IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1402 OF 2021

Smt. Mahalaxmi w/o M. Suresh … Applicant
Versus
The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO.2988 OF 2021
IN ABA/1402/2021

Bhaurao SSK Limited
(Through its Managing Director)
Shamsundar Rukhmanand Patil … Applicant
Versus
Smt. Mahalaxmi w/o M. Suresh and another … Respondents

WITH
ANTICIPATORY BAIL APPLICATION NO.1404 OF 2021

Smt. Sabitha Lingamsetty w/o Pandu Lingamsetty … Applicant
Versus
The State of Maharashtra … Respondent

WITH
CRIMINAL APPLICATION NO.2989 OF 2021
IN ABA/1404/2021

Bhaurao SSK Limited
(Through its Managing Director)
Shamsundar Rukhmanand Patil … Applicant
Versus
Smt. Sabitha Lingamsetty and another … Respondents

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Mr. V. D. Sapkal, Senior Counsel i/b Mr. S. S. Rathi, Advocate for applicants in ABA Nos.1402/2021 and 1404/2021.
Mr. D. R. Kale, PP for the respondents – State.
Mr. V. R. Dhorde, Advocate for applicant in APPLN Nos.2988/2021 and 2989/2021.

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CORAM : SMT. VIBHA KANKANWADI, J.

Reserved on : 13.01.2022
Pronounced on : 05.04.2022

ORDER :-

. Criminal Application Nos.2988 of 2021 and 2989 of 2021 filed by the original informant seeking permission to assist learned Public Prosecutor stands allowed and disposed of.

2. The applicants are apprehending their arrest in connection with Crime No.86 of 2021 registered with Barad Police Station, Dist. Nanded for the offences punishable under Sections 406, 420, 467 read with Section 34 of Indian Penal Code.

3. Heard learned Senior Counsel Mr. V. D. Sapkal instructed by learned Advocate Mr. S. S. Rathi for the applicants and learned PP Mr. D. R. Kale for the respondent – State well assisted by learned Advocate Mr. V. R. Dhorde for the original informant.

4. It has been vehemently submitted on behalf of both the applicants that the applicants have been falsely implicated. Both of them are no way concerned with the affairs of Kurinjee Pro Natural Foods Private Limited (for short "Kurinjee Company"). The applicants or their close relatives were never office bearers of the said company at any point of

time. Perusal of the FIR would show that there are no allegations against the applicants which could warrant their custodial interrogation. Name of the applicants is not appearing in the FIR. It appears from the FIR that there was certain dispute between Bhaurao Chavhan Sahakari Sakhar Karkhana (for short "Karkhana") and Kurinjee Company. At the most, that dispute which appears to be in respect of financial transaction, the said Karkhana could have filed suit for recovery of the due amount. Another fact that is also required to be considered is that in the FIR itself, it has been stated that Kurinjee Company had issued cheque in favour of the Karkhana, may be as a security, but when that cheque was deposited for encashment by Karkhana, it was bounced and the Karkhana had taken up proceedings under Section 138 of the Negotiable Instruments Act. S.C.C. No.1120 of 2021 and 1121 of 2021 are pending before learned Judicial Magistrate First Class, Nanded. Even there was an arbitration clause in the agreement that was entered into between Karkhana and the Kurinjee company. Merely because some financial transactions are there between Karkhana and the applicants that does not mean that the Karkhana has been cheated by present applicants. The applicants have produced on record their statement of account to show that how much amount they have received from Kurinjee Company. It is their own independent transaction with

Kurinjee Company and it is going on since prior to the transaction between Karkhana and Kurinjee Company. When custodial interrogation is absolutely not necessary, the applicants deserve to be protected. They would cooperate with the investigation. The applicants are ready to abide by the terms of the bail.

5. Per contra, the learned APP well assisted by learned Advocate Mr. V. R. Dhorde representing the original informant strongly objected the application and submitted that the Karkhana had entered into the 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 11.09.2020. 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. It has been further submitted that now the investigation is over and as against the present applicants charge-sheet has been filed under Section 299 of the Code of Criminal Procedure. Therefore, on this count also, the applicants do not deserve to be released on anticipatory bail as they are absconding. Further, as regards the resignation from the company is concerned, documents would show that it has been accepted by accused No.1. It would then be a family affair.

6. The evidence that has been collected would show that the present applicants have received huge amount from Kurinjee Company and, therefore, their 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 appears from the order passed by this Court in Anticipatory Bail Application No.1403 of 2021 that during the course of investigation, the State Bank of India had issued letter dated 19.04.2021 stating that bank account of Kurinjee Company was operated by the applicant in that application, namely, Pandu Morimisetty. It appears that said Pandu Morimisetty is the husband of applicant in Anticipatory Bail Application No.1404 of 2021, namely, Smt. Sabitha Lingamsetty. It appears that said applicant – Sabitha has two-three accounts. The details have been supplied by learned APP and those details are part of the police papers. In Sabitha's City Bank, Banglore, account there is transaction to the tune of Rs.40,00,000/- from the account of Kurinjee Company between 02.07.2020 to 30.03.2021. Thereafter, from Kurinjee Company's Smart Life SBI, Anantpur account, transaction of Rs.2,00,000/- has taken place in the account of applicant – Sabitha. Thereafter, from another account of Kurinjee Company, there is transaction to the tune of Rs.1,33,70,924/- with one Prestige Estate Project Private Limited having account with the J & K Bank. It is then stated that in the said Company applicant – Sabitha has concern. Further, as regards Mahalaxmi is concerned, she is also having various accounts and from Kurinjee Company to Mahalaxmi's account, Andhra Pragathi Gramin Bank, Kothacheruvu branch, there is transaction of

Rs.15,00,000/- on 12.10.2020 and thereafter also she has transaction of Rs.3,02,00,200/- in the same account. From another account of Kurinjee Company, there is transaction of Rs.10,00,000/-. One G. N. Commercial, Bangalore has transaction with applicant - Mahalaxmi. This G. N. Commercial, Bangalore is the company, which had purchased the sugar which was from the informant Karkhana. That transaction is to the tune of Rs.14,07,000/-. Then from Smart Life, SBI, Anantpur, there is transaction of Rs.1,73,00,000/- in the account of applicant – Mahalaxmi. Only on the basis of these transactions, it cannot be said that the same amount which Kurinjee Company had received by sell of sugar which the Karkhana had supplied for export, has been received and even if it is accepted that, the said amount was from the same transaction, yet what is to be noted is that there was a specific agreement between Karkhana and Kurinjee Company. Merely because applicant – Sabitha is the wife of one of the accused, it cannot be said that she had taken part in the transaction. The police papers which have been produced do not show any such document showing that she was any way concerned with the company. Apart from the above transactions between Kurinjee company and the applicants, there is nothing.

8. It is necessary to see the allegations in the FIR. It is in detail, but we are required to consider, at this stage, the allegations in the nutshell.

It has been stated by the informant that the Central Government had issued notification on 12.09.2019 and gave concession in order to repay the amount of the farmers for the season 2019-2020 and thereby the sugar factories were permitted to export the sugar and subsidy of Rs.1044.80/- per quintal would have been given by the Central Government to the factory. The export was to be made between 01.10.2019 to 30.09.2020. Thereafter, one more notification was issued on 15.09.2020 and the limit was extended till 31.12.2020. It was made compulsory that certain documents showing that the sugarcane was exported should be uploaded on the portal, then only that subsidy would be released. The Karkhana, thereafter, issued tender and Kurinjee Company took that tender and accordingly, an agreement was entered into on 11.09.2020. All the terms and conditions were to be strictly observed and it is then stated in the FIR itself that precaution was taken that there should not be loss, if the sugar is not exported and, therefore, from Kurnijee Company, two cheques were taken. One was for Rs.2,82,09,600/- and another was for 1,03,22,624/-. According to the informant, the Kurinjee Company did not give them the necessary papers and, therefore, it cannot be upload the same, thereby the Karkhana was deprived of getting subsidy. Karkhana was supposed to get subsidy to the tune of Rs.5,93,65,536/-. They were also required to pay the GST and it would have added to the further loss. It is then stated that there was continuous communication between them and Kurinjee Company, so that Kurinjee Company should export the sugar within time, but there was no response. Thereafter, that is after the deadline was over, Karkhana had presented the cheques for encashment, but they got bounced and, therefore, it is then stated that Kurinjee Company had sold the sugar that was supplied by Karkhana in the open market and thereby earned huge amount. Karkhana was thereby cheated.

9. The contents of the FIR would show that the transaction appears to be civil in nature and it has been tried to be given a criminal angle. There is absolutely no role attributed to the applicants in the FIR. Their names are also not appearing. Now, it is stated that the applicants have 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 applicants. 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 Kurinjee 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 lodge 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 applicants and the documents on record would show that the physical custody of the applicants is not necessary, they deserve to be released on bail, however, conditions are required to be imposed. When the connection between the alleged transaction and the applicants is missing, they deserve protection. The interim relief granted earlier to the applicants vide order dated 03.12.2021 deserve to be confirmed. Hence, the following order :-

ORDER

I) Applications stand allowed.

II) The interim relief granted earlier to the applicant in ABA No.1402 of 2021 vide order dated 03.12.2021 stands confirmed and made absolute. In other words, in the event of arrest of applicant in ABA No.1402 of 2021 i.e. Mahalaxmi w/o M. Suresh in connection with Crime No.86 of 2021 registered with Barad Police Station, Dist. Nanded for the offences punishable under Sections 406, 420, 467 read with Section 34 of Indian Penal Code, she be released on P. R. Bond of Rs.1,00,000/- with two solvent sureties of Rs.50,000/- each.

III) The interim relief granted earlier to the applicant in ABA No.1404 of 2021 vide order dated 03.12.2021 stands confirmed and made absolute. In other words, in the event of arrest of applicant in ABA No.1404 of 2021 i.e. Sabitha Lingamsetty w/o Pandu Morimisetty in connection with Crime No.86 of 2021 registered with Barad Police Station, Dist. Nanded for the offences punishable under Sections 406, 420, 467 read with Section 34 of Indian Penal Code, she be released on P. R. Bond of Rs.1,00,000/- with two solvent sureties of Rs.50,000/- each.

IV) The applicants shall remain present before the Investigating Officer as and when called and cooperate with the investigation.

V) They shall not tamper with the evidence of the prosecution in any manner.

VI) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

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