepting that she had taken money from the informant and accepting her liability to refund the same. However, the money was not returned. The informant came to know that the representation made by the applicant and wife was false and he was cheated to huge amount.

The F.I.R. mentions that out of the total amount paid by the informant; Rs.55,00,000/- were returned by Dinesh to him. But out of the remaining amount Rs.80,00,000/- Dinesh had retained Rs.30,00,000/- and rest of the amount of Rs.50,00,000/- was misappropriated by the applicant, his wife Roshni and one Raju Sabale. On these allegations, the F.I.R. is lodged.

6. Shri Sarda, learned Counsel for the applicant submitted that the allegations pertain to the year 2015 and the F.I.R. is lodged on 1st February 2019. Mr. Sarda submitted that the F.I.R. is lodged only after the informant's sons had completed their education. Hence, there was huge unexplained delay in lodging the F.I.R. He submitted that the amount was paid by the informant for capitation fee. It was thus, for illegal purpose and therefore, neither offence punishable under Section 406 nor that under Section 420 of I.P.C. is attracted against the present applicant. He submitted that basic requirement of both these Penal Sections was that the transaction and the contract should be for legal purpose. He relied on an order passed by the High Court at Patna in the case of **Vijay Sharma and Another v/s. State of Bihar** decided on 4th

November 2010 in - Criminal Misc. Application No.9248/2006. A copy of that order tendered by Shri Sarda is taken on record and marked ‘X’ for identification.

7. Learned APP opposed this application. She relied on the investigation papers produced before me. She submitted that the informant’s story is supported by an important witness Mahendra Kahar who was present at the meeting when the money was handed over. She submitted that the applicant’s wife had executed a document accepting their liability.

8. Learned Counsel for the intervener submitted that there was no delay because the informant was constantly pursuing the accused to refund his amount.

9. I have considered these submissions.

10. I have perused the order of the High Court at Patna relied on by Shri Sarda. In one of the paragraphs, it was observed thus - “there cannot be any entrustment of a property for its use or disposal contrary to the law or an illegal contract with the owner of the property retaining dominion over the property. The moment

he parts with the property for an illegal purpose, “entrustment” as defined in the Penal Code has no application.” It was also observed that concept of cheating shall have no application where the act which is stated to constitute cheating was itself an offence.

11. I have considered these observations. However facts in the present case show complete fraud played by the accused including the applicant. The entire narration in the F.I.R. reflects deliberate misrepresentation of facts made to the informant by the accused. Though at one place, it is mentioned that Dinesh had asked for Rs.1,60,00,000/- as ‘capitation fee’; the representation was made by the applicant’s wife that since she was well connected with the management of the Medical College, she was in a position to secure admission of the informant’s sons. The applicant and other accused cannot take shelter under the argument that the money was accepted for illegal purpose. More important feature in this case is the deliberate false representation made by the applicant and his wife. She had claimed that she was in close contact with the management. She had accepted money to secure admission. At that time, it was represented to the informant

that the applicant was working with RAW. The investigation has revealed that the applicant was working with Police department. The applicant's wife had no authority to collect money on behalf of the management. The entire representation was fraudlent right from the inception. In the case relied on by Mr. Sarda the money was accepted for securing employment in Government jobs. Paying bribe for such purpose has his own implications. The facts in the present case are totally different. The applicant and his wife had represented that they were well connected with a private management. The applicant's role is also spelt out. He was very much present at the meeting when the amount was accepted. The investigation has revealed that the amount was not returned. The amount involved is huge. The informant's had mortgaged most of his properties to raise the money. The informant was obviously cheated. I am unable to accept the Mr. Sarda's arguments that no offence is made out as the money was handed over for illegal purpose. After cheating a person and after misappropriating huge amount the applicant certainly can not take this stand. The offence is committed which requires investigation. The applicant's custodial interrogation for that purpose is absolutely essential. I do not agree with Mr. Sarda that there is an inordinate unexplained delay in lodging the F.I.R. The F.I.R. itself mentions that the informant had tried very hard for a long time to get back his money and only after his failure to secure his money he had approached the Police.

12. In view of this discussion, no case for grant of anticipatory bail order is made out. Hence, the following order.

ORDER

(i) Anticipatory Bail Application No.1286 of 2021 is rejected and disposed of accordingly.

(ii) In view of disposal of Anticipatory Bail Application No.1286 of 2021, Interim Application (St.) No.9390 of 2021 is disposed of.

(SARANG V. KOTWAL, J.)