

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2856 OF 2021

1) ANGELES SIMON ANTHONY)
2) VAISHALI ANGELES ANTHONY)...APPLICANTS

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Satyavrat Joshi i/b. Mr.Ashraf Ali Shaikh, Advocate for the Applicant.

Smt.M.M.Deshmukh, APP for the Respondent – State.

Mr.Aniket Vagal a/w. Mr.Apar Raje i/b. Ms.Swapna Raut, Advocate for the Intervenor.

CORAM : V. G. BISHT, J.

DATE : 7th DECEMBER 2021

P.C. :

1 The present application has been moved by the applicant under Section 438 of the Code of Criminal Procedure apprehending arrest under Section 406, 409, 420, 504, 506(2)

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read with 34 of the Indian Penal Code (IPC) registered vide Crime No.342 of 2021 with Police Station Wanwadi.

2 It is the case of the prosecution that the informant was acquainted with the applicant no.1 as a family friend. She was told by him that he and his wife i.e. applicant no.2 run a firm by name Ashirwad Finance with a partner by name Ajay Shinde. The applicants also told that if she invests in the said firm, she would get 1.60% per month by way of interest and therefore on the say of the applicants, she in all invested Rs.12,50,000/-. However, when she asked from time to time about the agreement in respect of the investment done by her, the applicants avoided on one or the other pretext. They only gave Rs.8,000/- as a return in token of the investment so made by her and thereafter they stopped. Even she invested Rs.4 lacs with the partner of the applicants, namely, Ajay Shinde. However, the said partner returned only Rs.1,98,500/-.

3 The prosecution alleges that on 6th October 2019 applicant no.1 visited her house and insisted her to immediately invest otherwise he would not return the earlier amount. Because of the said fear, she gave four gold bangles weighing 280 gms. Later on she came to know from the sister of the applicant no.1 that the applicant no.1 had mortgaged those bangles with Dinesh Jewellers, Jagtap Chowk, Wanvadi, in lieu of Rs.5,50,000/-. Later on, whenever the informant asked the applicants about her monies, she was abused and threatened with death. She accordingly lodged the report.

4 Mr.Satyavrat Joshi, learned counsel for the applicant, submits that the applicant no.1 had filed a complaint on 28th August 2020 with Police Commissioner, Pune against the applicants in respect of the threats given by the latter and as a counterblast the FIR in question has been filed. According to the learned counsel there is nothing on record to show that the applicants have cheated the informant. Moreover, all the documents pertaining to the alleged offence are seized by the

police and therefore there is no necessity of custodial interrogation. In such circumstances, the application deserves to be allowed.

5 Smt.M.M.Deshmukh, learned APP, with the aid of learned counsel for the intervenor, opposed the submissions by contending that the various amounts as claimed in the FIR were transferred from time to time through RTGS to the account of the applicants. Even the cheques given by the applicants were bounced leading to the initiation of criminal proceedings under Section 138 of the Negotiable Instruments Act. Having regard to the nature of offence, interrogation of the applicants is necessary. There being no merit in the application, the same is liable to be rejected.

6 The informant has filed documents on record. Perused the documents at Exhs. B, C and D. It is seen that the amounts as claimed in the FIR were transferred through RTGS/NEFT by the informant in the account of applicants. Thus,

prima facie, there is documentary evidence to that effect which supports the informant's case.

7 There is also a copy of the complaint under Section 138 of the Negotiable Instruments Act filed against the applicant no.2 by the informant in respect of dishonour of the cheque.

8 From the above, prima facie, there is merit in the contention of the learned APP that the applicants committed offence of cheating. Having regard to the nature of accusation, in my considered opinion, the custodial interrogation of applicants is necessary.

9 In view of above, I do not find merit in the application. Hence, I pass the following order :

ORDER

The application is rejected.

(V. G. BISHT, J.)