IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 458 OF 2022

Abhijit Krishnat Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 1063 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO. 458 OF 2022

Anjali Arvind Mehendale ...Intervener

In the matter between

Abhijit Krishnat Patil ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 562 OF 2022

Manojkumar Shrimant Salunkhe ...Applicant

Versus

The State of Maharashtra ...Respondent

WITH

INTERIM APPLICATION NO. 1062 OF 2022

IN

ANTICIPATORY BAIL APPLICATION NO. 562 OF 2022

Anjali Arvind Mehendale ...Intervener

In the matter between

Manojkumar Shrimant Salunkhe ...Applicant

Versus

The State of Maharashtra ...Respondent

Mr. Kedar Lad, for the Applicant in both ABA.

Mr. Virendrasinh Tapkir, i/b Amey Sawant, for the Intervener in both IA.

Ms. M. R. Tidke, APP for the State.

CORAM: N. J. JAMADAR, J.
DATED : 29th JUNE, 2022

ORDER:-

1. These applications are preferred for pre-arrest bail in connection with CR No.7 of 2022, registered with Shivaji Nagar Police Station, Ichalkaranji, District Kolhapur.

2. Anjali Mehendale (the first informant) lodged a report with the allegations that she is one of the Directors of New Wonder Wash Laundry Services Pvt. Ltd., Ichalkaranji. The company was in need of finance to expand its business. The applicant Abhijit Patil (ABA/458/2022), Manojkumar Salunkhe (ABA/562/2022) and Prasad Mujumdar represented to them that they had made the finance available to big corporate houses. The applicants and the co-accused promised to make finance to the tune of Rs.25 Crores available to the first informant. In lieu thereof, the first informant shall part with a sum of Rs.1,25,00,000/- as a pre-investment towards the bank guarantee and other related expenses. The applicants represented that they were the partners of APM Associates, through which the finance would be made available. An agreement was executed on 14th July, 2018.

3. On 27th September, 2018 an amount of Rs.25,00,000/- was credited to the account of APM Associates through RTGS.

The applicants had promised to make the finance of Rs.25 Crore available within 45 days thereof. The said time elapsed. Finance was not made available. Upon being inquired, the applicants started to give evasive answers. Suspecting foul play, the first informant made inquiries about the credentials of the applicants. It transpired that the applicants had duped many a persons, like the first informant, by inducing them to part with huge amount on the basis of false representations. Hence the report.

4. Prasad Mujumdar, the associate of the applicants, came to be arrested. Apprehending arrest the applicants have approached this Court after their prayer for pre-arrest bail came to be negatived by the learned Sessions Judge.

5. Initially, by an order dated 21st February, 2022 this Court granted an interim pre-arrest bail to the applicant Abhijit Patil. The same dispensation was made available to the applicant Manojkumar Salunkhe by an order dated 2nd March, 2022.

6. On 14th March, 2022, a statement, based on instructions, was made on behalf of the applicants, that applicant Abhijit Patil will deposit Rs.20,00,000/- before this Court within two weeks, and a sum of Rs.5,00,000/- was already refunded to the first informant. On 4th April, 2022 further time was sought to make the said deposit. This Court was persuaded to extend time on the condition that the applicant files an undertaking before the Court. Accordingly, Abhijit Patil filed an undertaking on 7th April, 2022 to the effect that he would deposit Rs.20,00,000/- in this Court within two weeks in terms of the directions contained in the order dated 14th March, 2022.

7. The record reveals that only a sum of Rs.10,00,000/- came to be deposited. On 22nd June, 2022, when the matter was listed before this Court, a submission was made that the applicant would deposit Rs.10,00,000/- within a period of one week therefrom. The office report indicates that the amount of Rs.10,00,000/- has not been deposited as undertaken.

8. When the matter was taken up today, the learned Counsel for the applicants submitted that he has no instructions as to whether the applicant would deposit the balance amount of Rs.10,00,000/-. The learned Counsel fairly submitted that he has no instructions to seek extension of time as well. The learned Counsel, however, sought to advance submissions on the merits of the applications.

9. Since the interim protection was continued by this Court on the express condition of deposit of the amount of Rs.20,00,000/-, which the applicant Abhijit Patil had undertaken to deposit, the breach of the undertaking given to the Court dis-entitles the applicant from seeking a hearing on the merits of the application. Nonetheless, I have heard the learned Counsel for the applicants and the learned APP for the State.

10. It was submitted that in terms of the agreement, the first informant was to pay a sum of Rs.75,00,000/- before the finance could be made available. Since the first informant had paid only Rs.25,00,000/-, the transaction could not materialize. Therefore, the failure on the part of the applicants to secure the finance to the tune of Rs.25 Crores does not have any element of criminality. The learned Counsel for the applicants submitted that, even otherwise, the offence of the cheating can not be said to have been made as it would, at best, be a case of non-performance of contract.

11. I am afraid to accede to these submissions. When probed, about the identity of the lender, the learned Counsel for the applicants submitted that the applicants would have arranged finance from their own sources. The very nature of the transaction whereunder a finance of Rs.25 Crore was to be made available, *prima facie* indicates that the intention of the applicants was dishonest since the inception of the transaction.

12. Indisputably, a sum of Rs.25,00,000/- was accepted through banking channels. The first informant was made to part with such huge amount allegedly on the basis of the representation that a finance to the tune of Rs.25 Crore would be made available. This *modus operendi* of making the persons in need of finances, to part with the huge sum on the pretext of facilitating finance, is itself impregnated with an element of criminality.

13. The allegations in the first information report are required to be appreciated in the backdrop of further allegations that the applicants have duped many a persons by making such false representations. The Investigating Officer has named the firms which were so duped namely; Jyotirling Fashion and Saraswati Trading, Gandhinagar and Ridhisiddhi Hosiery and other persons at Pimpri-Chinchwad, Pune. Custodial interrogation is thus indispensable to unearth the fraud, in all its facets. I am, therefore, not persuaded to exercise the discretion in favour of the applicants.

14. Hence, the Anticipatory Bail Applications stand rejected.

15. Interim orders dated 21st February, 2022 (in ABA/458/2022) and dated 2nd March, 2022 (in ABA/562/2022) stand vacated.

16. In view of the disposal of Anticipatory Bail Applications, Interim Application No.1063 of 2022 in Anticipatory Bail Application No.458 of 2022 and Interim Application No.1062 of 2022 in Anticipatory Bail Application No.562 of 2022, do not survive and stand disposed.

17. By way of abundant caution, it is clarified that the observations made hereinabove are confined to the consideration of the entitlement for bail and they may not be construed as an expression of opinion on the guilt or otherwise of the applicant and the co-accused.

[N. J. JAMADAR, J.]