IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1582 OF 2021

NIVRUTTI @ BABAN DNYANDEO ROHOKALE
VERSUS
THE STATE OF MAHARASHTRA
...
WITH
ANTICIPATORY BAIL APPLICATION NO.14 OF 2022

MANGALBAI W/O SUBHASH CHOUDHARI
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

...
Mr. A. A. Yadkikar, Advocate for applicant in ABA No.1582/2021.
Mr. N. S. Kadarale, Advocate for applicant in ABA No.14 of 2022
Mrs. Vaishali Patil Jadhav, APP for the respondents – State in both the cases.
...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23.02.2022

ORDER :-

. Applicants in both the applications are apprehending their arrest in connection with Crime No.65 of 2018 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Sections 467, 468, 471, 420 read with Section 34 of Indian Penal Code.

2. Heard learned Advocate Mr. A. A. Yadkikar for the applicant in ABA No.1582 of 2021, learned Advocate Mr. N. S. Kadarale for the

applicant in ABA No.14 of 2022 and learned APP Mrs. Vaishali Patil Jadhav for the respondents – State in both the cases.

3. It has been vehemently submitted on behalf of the applicants that the informant contends that he was offered a license to sell country liquor and this information was given to him by his uncle in September, 2014. His uncle told that his friend Ramakant Bhavsar has acquaintance with one Subhash Babu Choudhari, who is an Excise Inspector at Ahmednagar and he has the information that one CL-3 country liquor license is for sale and whether the informant is interested in purchasing the same. The informant is already a license holder to sell country liquor at Taloda and Dondaicha. After he was introduced to Subhash Babu Choudhari on 21.09.2014 and his wife Mangalbai i.e. applicant in ABA No.14 of 2022, one Dinesh Lahare and Baban Rohokale i.e. applicant in ABA No.1582 of 2021, the deal was finalized. Certain documents were shown to him and all the four persons told him that he will have to pay amount of Rs.70,00,000/-, but then he agreed to give amount of Rs.60,00,000/-. On that day itself, he gave amount of Rs.5,00,000/- in cash and the rest of the amount was agreed to be paid within three months till the license is made in his name. It appears from the FIR that certain amount was given to Subhash Choudhari by cash and by RTGS to Dinesh Lahare. It is then stated that the cash amount

that was given to Subhash Choudhari was handed over to his wife Mangalbai. In spite of giving amount of Rs.45,00,000/- and promise to pay remaining amount of Rs.15,00,000/-, no steps were taken to transfer the license in his favour. On 27.04.2015, he had then met Baban Rohokale and asked as to what is the progress and since he is feeling cheated, he would file complaint. Thereupon, a written document was given in favour of informant on 03.05.2015. Cheque was given for repayment of amount of Rs.45,00,000/- which was post dated cheque, but after the said cheque was deposited by the informant, that was dishonoured. The cheque was in the name of mother of the informant. After dishonour of the cheque, he had tried to contact those persons, but they were not picking phones. Ultimately, he says that he had lodged the report.

4. Perusal of the FIR would show that the amount was not transferred to the applicant - Baban Rohokale, so also nor in the name of Mangalbai. Though it is stated that Mangalbai was also present, she had nothing to do with the business as she is only housewife. The custodial interrogation of the applicants is not required for the purpose of investigation. They are ready to cooperate with the investigation.

5. Per contra, the learned APP strongly opposes the application and submitted that specific role is attributed to the applicants. Applicant –

Mangalbai had actually received the amount and had also taken part in the settlement of the transaction. She cannot claim that she has no knowledge about the transaction. Even applicant – Baban was present when the talks had taken place and the amounts were transferred. It is then required to be seen as to any portion of the amount, that was transferred to Dinesh Lahare and also given to Subhash Choudhari, was then parted with by them to the present applicants. Therefore, the custodial interrogation of the applicants is necessary.

6. At this stage, we go by the allegations in the FIR and the statements of witnesses recorded. The first and the foremost fact that is required to be borne in mind is that for informant, the said transaction was not new. He was already holding a license for the business of country liquor at two places. He could have got knowledge or he might be having the knowledge already as to how much amount is required to be paid for transfer of a license or purchase of license of such a nature. The entire FIR does not say that he had made inquiry with those persons as to who intend to sell the license, but then according to him he was shown with a license in the name of Rajendra Piraji Korde, who is resident of village Wakode, Dist. Ahmednagar. He has not stated that he had ever tried to contact Rajendra Korde in respect of the sale transaction. It is rather unbelievable that whatever price was quoted by

the alleged four persons with some settlement or adjustment is stated to have been accepted by the informant. Why he has done cash transaction with accused Subhash Choudhari has not been explained by him, but then what was the position of accused Dinesh Lahare in the transaction is also not stated by him. Merely because accused – Subhash Choudhari was asking him to send amount in the account of Dinesh Lahare and he was sending it, sounds unnatural. Whether the transaction alleged in the FIR can be said to be the legal transaction itself is a question and, therefore, for any illegal act, there cannot be cheating.

7. As regards the role attributed to the applicants is concerned, it is stated that both of them were present when the transaction had taken place and as regards applicant – Mangalbai is concerned, it is stated that her husband had handed over the amount to her. There is no question of recovery of the said amount as the criminal case cannot be utilized for the purpose of recovery of money. The interim protection granted earlier to the applicants, therefore, deserves to be confirmed. Hence, the following order :-

ORDER

I) Both the applications stand allowed.

II) The ad-interim relief granted earlier to the applicant in ABA No.1582 of 2021 vide order dated 22.12.2021 stands confirmed and made absolute. In other words, in the event of arrest of the applicant - Nivrutti @ Baban Dnyandeo Rohokale in connection with Crime No.65 of 2018 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Sections 467, 468, 471, 420 read with Section 34 of Indian Penal Code, he be released on P. R. Bond of Rs.25,000/- with one or more sureties in the like amount.

III) In the event of arrest of the applicant in ABA No.14 of 2022 i.e. Mangalbai w/o Subhash Choudhari in connection with Crime No.65 of 2018 registered with Nandurbar City Police Station, Dist. Nandurbar for the offences punishable under Sections 467, 468, 471, 420 read with Section 34 of Indian Penal Code, she be released on P. R. Bond of Rs.25,000/- with one or more sureties in the like amount.

IV) The applicants shall not tamper with the evidence of the prosecution in any manner.

V) They shall not indulge in any criminal activity.

[SMT. VIBHA KANKANWADI, J.]

scm