IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1545 OF 2021

GAYATHRI W/O PRADEEPRAJ
VERSUS
STATE OF MAHARASHTRA
…
Mr. S. S. Deshpande, Advocate for applicant.
Mr. A. M. Phule for the respondent – State.
...
WITH
CRIMINAL APPLICATION NO.7 OF 2022

ASHOK HANMANTRAO TODKAR
VERSUS
THE STATE OF MAHARASHTRA AND ANR
…
Mr. P. P. More, Advocate for the applicant.
Mr. A. M. Phule for the respondent No.1 – State.
Mr. S. S. Deshpande, Advocate for respondent No.2.
...

CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 19.01.2022
Pronounced on : 01.02.2022

ORDER :-

. Criminal Application No.7 of 2022 filed by the original informant seeking permission to assist learned APP stands allowed and disposed of.

2. The applicant is apprehending her arrest in connection with Crime No.227 of 2021 registered with Murud Police Station, Dist. Latur for the offences punishable under Sections 420, 467, 406, 120-B read with 34 of Indian Penal Code.

3. Heard learned Advocate Mr. S. S. Deshpande for the applicant and learned APP Mr. A. M. Phule for the respondent – State assisted by learned Advocate Mr. P. P. More for the original informant.

4. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. Her husband is accused No.1, who came to be arrested on 07.09.2020. In fact, the present applicant had tendered her resignation from the Directorship of Company by name Kurinjee Pro Natural Pvt. Ltd., Chennai (for short "Kurinjee Company) on 18.03.2020. The said resignation was accepted by the Board of Directors on 10.04.2020. The contract, which the informant is alleging, had taken place between Vilas Sahakari Sakhar Karkhana Ltd. (for short "Karkhana") and Kurinjee Company on 30.06.2020, which is after acceptance of resignation of the applicant and, in fact, on the website of the ministry of corporate affairs, name of the applicant has been deleted from the Board of Directors and in her place, name of one Ediga Manikanta has been replaced as Director from 21.03.2020. Copy of the web page has been made available. Further, date of approval of name of said Mr. Ediga Manikanta by the Government of India is from 21.03.2020 and document to that effect is also produced on record. No role has been played by the present applicant in the impugned contract which appears to be purely civil in nature. Further, there is huge delay

in lodging the FIR. Another fact to be noted is that the said Karkhana had taken cheque worth Rs.8,73,87,002/- from Kurinjee Company as a security deposit. The Karkhana had already deposited that cheque for encashment, but since it was dishonoured, Karkhana had filed complaint under Section 138 of the Negotiable Instruments Act bearing SCC No.1179 of 2021 and it is still pending. When complaint under Section 138 of the Negotiable Instruments Act has been filed on 15.06.2021, the present crime has been registered on 26.08.2021. It shows the delay on the part of the Karkhana and it is one way to pressurize the accused persons to make the payments. In fact, the said company has already paid lakhs of rupees to the Karkhana prior to picking up of the sugar from the Karkhana. Under such circumstance, when the applicant was not at all party to the contract, it cannot be stated that she had ever cheated the Karkhana or misappropriated any amount. The applicant is ready to abide by the terms of the bail and cooperate with the investigation.

5. Per contra, the learned APP well assisted by learned Advocate Mr. P. P. More representing the original informant strongly objected the application and submitted that the Karkhana had entered into contract with Kurinjee Company, which is a company from Chennai. The FIR clearly states as to which benefits the Government of India was offering

to the sugar factories, if the sugar would be exported. It was not possible for the Karkhana to export it personally and, therefore, tender was issued. Four companies, who were dealing in the export of sugar responded. Kurinjee Company was giving highest rate and, therefore, contract was entered into on 30.06.2020. It was mentioned in the contract itself that they should export the sugar and place all those documents with the Karkhana. Thereafter, the Karkhana would have placed those documents with the Central Government and would have got the cash benefits. Taking into consideration the contents of the contract, a cheque was taken from Kurinjee Company as security. However, though the entire consignment was lifted by Kurinjee Company, documents about its export were not submitted within 90 days and, therefore, Karkhana could not get the benefits. Thereafter, Karkhana had deposited the cheque for encashment, but that was dishonoured. This amounts to cheating and it appears that it is calculated cheating, because instead of exporting the sugar, said company had sold it in open market and thereby loss has been caused to the Karkhana.

6. It has been further submitted that now the investigation is over and as against the present applicant charge-sheet has been filed under Section 299 of the Code of Criminal Procedure. Therefore, on this count

also, the applicant does not deserve to be released on anticipatory bail as she is absconding. Further, as regards the resignation from the company is concerned, documents would show that it has been accepted by her husband – accused No.1. It would then be a family affair. The evidence that has been collected would show that the present applicant has received huge amount from Kurinjee and, therefore, her custodial interrogation is necessary. It was also pointed out that this Court on 10.12.2021 had rejected Anticipatory Bail Application No.1403 of 2021 filed by co-accused Pandu Morimisetty s/o Venkata Ramappa Morimsetty holding that investigation discloses complicity of the said applicant with the transaction and the dispute cannot be termed as civil dispute.

7. At the outset, it can be seen that in Anticipatory Bail Application No.1403 of 2021 (Supra), it was pointed out by this Court that it was revealed during the course of the investigation that the State Bank of India had issued letter dated 19.04.2021 stating that the bank account of Kurinjee Company was operated by said applicant i.e. Pandu Morimisetty. So also, co-accused has disclosed that the bank account of the Company was operated by the applicant. Agreement was executed and the economic affairs were looked after by the applicant. That applicant was looking after the affairs of the company in the capacity as Chairman and, therefore, this Court had observed that there is evidence

to state that the applicant had complicity with the transaction in question. Now, it is required to be seen as to whether it is the same case with this applicant also. Merely because she is the wife of accused No.1, it cannot be stated that she has taken part with the transaction. Copy of the charge-sheet is produced on record which does not contain a single document to show that investigating officer had made efforts to arrest her since 26.08.2021 to 01.12.2021. When the husband of the applicant came to be arrested from the same flat, why they could not find his wife in the same flat is a question. The copy of the charge-sheet which has been produced on behalf of the applicant appears to be in complete, but then learned APP has not pointed out that at the time of arrest of accused No.1, since his wife was not present, information about the arrest of accused No.1 was given to somebody else. Therefore, it cannot be said that the present applicant is absconding. There is no documentary evidence on record to show that the investigating officer had taken up the proceedings as required under Section 82(2) of the Code of Criminal Procedure. Section 299 of the Code of Criminal Procedure is only enabling provision for the Court to take evidence in absence of an absconding accused. But, unless that person is declared as proclaimed absconder, further things cannot be taken up.

8. There is evidence on record to show that the applicant had

tendered her resignation on 18.03.2020. It is stated to be accepted by the Board of Directors. The letter appears to have been signed by the husband of the applicant i.e. accused No.1, but it is in the capacity as Director. There also appears to be substance in the say of the applicant that in her place accused – Ediga Manikanta has been appointed and his appointment has received approval from the Government of Indian on 21.03.2020. We are only required to take into consideration the *prima facie* evidence in this respect. Therefore, when she had resigned and her resignation has been accepted with effect from 10.04.2020, she was not working as Director when the contract was signed between the Karkhana and Kurinjee Company on 30.06.2020.

9. Now, it is stated that the applicant has received huge amount from Kurinjee Company. Mere statement of account will not be sufficient in this respect. The prosecution will have to show the connection that the amount in this contract, which was supposed to be paid by Kurinjee Company to the Karkhana has connection with the bank account of the applicant. That connection is missing at this stage.

10. Another fact to be noted is that in the FIR itself it is stated that in order to avoid financial loss of the Karkhana, if there would be delay in submitting the documents and receipt of the benefits from the Government, in the contract itself, it was mentioned that Kurnijee

Company should give cheque of Rs.8,73,87,072/- towards 8364 metric tone Sugar. Accordingly, such cheque was given, but that was dishonoured. The Karkhana has already lodged offence under Section 138 of the Negotiable Instruments Act. Whether then both the Sections i.e. Section 138 of the Negotiable Instruments Act and Section 420 of Indian Penal Code would go together is a question. Therefore, in view of the fact that the role attributed to the present applicant and the documents on record would show that the physical custody of the applicant is not necessary, she deserves to be released on bail, however, conditions are required to be imposed. At this stage itself, it is made clear that filing of other offences against the present applicant with some other police stations on the similar background i.e. contract with Kurinjee Company will not come in a way in the exercise of extraordinary powers of this Court to grant relief to the present applicant. Each FIR/offence and the role attributed will have to be taken into consideration separately. With these observations, following order is passed :-

ORDER

I) Anticipatory Bail Application stands allowed.

II) In the event of arrest of the applicant – Gayathri w/o Pradeepraj in connection with Crime No.227 of 2021 registered with Murud Police Station, Dist. Latur for the offences punishable under Sections 420, 467, 406, 120-B read with Section 34 of Indian Penal Code, he be released on P. R. Bond of Rs.1,00,000/- with two sureties of Rs.50,000/- each.

III) The applicant shall attend the concerned police station initially on 04.02.2022 and every 15 days thereafter between 10.00 a.m. to 2.00 p.m., till filing of the charge-sheet.

IV) The applicant shall not indulge in any criminal activity.

V) The applicant shall cooperate with the investigation.

VI) The applicant to produce all the documents, whichever are called by the Investigating officer.

[SMT. VIBHA KANKANWADI, J.]

scm