SWAROOP SHARAD PHADKE Digitally signed by SWAROOP SHARAD PHADKE Date: 2022.07.18 18:37:03 +0530

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2838 OF 2021

Irshad Abdul Razzak Jogilkar and Anr. ... Applicants
versus
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.428 OF 2022

Nuruddin Abdul Rehman Jalgaonkar ... Applicant
and
Irshad Abdul Razzak Jogilkar and Anr. ... Applicants
versus
The State of Maharashtra ... Respondent

Mr. Owasis Jahagirdar i/by Ms. Dipti Karadkar, for Applicant.
Ms. Misbaah Solkar, for Intervener.
Mr. Y.Y.Dabke, APP, for State.
Mr. J.T.Watve, PSI Mangaon Police Station, present.

CORAM: N.J.JAMADAR, J.

DATE : 18th JULY, 2022

P.C.

1. Heard the learned Advocate for the Applicant and the learned APP for the State.

2. This is an application for pre-arrest bail in connection with C.R.No.172 of 2021 registered with Mangaon Police Station for the offences punishable under Section 420 and 406 read with Section 34 of the Indian Penal Code.

3. Mr. Nuruddin Jalgaonkar, the first informant, lodged a report with the allegations that during the period October, 2018 to October, 2019 on the

representation of the Applicants, the first informant had invested a sum of Rs.16 Lakhs in the scrap business, which the Applicants were engaged in. The Applicants had promised 50% share in the profits from the said business. The Applicants neither repaid the amount of Rs.16 Lakhs which the first informant was induced to invest on the strength of the false representation, nor paid part of the profits as promised. Hence, the first informant lodged a report.

4. In the report, the first informant also alleged that other investors, who have invested the amount with the Applicants, were also deceived.

5. On 13th December, 2021, on behalf of the Applicants, a statement was made that the Applicants would deposit a sum of Rs.20 Lakhs in the trial court. On the basis of the said statement, the Applicants were protected from arrest. The said position continues to operate till date.

6. The learned Counsel for the Applicants submits that the Applicants have since deposited a sum of Rs.20 Lakhs in the trial Court.

7. I have heard the learned Counsel for the Applicants, the learned APP for the State and the learned Counsel for the Intervener.

8. The learned APP and the learned Counsel for the Intervener submitted that the deposit of Rs.20 Lakhs in the trial court would not enure for the benefit of the Applicants as the Applicants have duped other persons to the tune of Rs.80 Lakhs. To the Intervention Application, the first informant has annexed a copy of the MOU

executed by the Applicants in favour of one Hasan Mohammad Kagdi. Under the said MOU, the Applicants purportedly acknowledged to have received a sum of Rs.55 Lakhs from the said Mr. Kagdi.

9. The material on record indicates that there were financial transactions between the parties. The question as to whether the intention of the Applicants was dishonest since the inception of the transaction, that is, when the Applicants allegedly induced the first informant to invest the money, would be a matter for evidence and trial. In the case at hand, the Applicants have deposited a sum of Rs.20 Lakhs against the alleged investment of Rs.16 Lakhs made by the first informant.

10. So far as the allegations of the Applicants having duped other persons, having regard to the nature of the memorandum of understanding relied upon by the Intervener as well as the documents which are placed on record by the Applicants, it appears that the transactions were in the nature of money lending. Out of the said amount of Rs.55 Lakhs, Mr. Kagdi claimed to have paid a sum of Rs.43 Lakhs in cash. It would, therefore, be appropriate that the aggrieved person/s initiate appropriate action against the Applicants as may be permissible in law. The said factor, therefore, cannot be arrayed against the Applicants in declining the relief of pre-arrest bail in this case.

11. Hence, the following order :

ORDER

(i) The Application stands allowed.

(ii) In the event of the arrest of the Applicants in C.R.No.172 of 2021 registered with Mangaon Police Station, they be released on bail on furnishing a PR bond in the sum of Rs.25,000/- each and one or two sureties in the like amount.

(iii) The Applicants shall not tamper with the prosecution evidence and/or give threat or inducement to any of the prosecution witnesses.

(iv) The Applicants shall co-operate with the investigation and report to the Investigating Officer as and when directed.

(v) The Applicants shall submit their specimen hand writings and signatures, if directed by the Investigating Officer.

(vi) The Applicants shall not leave the jurisdiction of the learned Magistrate without prior permission of the learned Magistrate.

(vi) By way of abundant caution, it is clarified that this order is passed on the basis of the deposit of Rs.20 Lakhs by the Applicants and is restricted to aforesaid C.R.No.172 of 2021 and the observations made hereinabove may not be construed as an expression of opinion on the rights and liabilities of the Applicants qua other cases which are or may be filed.

(vii) The Interim Application also stand disposed.

(N.J.JAMADAR, J.)