IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1910 OF 2021
WITH
INTERIM APPLICATION NO. 2198 OF 2021

Mansi Khandelwal & Anr. .. Applicants

Vs.

The State Of Maharashtra .. Respondent

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Mr. Rizwan Merchant a/w Faisal F. Shaikh i/b Rizwan Merchant & Associates, Advocate for Applicants.
Ms. Padma S. Shelatkar, Adv. For complainant in IA.
Mr.S. R. Agarkar, A.P.P. for the State-Respondent.

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CORAM : PRAKASH D. NAIK, J.
DATE : 17th SEPTEMBER, 2021

PC.

1. The applicants are apprehending arrest in connection with C.R. No.298 of 2021 registered with Khar Police Station for the offence punishable under Section 420 read with section 34 of Indian Penal Code.

2. The case of the prosecution is as under: -

(a) Complaint is lodged by Ravi Bansi Jaising on 29.04.2021. The complainant is in shipping business.

(b) In 2010 the friend of the complainant had introduced him to Raju Naik. Padmakar Das offered the complainant to invest money in Oil Barje. The complainant visited the place of business on account of offer. The name of Shipyard Company was Shri Tirupati Balaji Marine Enterprises Pvt. Ltd. Owner of the company was Padmakar Das, who was holding 49% shares.

(c) The complainant was shown the place where the Barje is manufactured. He refused to invest amount in the said business. Mr. Das than called the applicant No.1. who is the daughter of the applicant No.2, holding 51% shares in the said company and insisted that the complainant should meet her. They visited Kamat Restaurant situated at Ganesh Ghat Kalyan where Raju Naik, Naresh Roz, Mansi Khandelwal, Padmakar Das and Nikhil Natesan were present. They informed the complainant that if he is not interested in investing in Barje, he can invest 50 lakhs in shipyard and he would be given 34% shares of Tirupati Balaji Enterprises Pvt. Ltd and the balance 32% shares would continue to be in the name of Padmakar Das and the balance shares of 34% would remain with Padmakar Das and 34% would remain with Ragini Khandelwal (Applicant No.2). They also represented that complainant would get profit of 34% in shipping, repairing and manufacturing. The complainant agreed to invest the amount of Rs. 50 lakhs in aforesaid company.

(d) On 06.11.2018 MOU was signed. Raju Naik accepted responsibility. Hence cheque of Rs.25 lakhs was issued in the name of his company USR, which was honoured on 09.11.2018. Thereafter, it was directed that the cheque of the same amount be given to Tirupati Balaji Marine Enterprises Pvt. Ltd. when Raju Naik, Mansi Khandelwal, Padmakar Das, Nikhil Natesan were present. The complainant requested Mansi to transfer 34% shares in accordance with MOU. She agreed. Thereafter, the complainant repeatedly insisted that share be transferred to him. he also requested Mansi Khandelwal, Nikhil Natesan Padmakar Das, Ragini Khandelwal for the shares to be transferred to him.; however, as agreed 34% shares of the company were not transferred to him.

(e) On 03.12.2018, Raju Naik Mansi Khandelwal, Padmakar Das, Nikhil Natesan visited the office of the complainant to collect the balance amount of Rs. 25 lakhs. At that time the complainant gave the cheque of Rs.25 lakhs from his company Azura International in the name of STB Company. However, inspite of that the shares of STB Company were not transferred to complainant. Thereafter, the directors of the company Mansi Khandelwal and Nikhil Natesan demanded money for paying income tax and court fees and on several occasions, he parted the amount of

Rs.13,72,500/- by cheque. In spite of request made through E-mails, the shares were not transferred to him.

(f) In February 2019 Ragini Khandelwal, Mansi Khandelwal, Padmakar Das and Nikhil Natesan handed over share certificate and share transfer form in the office of the complainant. On perusing the share transfer form, the complainant was surprised that although while executing MOU 34% share were to be transferred to the complainant, Ragini, Mansi, and Padmakar Das did not take any steps to do so. The share transfer form contained first name of Raju Naik and second name of complainant.

(g) On 04.01.2020 both the applicants visited the office of complainant and told him that share would not be transferred to him and he can take whatever steps in that regard. The complainant lodged NC complaint. At that time, he learnt that cases are registered against the Mansi, Ragini, Padmakar Das Nikhil Natesan, Raju Naik with various Police Stations and they are habitual offender and deceived the complainant.

3. The applicants preferred application for anticipatory bail before the Court of Sessions. The said application was rejected by order dated 03.08.2021. While rejecting the said application,

it was observed that the investigation papers suggest role of applicants in the backdrop of their participation alongwith co-accused in misrepresenting the informant falsely and inducing him to part with amount under the pretext of investing in STB company under the grab of handful return from income of the Company. The applicant No.1, being daughter of applicant No.2, has made powerful presentation of luring the informant about future prospect of the Company and his income. The MOU dated 06.11.2018 demonstrates the mindset of the accused for making wrongful gain to them and wrongful loss to the informant. There is ample materials to connect them in the instant crime. There is nothing on record to assume that applicants are falsely roped in the case. Hence, they are not entitled for relief under Section 438 of Cr.P.C.

4. Learned counsel for the applicants submitted that the applicants are falsely implicated in this case. Transactions executed between parties is of commercial nature. There is no element of cheating. Notice was issued for specific performance. The dispute is of civil nature. Raju Naik is the nominee of the complainant. The shares were to be transferred to Raju Naik, which act has been performed. Raju Naik has received the money. While rejecting the application preferred by Raju Naik, it was observed that he is the main person. The complainant could not be party to the MOU executed on 06.11.2018. There is delay in registering the FIR. Custodial interrogation of the

applicants is not necessary. For lack of evidence to substantiate the allegations against the applicants, mere on account of antecedent, relief under Section 438 of Cr.P.C may not be refused to the applicants. Reliance is placed on the decision of this Court in Criminal Bail Application No.2519 of 2017 dated 25.04.2018, wherein it was observed that mere antecedents cannot be ground to reject an application for bail. The applicants cannot be held liable for inducing the complainant into investing money with the company. The presence of applicant No.2 is not shown in the alleged meeting held with the complainant inducing him to induce the amount. The MOU was executed between Padmakar Das, Ragini and Raju Naik which has nothing to do with complainant or his company. From Clause 5 of the MOU, it was made clear that the complainant had not paid the lease rentals to the Maharashtra Maritime Board for one year which was equivalent to Indian Rs.25 lakh in favour of Port Inspector of Kalyan. The FIR involved MOU dated 06.11.2018 for transfer of shares and to pay lease rental to the Maharashtra Maritime Board. The amount is paid to Maharashtra Maritime Board.

5. Learned APP submitted that the applicants are involved in the crime. The complainant has been deceived by them in connivance with the co-accused. Systematic fraud is played against the complainant. The investigation has revealed complicity of the applicants in the crime. The complainant has

been cheated. The investigation revealed element of cheating. False representations were made to the informant inducing him to invest huge amount. Applicants are having antecedents. The applicant No.2 is involved in C.R. No.231 of 2015 registered with Bazarpeth Police Station, Kalyan for offence under Sections 420, 406, 504, 406 r/w 34 of IPC. She has also involved in C.R. No.305 of 2020 registered with Khadakpada Police Station, Kalyan for the offence under Sections 420, 406 r/w 34 of the IPC, C.R. No.987 of 2020 registered with Andheri Police Station for the offence under Sections 420, 406 r/w 34 of the IPC, C.R. No.18 of 2020 registered with Khar Police Station for offence under Section 506 of the IPC, C.R. No.411 of 2020 registered with Khadapkada Police Station for the offence under Section 506 of the IPC. The applicant No.1 is involved in C.R. No.305 of 2020 registered with Khadakpada Police Station for offence under Section 420, 406 r/w 34 with Applicant No.2, C.R. No.03 of 2021 registered with Sahar Police Station, Mumbai for offence under Section 188, 269, 270 r/w 51 of IPC, C.R. No.987 of 2020 registered with Andheri Police Station with applicant No.2 for offence under sections 420, 406 r/w 34 of the IPC, C.R. No.170 of 2021 registered with Khadakpada Police Station, Kalyan under Section 420 r/w 34 of the IPC. C.R. No.18 of 2020 registered with Khar Police Station along with applicant No.2, C.R.No.411 of 2020 registered with Khapadpada Police Station along with applicant No.2 and two complaints are received by Khadakpada Police Station, which are under inquiry.

6. Learned advocate for the intervener/complainant submitted that both the applicants were involved in deceiving the complainant. 34% shares were to be transferred to the complainant were not transferred. All the accused had acted in collusion. The complainant has received threat from the underworld to forgive his money and stay away from the applicants. The contact number of the complainant is shared with goons for threating and pressurizing the complainant.

7. I have perused the documents annexed to this application and the investigation papers. Both the applicants are involved in the offence. They have played role and their complicity is apparent from the investigation. The submission of learned counsel for the applicants that dispute is of civil nature and transactions are commercial cannot be accepted. There is element of cheating right from inception. Systematically, the complainant has been deceived by inducing him to invest the huge amount. The amount of Rs.63,72,500/- was transferred from the account of complainant's family investment company to the account of the applicants and the co-accused. It is the case of prosecution that the amount of Rs.25 lakhs was transferred in the account of United Ship Repairs which belongs to accused No.5 and the amount of Rs.25 lakhs with additional amount of Rs.13,72,500/- was transferred to the account of the applicants. The accused No.1 (applicant No.1) had represented

herself on behalf of the Tirupati Balaji Maritime Enterprises Pvt. Ltd. as Director of the company. In the share transfer form, the name of the accused No.5 Raju Naik is shown as first transferee i.e. USR and the complainant wife as second transferee through USR company. It is case of the prosecution that the complainant was to get to 34% shares in his name. The accused had tried to contend that the complainant is not party to MOU. The conduct of the accused reflected that they have engineered to deceive the complainant. The applicant No.1 is director of STB Company. Applicant No.2 is shareholder. Role has been assigned to both applicants. The amount of Rs.50 lakhs were transferred in the Tirupati Balaji Maritime Enterprises Pvt. Ltd. out of Rs.13,72,500/- was transferred in the personal account of the accused. The prosecution has pointed out that the applicants are involved in several other cases. Investigation revealed that the amount of Rs.13,72,500/- were transferred by complainant into the account of company. Rs.25 lakhs were transferred through Raju Naik into the bank account of the accused. The prosecution has alleged that the applicants have not cooperated with the investigation. Statement recorded during the course of investigation shows the complicity of the applicants in the offence. Custodial interrogation of the applicants is necessary. They are not entitled for relief under Section 438 of Cr.P.C.

8. Hence, I pass the following order:-

ORDER

(a) Anticipatory Bail Application No.1910 of 2021 is rejected and disposed of.

(b) Interim Application No.2198 of 2021 stands disposed of.

(PRAKASH D. NAIK, J.)

(i) At this stage, learned counsel for the applicants submits that the interim protection granted by this Court may be continued for a period of two weeks to enable the applicants to move the Apex Court for seeking relief.

(ii) The submission is strongly opposed by learned APP and learned counsel for the complainant. This Court vide order dated 13.08.2021 had directed that no coercive action initiated against the applicants till the next date.

(iii) Interim protection is continued for a period of two weeks from the date of uploading this order.

(PRAKASH D. NAIK, J.)