IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1849 OF 2019
WITH
INTERIM APPLICATION NO.332 OF 2019

1. Geeta Pradumna Nirmal
2. Shrihari Bapurao Nirmal
3. Guruling Dnyanoba Andil
4. Jayram Guruling Andil .. Applicants

Vs.

The State Of Maharashtra .. Respondent

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Mr.Niranjan Mundargi i/by Mr. Zaid Qureshi & Mr. Keral Mehta, Advocate for Applicant.
Mr. Rajiv Chavan, Senior Advocate a/w Ms. Priyanka Chavan, with Ms. Angelina Patil, advocate for Intervenor.
Mr. R.M.Pethe, APP for the Respondent-State.
Mr.Jadhav (P.S.I.) E.O.W. Pimpari Chinchwad, Present.

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CORAM : PRAKASH D. NAIK, J.
DATE : 7th SEPTEMBER, 2021

PC.

1. This is an application for anticipatory bail in C.R. No.658 of 2019 registered with Wakad Police Station for the offences punishable under Sections 420, 406, 467, 468, 471, 403 read with section 34 of the Indian Penal Code (for short "IPC").

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

(i) In May 2016, the accused No.1 was introduced to the complainant by Ashok Dak. The complainant was informed that accused No.1 is working with Wipro Company. The accused No.1 told the complainant that he is interested in carrying business. He was working with Wipro Company and has good contacts. He intends to start a business of supplying furniture to Wipro company and by obtaining vendorship from company. He needs three to four persons like complainant. They can conduct business together. The complainant then appraised aforesaid discussion to his friend Raghunath Chitre and Nitinkumar Taur. He requested them to join him at Wakad.

(ii) Joint meeting was held with accused No.1, Raghunath Chitre, Nitinkumar Taur and Ashok Dak.

(iii) It was decided to start business. Since the accused No.1 was employed with company, it was decided to induct his father Shrihari Bapurao Nirmal as partner and the actual work relating to business was to be conducted by the accused No.1. It was also agreed that on obtaining vendorship from Wipro Company, the furniture to be supplied to the said Company and the profits were to be shared by all of them.

(iv) On 25.05.2016 all of them incorporated partnership firm Shrihari Business LLP having address as Jio Squre, 201, B Wing, Karpate Chowk, Hinjewadi-Wakad Road, road Pune. Vendorship was obtained and bank account in the name of the firm was opened with IDBI Bank Hinjewadi Branch.

(v) Raghunath Chitre, Nitinkumar Taur and Shrihari Nirmal started depositing money in the IDBI Bank from 06.08.2016. The complainant and his two friends invested amount of Rs.4,50,00,000/-. For executing transactions and handling bank accounts, using the amount for business, dealing with cheques, correspondence, purchase and sale, executed transactions with other concerned, father of the accused No.1 was appointed as CEO. Letter in that regard was issued to him.

(vi) Initially the transactions were cordial. The accused No.1 performed the work in the interest of partners and after gaining confidence of complainant and others, he diverted the amount of Rs.4,50,00,000/- invested by complainant and others and the amount of Rs.1,30,00,000/- invested by father of accused No.1 to different bank accounts. The complainant and others were shown fake bills of Patanjali and other companies. The accused No.1 also altered the bank statements showing inflated figure with false stamp of bank to misrepresent the complainant and others to make them believe that they are genuine documents. The accused No.1 kept on misleading them.

(vii) The complainant and others came to know about this fraudulent transaction in April 2018. They obtained the bank statements of IDBI Bank of Hinjewadi branch and noticed that there were irregularities and that they were cheated by the accused No.1. The amount invested by the complainant and others was diverted to different accounts. Inquiry was made with Sanjay Javale, who is working as accountant. He informed that the accused No.1 had pressurized him to make false entries in the business account. The employee Pramila Nehra and Priyanka Jadhav informed them that under the pressure of the accused No.1 she has made false entries. Discussion was also held with Chartered Accountant of the firm Atul Hatarange. He was shown the false account statements. They were informed that he had prepared balance sheet. Subsequently, it was found that there were differences in the balance sheet prepared by the Chartered Accountant inducted by accused No.1 and Chartered Accountant engaged by complainant and others.

(viii) It was also revealed that the accused No.1 has been terminated from the employment of the Wipro Company in 2015. On inquiry about the amount of 4,50,00,000/- invested by the complainant and others, it was revealed that by using the said amount the accused No.1 had purchased the property in the name of his father-in-law and wife at Wai. He also executed property transaction with Dinesh Dhumal.

(xi) The complainant and others demanded money from the accused No.1. He executed the writing on stamp papers on 06.12.2018 and admitted that Rs.4,50,00,000/- were spent by him and he would return the said amount within three months.

(x) The accused No.1 stated that the farm had been purchased by him at Wai could not be registered and the transactions has stopped. On completion of said transaction the said property could be mortgaged with the bank and amount of Rs.2 crore could be obtained as loan. The accused No.1 kept on insisting that the amount of Rs.8 lakhs be provided by complainant and other for the purpose of registration of documents. Believing his representations amount of Rs.8 lakhs transferred into the account of the accused No.1 on 26.11.2018. The firm had earned profit of Rs.57 lakhs. They were cheated for amount of Rs.5,07,00,000/-.

3. The accused No.1 had preferred application for anticipatory bail before the Sessions Court which was rejected by order dated 17.12.2019.

4. Learned counsel for the accused No.1 submitted that the accused No.1 is businessman by profession. He has served in Wipro Company. The FIR has been lodged to pressurise the accused to settle demand of the complainant and others. Accused are not involved in siphoning the amount. The writing was executed by accused no.1 under the coercion. The complainant and Raghunath Chitre had received the returns. On 30.05.2016, Shrihari Business LLP was registered, Raghunath Chitre, complainant, Nitingkumar Taur, Ashok Dak and Shrihari Nirmal were partners. Day to day business were

looked into by complainant and others. The amount was transferred into the account of the complainant and his associates. In view of settlement, the accused No.1 has transferred the amount from Vedant Enterprises and Hari Associates to LLP. The accused No.1 had transferred amount to the personal account of Raghunath Chitre, Nitinkumar Taur and complainant from the joint account. Rs.3,30,94,515/- was transferred to the account of partnership firm and complainant. The accused are not signatory to any documents of money transactions nor a beneficiary of the same. The dispute is of civil nature. The entire evidence is documentary in nature. Applicant No.1 is housewife. She is married to accused No.1. Applicant No.2 is 67 years old person. He is the father of accused No.1. Applicant No.3 is aged 67 years. He is father-in-law of accused No.1. Applicant No.4 is brother-in-law of accused No.1. No overt act is attributed to them. Their custodial interrogation is not necessary.

5. Learned APP submitted that the accused No.1 has played vital role in fraudulent transactions. He was instrumental in making false representations to the complainant and others. The amount is misappropriated by the accused. Statements of other witnesses also contained incriminating evidence against the accused. Learned APP relied upon the bank statements and other documents which according to him were manipulated by the accused No.1. The bank statements were fabricated.

Promissory note was executed by the accused No.1. Statements of bank employees were recorded which disclosed the complicity of the accused. Amount was diverted by accused No.1 into account of co-accused. The applicants are family members of accused No.1.

6. Learned senior advocate Mr. Rajiv Chavan appearing for the intervener/complainant submitted that the complainant and others were deceived by the accused. Huge investment was made by the aggrieved person. Initially for 8 to 10 months, the accused No.1 was looking after the business transactions efficiently and gained the confidence and trust of the complainant and others. The accused No.1 diverted the investment of 4,50,00,000/- of the informant and his friends into the account of Vedant Enterprises and other accounts of applicants. Properties were purchased in name of family members. Forgery was committed in connivance. All the applicants were involved in transferring funds of firm. Applicant was involved in affairs of firm. He was appointed ECO. He was acting at instance of accused No.1. The accused No.1 showed forge bills/invoices of Patanjali and other companies and also by showing forged bank statements of IDBI created the bank statements of overvalued amount and used for forged seal of IDBI Bank and misguided complainant and others. The complainant and others subsequently noticed the discrepancies in the original bank statements of IDBI bank and new bank

account of Shrihari Business LLP in Kotak Mahindra Bank. The investments of the complainant and others were siphoned off. Accused No.1 pressurized the Accountant of the company and forced him to make forged entries. Documents were created. After discussion with Chartered Accountant and compelling the original account statement of IDBI Bank and forged bank statement of IDBI Bank prepared by the accused No.1. The Chartered Accountant informed that the accused No.1 had given him forged account statement of IDBI Bank and false bill/invoices. Chartered Accountant prepared original balance sheet and the report from the original account statement of IDBI Bank and on compelling both balance-sheets, it was found that there were huge differences. The accused No.1 informed that he is purchased the land by using amount of Rs.1.5 crore. On 14.12.2018, Nitinkumar Taur transferred Rs. 8 lakhs into the account of accused No.1's wife and his father-in-law. Since the accused No.1 represented that he has purchased the property. General promissory note was executed by Shrihari Nirmal appointing the accused No.1 to be is wrongful attorney. MOU was executed on 06.12.2018. Learned counsel pointed out promissory note, MOU and bank statements, the accused No.1 had operated the transactions of Vedant Enterprises, it was the business concerned on his family. Reliance is also placed on the Special Audit Report, it is submitted that the application be rejected.

7. I have perused the documents annexed to the application of anticipatory bail application, intervention application and the investigation papers, the accused No.1 has played vital role alleged fraudulent transactions. Huge investment was made by the complainant and his friend. The entire amount of Rs.4,50,00,000/- was diverted and siphoned off by the accused No.1. The case of the prosecution is that the accused No.1 has fabricated bank statements. The statement of employees of Shrihari Business LLP were recorded. They have stated that the accused No.1 has forced them to execute false entries. The accused No.1 has executed promissory note and admitted that the amount was diverted to the account of other companies. I have perused the chart of money transferred by the informant and his friends in Shrihari Business LLP. Letter of payment of accused No.1 CEO of Shrihari Business LLP, copy of promissory note, fabricated bills/invoices of Patanjali, forged bank statements of IDBI Bank and Audit reports promissory notes, MOU, bank statements showing transfer of Rs. 8 lakhs into the account of the accused No.1, Applicant No.1 and applicant No.2. Thus, there is strong evidence show involvement of the accused No.1. The role attributed to applicants is that they are family members of accused No.1. Amount was transferred by accused No.1 Considering the overt act attributed to applicants, they need not be subjected to custodial interrogation.

ORDER

(i) Anticipatory Bail Application No.1849 of 2019 is allowed;

(ii) In the event of arrest of the applicants in connection with in C.R. No.658 of 2019 registered with Wakad Police Station, Pimpri Chinchwad, the applicants be released on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

(iii) The applicants shall attend the investigating officer as and when called for till filing of charge-sheet;

(iv) Anticipatory Bail Application as well as Interim Application are disposed of accordingly.

(PRAKASH D. NAIK, J.)