IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1758 OF 2018

Farhan Abu Azmi .... Applicant
Versus
The State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1706 OF 2018

Jay Jiwat Lalwani .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Aabad Ponda, Sr. Advocate i/b. Sujit B. Shelar for Applicant in ABA/1758/2018.
Mr. Bhavesh Thakur i/b. Harsh Pandey for Applicant in ABA/1706/2018.
Mr. Ali Khashif Khan for Intervenor.
Mrs. J. S. Lohokare, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 11th JANUARY, 2022
(through Video Conferencing)

P.C. :

1. Both these applications are decided by this common order because they arise out of the same investigation and the same F.I.R.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.310 of 2018 registered at Bandra Police Station, Mumbai, on 19/06/2018, under sections 420 and 406 r/w. 34 of the Indian Penal Code (for short 'IPC').

3. Heard Shri. Aabad Ponda, learned Senior Advocate for the applicant in A.B.A.No.1758 of 2018, Shri. Bhavesh Thakur, learned counsel for the applicant in A.B.A. No.1706 of 2018, Smt. Lohokare, learned APP for the State and Mr. Ali Khashif Khan, learned counsel for the Intervenor.

4. The First Information Report (for short 'F.I.R.) is lodged by one Kashif Sardar Hashim Khan. He has stated that, he is in the hotel business. He has a shop by the name Khakai Coffee Shop, LLP at Bandra. Earlier the name of the business was Chai Coffee Food and Beverage LLP. At that time, he himself, the applicant Farhan and N.A.Shah Associates were the partners in the business.

5. In 2016, the informant, applicant Farhan and N.A. Shah Associates resigned from that business and in their place, informant's wife and one Viren Gada were added as partners.

Khakai Coffee Shop LLP wanted to start a new hotel in Colaba. The informant and others had requested the applicant Farhan to look for a space in Colaba. It was decided that the new hotel would be started by the name Chai Coffee Restaurant.

6. In May 2016 there was a meeting at Colaba with the applicant Farhan, Jay and the first informant. The applicant Jay was Director of M/s. Shubh Hospitality Pvt. Ltd. The informant was told that there was a space in front of Radio Club at Colaba owned by Shubh Hospitality Pvt. Ltd. and the applicant Jay was interested in giving that place for Chai Coffee Restaurant. The informant was told that everything was in order and they could start their business there.

7. On 15/07/2016, an agreement was entered into between Shubh Hospitality Pvt. Ltd. and Khakai Coffee Shop, LLP. and the deposit was fixed at Rs.13,50,000/-. After the transaction was entered into and after the informant had paid that amount in September 2016, the informant came to know that the property was in litigation and the business could not be started. Therefore, the informant asked for refund of his deposit from the applicant

Jay. The informant even sent a notice. According to informant, the applicant Jay told him that, on the say of applicant Farhan the said amount of Rs.13,50,000/- was deposited in the joint account of Kats Euroo Cafe, maintained with HDFC bank and subsequently that amount was misappropriated by the applicant Farhan. Therefore, this F.I.R. is lodged.

8. Shri. Ponda, learned Senior counsel for the applicant Farhan invited my attention to the agreement between Shubh Hospitality Pvt. Ltd. and Khakai Coffee Shop, LLP. The agreement was for a period of 60 months. The Clause 12 mentioned that the security deposit was not to carry any interest and on termination of this agreement security deposit was to be refunded by the owner to M/s. Khakai Coffee Shop LLP., who is described as operator. Clause 15 mentions that the dominant control of the said business and of the said premises was to be with the owner and the owner had the right to terminate that agreement by giving three months notice.

9. Shri. Ponda also relied on another agreement which was in the nature of Franchise Agreement executed between the

applicant Farhan and Kats Euroo Cafe LLP. It was executed in 2017. Shri. Ponda submitted that, pursuant to that Franchise Agreement, a joint account was opened with HDFC Bank and as per understanding the amount of Rs.13,50,000/- was transferred by the applicant Jay in that joint account. Shri. Ponda submitted that the amount was taken away by the applicant Farhan, joint account holder of that account as per understanding between the parties. Two years after that amount was taken away by the applicant Farhan in November 2016, the F.I.R. was lodged belatedly in June 2018 as an afterthought.

10. Learned counsel Shri. Thakur appearing for other applicant Jay, supported the contentions of Shri. Ponda and he submitted that the applicant Jay has refunded the amount and he did not gain anything from the transaction.

11. Learned counsel for the intervenor submitted that, there were various transactions between the same parties and in most of the transactions intervenor was put to loss. The F.I.R. clearly mentions how he lost Rs.13,50,000/-. That amount was deposited in the joint account without informant's knowledge and

it was withdrawn without his knowledge. Therefore the offence is clerly made out, for which, custodial interrogation of the applicants is necessary.

12. In this matter, the stand taken by the investigating agency is most crucial. Therefore, I have specifically asked the learned APP about the progress in the investigation and their stand.

13. Learned APP, on instructions of the investigating officer has made a categorical statement that the investigation in this case is almost over and the investigating agency does not want to arrest any of these applicants.

14. I have recorded the statement made by the investigating agency solemnly before this court. In this view of the matter, there is no question of applicants being subjected to custodial interrogation because the investigating agency does not want to arrest them.

15. In any case, as pointed out by Shri. Ponda, the amount was deposited in the joint account held by the applicant Farhan and the informant. Therefore, prima facie, there is sufficient

substance in the submission of Shri. Ponda that the applicant Farhan was entitled to withdraw that amount and to use it as per his requirements. Be that as it may, since the investigating agency has made a categorical statement that they do not want to arrest either of the applicants, both these applications are required to be allowed. However, it is made clear that, all the contentions raised by the intervenor in these applications are specifically left open to be decided at an appropriate stage in appropriate proceedings.

16. Hence, the following order :

ORDER

(i) In the event of their arrest in connection with C.R.No.310 of 2018 registered at Bandra Police Station, Mumbai, the applicants are directed to be released on bail on their furnishing P. R. bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand each Only) with one or two sureties each in the like amount.

(ii) The Applicants shall attend the concerned Police Station as and when called and shall cooperate with the investigation.

(iii) The applicants shall not tamper with the evidence and they shall not threaten any of the witnesses.

(iv) Both Applications stand disposed of accordingly.

(SARANG V. KOTWAL, J.)