IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.9 OF 2022

Komal W/o Vishwajeet Kasar **...APPLICANT**

VERSUS

The State of Maharashtra **...RESPONDENT**

...
Mr.Rahul R. Karpe Advocate for Applicant.
Mr.V.M. Kagne, A.P.P. for Respondent-State.
...

CORAM: SMT. VIBHA KANKANWADI, J.

DATE OF RESERVING ORDER : 25th FEBRUARY 2022

DATE OF PRONOUNCING ORDER : 4th APRIL 2022

ORDER :

1. Applicant is apprehending her arrest in connection with Crime No.69 of 2021 registered with Supa Police Station, Taluka-Parner, District-Ahmednagar for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code.

2. Heard learned Advocate Mr. Karpe for the applicant and learned APP Mr. Kagne for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that she has been falsely implicated along with her husband. She had never demanded money from the informant and there was no question of cheating of the informant by her. She never met the informant nor made any kind of representation. The basic essential ingredients of dishonest intention under Section 415 of the Indian Penal Code is not attracted. In fact her husband is now arrested and she has two children to take care of. If she is arrested then there is nobody to look-after those children. There is delay in lodging the First Information Report (for short "FIR"). The applicant has also produced her statement of account from Kotak Mahindra Bank. As per the FIR, the informant had sent amount of Rs.3,00,000/- by RTGS through Parner Teachers Bank, but there is no such entry in her account. Therefore, when the applicant cannot be connected to the transaction alleged in the FIR, she deserves to be protected.

4. Per contra, the learned APP has strongly opposed the application and submitted that the FIR is clear enough in saying

that how the transactions had taken place. Husband of the applicant is a notorious person. He has one offence registered against him in Shrigonda Police Station and also in Nagar Taluka Police Station, Kotwali Police Station, Supa Police Station. In all 18 offences have been registered against the husband of the applicant including offence under Section 302 of the Indian Penal Code. Even amount of Rs.2,50,000/- has been credited by the informant in the account of one Rupchand Laxman Kasar, who is the relative of the applicant. Applicant, her husband and co-accused have time and again taken amounts from various persons under some or the other pretext, especially by saying that they should invest in the business and they would receive good return. Applicant has been cheated for an amount of Rs.24,50,000/- which was his hard earned amount and since this is economic offence, no leniency be shown.

5. At the outset it is to be noted that merely because the husband is involved in many offences, we cannot infer that even the wife is involved or is acting with common intention. We are definitely required to consider the allegations. FIR has been lodged by one Suryakant Yashwant Bankar. He retired from Panchayat Samitee, Parner in 2011. The applicant and her husband were residing on rent basis in his premises in January

2018. It was disclosed to the informant that the husband of the applicant is a road contractor. By gaining confidence and faith, he attracted informant and his wife in investing their amount. They were given an impression that informant and husband of the applicant would take contract of runway to Rajasthan Airport and it will give them huge amount. Informant says that initially amount of Rs.5,00,000/- was given by him in cash and thereafter he credited an amount of Rs.3,00,000/- in the account kept in the maiden name of the applicant as, Komal Balasaheb Lokhande, by RTGS. Thereafter amounts of Rs.8,50,000/- and Rs.5,00,000/- were given to the accused persons by cash and lastly amount of Rs.2,50,000/- was given by RTGS to Rupchand Laxman Kasar. It is also stated that some writing has been taken from the informant, however, no such document appears to be collected. No doubt, it appears that on Whats-app some photographs have been shared but whether to believe those photographs, is a question. It is to be noted that after the applicant had produced copy of her statement of account with Kotak Mahindra Bank, learned APP had sought time to confirm the details of said account. It has been reported by the Investigating Officer that amount of Rs.3,00,000/- was to be given in the name of Komal Kasar in Nagebaba Patsanstha by

RTGS and accordingly the complainant had made RTGS but it could not be collected by the Investigating Officer as to whether that amount was received by Nagebaba Patsanstha or not. It is also the statement in the communication to learned APP by the Investigating Officer that the said amount has been again credited to the bank account of the informant on 15th July 2018. That means, the said amount of Rs.3,00,000/- was never received by the applicant. It is not known, which documents the informant has seen before giving amount to the applicant's husband or any other person whose name he had taken and as to whether there is any contract between the husband of the applicant and the Airport Authorities. When the informant has retired from Panchayat Samitee, Parner, he would have had the idea as to how these contracts generated and what is the procedure that is adopted. There would definitely be a tender and only after acceptance of the same, the contract could be in favour of the person who takes the contract. If the informant was negligent in not considering all these documents and just going on accepting whatever has been represented to him to be true without cross checking it, then whether that amounts to offence punishable under Section 420 of the Indian Penal Code, is a question. There would be every sympathy to such person whose hard earned amount is taken away by such persons who are there to cheat, but we cannot forget the fact that people are also required to be on guard before entering into any kind of transaction with anybody. There appears to be no direct transaction between the applicant and the informant. There is no such document collected up till now to show that she had received the amount though her husband might have received and therefore, the applicant deserves to be protected. Hence, following order is passed:-

O R D E R

i) Application stands allowed.

ii) In the event of arrest of the applicant – Komal W/o Vishwajeet Kasar in connection with Crime No.69 of 2021 registered with Supa Police Station, Taluka-Parner, District-Ahmednagar for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, she be released on bail on PR Bond of Rs.50,000/- (Rupees Fifty Thousand) with two solvent sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each.

iii) Applicant shall remain present before the Investigating Officer as and when called, for which Investigating Officer to give notice to applicant 48 hours in advance.

iv) Applicant shall not tamper with the evidence of the prosecution in any manner.

v) Applicant shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI , J.]

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