# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# BENCH AT AURANGABAD

## ANTICIPATORY BAIL APPLICATION NO.21 OF 2023

SINDHUTAI W/O DHARAMSING CHAVAN AND ANOTHER
VERSUS
THE SUPERINTENDENT OF POLICE, NANDED AND ANOTHER
...
Mr. Shailendra S. Gangakhedkar, Advocate for Applicants
Mr. A. V. Deshmukh, APP for Respondents – State
Ms. Ashvini R. Mate, Advocate for Informant
...

**CORAM : NITIN B. SURYAWANSHI, J.**

**DATE : 14th FEBRUARY, 2023**

**PER COURT :**

1. Applicants apprehend arrest in Crime No.73/2022, registered with Mandavi Police Station, District Nanded, for offence punishable under sections 420, 498-A, 504, 506 r/w 34 of the Indian Penal Code.

2. On 14/09/2022, written FIR is lodged by Sanjivani w/o Sudhir Chavan against five accused persons who are her in-laws. It is, in short, alleged in the FIR that her husband namely Sudhir Dharamsing Chavan had obtained term policy of HDFC Life Insurance. He expired on 15/06/2021 during Covid-19 pandemic at Mumbai. HDFC Life Insurance settled amount of Rs.1,50,00,000/- for his unnatural death. 51% amount was to be received by the informant and 49% was to be received by her minor daughter Banipriya. Amount of Rs.76,50,000/- was deposited in the bank

account of informant and sum of Rs.73,50,000/- payable to the minor daughter was transferred in the account of applicant No.1, which applicant No.1 was to hold in trust till minor daughter Banipriya attains majority. However, accused persons misappropriated the said amount for their own use. When the informant asked about the same, she was ill-treated and threatened with life. Applicant No.2 threatened her that his son is serving in police department and they will see that informant is killed by giving contract to criminals. Money received by them on behalf of minor belongs to them and the informant has nothing to do with the same. It is further alleged that informant learnt that applicants have withdrawn money received by them on behalf of her minor daughter Banipriya and have utilized it for their own purpose. Hence, she lodged the present FIR.

3. Heard learned advocate for applicants, learned Additional Public Prosecutor for State and learned advocate for informant. Perused the investigation papers.

4. This application was heard for admission hearing on 05/01/2023. On the first date of hearing, statement was made by the applicants that *"amount received by applicant No.1 towards insurance claim of son is invested by her in various schemes including fixed deposit, insurance policies etc., and the grand*

*daughter is named as the nominee".* In paragraph No.8 of the application memo following statement is made;

> "*Applicants state that, the applicant No.1 has invested the amount in fixed deposit to the tune of Rs.10 lac and the applicant No.2 has invested the amount in fixed deposit to the tune of Rs.2 Lac (it should be Rs.20 Lac)*".

5. Copies of Fixed Deposit receipts placed on record were relied upon by the applicants. Receipt of Fixed Deposit of Rs.10 Lakhs kept by applicant No.1 is at page No.85, in which, in front of Nominee Name, "*Nominee Registered*" is type written. Another Fixed Deposit receipt is at page No.86, by which applicant No.2 has kept Rs.20 Lakhs in Fixed Deposit. In this receipt, in front of Nominee Name "*Nominee Registered*" is type written and *"Ku. Banipriya Sudhir Chavan"* is overwritten on the same in handwriting. Considering these facts, this Court granted interim protection to the applicants.

6. For opposing the bail application, investigating officer has filed affidavit and placed on record applications of the applicants for keeping Fixed Deposits of Rs.10 Lakhs and Rs.20 Lakhs respectively. In the application submitted by applicant No.1, her husband applicant No.2 is shown as nominee and in application of applicant No.2 for keeping Fixed Deposit of Rs.20 Lakhs, applicant No.1 is shown as nominee. After perusing original fixed deposit receipt, copy of which is placed on record at page No.86,

name of Banipriya is not mentioned on the same. It, therefore, *prima facie* appears that applicants have overwritten name of Banipriya on the receipt at page No.86, at the time of annexing it to the present application. Both these fixed deposits are withdrawn by the applicants on 24/08/2022.

7. Admittedly amount of Rs.73,50,000/- belongs to the minor Banipriya and applicant No.1 was her appointee. The Sessions Court while rejecting anticipatory bail application of the applicants has observed that appointee/applicant No.1 should have acted as trustee for minor to receive the benefit of nomination as per the Hindu Minority and Guardianship Act as well as the Guardians and Wards Act. The funds or properties received by minor are required to be used and utilized for benefit and betterment of future of the minor and permission has to be obtained from the District Court having the jurisdiction, while utilizing the said amount for minor. The Sessions Court in it's order has further observed that "*One cannot understand as to what made the insurance company to disburse the claim amount in the account of appointee, that too at a place which was not her permanent residence".*

8. It appears that applicants and their son, co-accused No.3 who is serving as Police Officer in the Local Crime Branch,

Yavatmal and who at that time was serving as API at Police Station Virur, Tq. Rajura, Dist. Chandrapur, influenced the HDFC Life Insurance Company to disburse the said amount not in the name of minor through appointee but directly in the account of appointee/applicant No.1 at Yavatmal Urban Cooperative Bank, Branch Gadchandur, when the applicants and their family members are residents of village Jivti, Tq. Jivti, Dist. Chandrapur. Thus, it is clear that the amount was disbursed in the account of applicant No.1 at a place which was not her permanent residence.

9. There appears substance in the contention of informant that applicants and co-accused No.3 are influential persons and they are influencing the investigation.

10. Informant was constrained to file Criminal Writ Petition No.1744 of 2022 seeking transfer of investigation in the present crime to some other agency or investigating officer as the investigation was not been done properly. In the said petition, the Division Bench of this Court in the order dated 01/02/2023 has made following observations:-

> "2. Pursuant to the said order, the Investigating Officer has filed his reply. The gist of the affidavit is as under :-
> (a) ….
> (b) ….
> (g) On 03.11.2022, notice was issued to Sindhutai Chavan and her husband Dharamsing Chavan to remain present at the police station. It is stated that the accused had informed

that the said amount was utilised to purchase the land in survey no.35 at village Isapur.

(h) The Investigating Officer once again entered into correspondence with the Tahsildar and the Branch Manager.

(I) Notices were again sent to the accused Sindhutai Chavan and her husband on 03.11.2022, 05.11.2022 and 06.11.2022. Dharamsing Chavan had failed to respond to the notice dated 05.11.2022 and both the accused i.e. Sindhutai Chavan and Dharamsing Chavan had not responded to the notice dated 06.11.2022.

(j) In the course of investigation, it was revealed that said Dharamsing Chavan purchased Scorpio vehicle, the value of which is stated to be Rs.13,44,818/- and that the said vehicle has been seized.

(k) ….

4. Though the Investigating Officer has stated that the accused have disclosed that they have purchased the land at village Isapur in survey no.35, he has not given the details of said transaction. Learned APP fairly concedes that the said sale transaction was entered into even before the amount was credited in the account of Sindhutai Chavan.

5. It is stated that the total amount of Rs.73,53,000/- has been transferred from account No.20023006655 from 14.12.2021 till 14.03.2022, out of which an amount of Rs.45,50,000/- was transferred to the account of Dharamsing Chavan. The total amount of Rs.15,38,000/- was withdrawn in cash by Sindhutai Chavan. Rs.2,00,000/- was transferred to Agro Agency. Rs.80,000/- was transferred to Sandeep Krushi Kendra, which belongs to accused Dharamsing Chavan. An amount of Rs.4,80,000/- was transferred to the account of Chandak Agro Center and an amount of Rs.05,05,000/- was transferred to the another account of Sindhutai Chavan.

6. Even though the Investigating Officer has given the details of the amount transferred or withdrawn from the account of Sindhutai Chavan, he has not followed the money trail. The accused Sindhutai Chavan has withdrawn total Rs.15,38,000/- by cash. He has not ascertained, whether this amount has been invested in the name of the minor or has been utilised for any other purpose. No attempts have been made to recover the amount.

7. It is seen that though the accused had failed to

respond to the notice under Section 41 of Cr.P.C., instead of arresting the accused, the Investigating Officer followed a novel procedure of seeking permission of learned Magistrate to arrest the accused in a cognizable offence. It is sought to be projected that the accused could not be arrested since learned Judge had declined to grant such permission. First and foremost, we fail to understand, as to what compelled the Investigating Officer to seek such permission from the learned Magistrate. The Investigating Officer has also not explained, as to why the order passed by learned Magistrate was not challenged before the higher Court if the same impeded attempt to arrest. It is stated that one of the accused is a police personnel and we have a reason to believe that by such designedly shoddy investigation an attempt is made to shield the accused and protect one of the accused from his own department.

8. Having failed to arrest the accused even after they failed to respond to the notice under Section 41 of Cr.P.C., it is now contended that the accused have been granted pre arrest interim bail. While granting interim pre-arrest bail on 05.01.2023 in Anticipatory Bail Application No.21 of 2023, learned single has observed thus:-

> "Considering the allegations made in the FIR and the fact that the amount received by applicant no.1 towards insurance claim of son is invested by her in various schemes including fixed deposit, insurance policy etc, and the name of nominee is of grand daughter, the applicants deserve interim protection."

Learned APP states that no such amount has been invested in the name of the minor, despite which no steps have been taken to bring this fact to the notice of the learned single Judge.

9. As noted by us in the previous order, the investigation is shoddy and is nothing but an eye wash. The explanation given by the Investigating Officer is unsatisfactory. We would like to refer to the decision of the Hon'ble Supreme Court in the case of **XYZ Vs. State of Madhya Pradesh and ors. (Criminal Appeal No.1184 of 2022)**, wherein it is observed that *"it is every police officer's bounden duty to carry out his or her functions in a public-spirited manner. The police must be cognizant of the fact that they are usually the first point of contact for a victim of a crime or a complainant. They*

> *must abide by the law and enable the smooth registration of an FIR. Needless to say, they must treat all members of the public in a fair and impartial manner......"*
>
> 10. In the case in hand, the record prima facie indicates that the accused have misappropriated money of a child of four years, who has lost her father in Covid-19 pandemic. The police have not only failed to register the crime but for some obvious reasons, have tried to protect and shield the accused and facilitated misappropriation by their inaction. The manner in which the protector of law has tried to create an advantage in favour of the accused, we apprehend that it will not be too long before the people loose faith in the legal system. It is, therefore, necessary to direct the Superintendent of Police, Dist. Nanded, to monitor the investigation and if necessary, to change the Investigating Officer. We direct the Superintendent of Police, Dist. Nanded, to remain present before this Court on 02.02.2023. Stand over to 02.02.2023."

11. Investigating officer has placed on record chart along with the affidavit showing as to how amount of Rs.73,54,274/- of minor has been spent by the applicants for their own purpose. From the said amount, Scorpio vehicle is purchased by applicant No.1 on 14/12/2021. The amount was also spent for purchasing agricultural equipments, for agricultural operations, for medical expenditure of applicants and some amount was also kept in fixed deposits in the name of applicants. It is also alleged that applicants have purchased land at village Isapur in Survey No.35 from the said amount.

12. It is, therefore, clear from record that applicant No.1 was trustee of the amount received by the minor and was under

duty to utilize the said amount for welfare of the minor. However, applicants have misappropriated the said amount of minor and utilized it for their own purpose. Applicant No.1 has withdrawn total amount of Rs.15,38,000/- in cash from the said amount and for ascertainment of money trail, custody of the applicants is necessary for effective investigation.

13. It is further revealed from record that as is mentioned in the affidavit filed by investigating officer, in spite of repeated notices dated 03/11/2022, 05/11/2022 and 06/11/2022, issued to the applicants, applicants have failed to respond to the same.

14. Learned advocate for applicants, on instructions, submits that amount of Rs.73,50,000/- is recovered from applicants and the same is credited in the account of informant through RTGS after passing of the order by learned Division Bench of this Court.

15. Fact remains that the said amount was required to be recovered from applicants and the applicants have secured interim protection by making incorrect statement that the amount of minor was invested by them in her name. It is to be noted here that applicants have enjoyed the interest of the fixed deposits kept by them, which as per the instructions of learned Additional Public Prosecutor is more than Rs.90,000/-.

16. It is thus, clear from record that *prima facie* there is sufficient material on record to show that the applicants have misappropriated the minor’s fund and utilized the same for their own purpose. The applicants are influential persons and they are likely to tamper prosecution evidence. Since the applicants have secured interim protection by misleading this Court and by placing reliance on forged fixed deposit receipt (page No.86) they are not entitled for discretionary relief of anticipatory bail. In the result, application is rejected. Interim protection granted to the applicants stands vacated.

**(NITIN B. SURYAWANSHI, J.)**