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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.226 OF 2022

Geeta Jaydeep Kher … Applicant
V/s.
The State of Maharashtra & Ors. … Respondents

IN
ANTICIPATORY BAIL APPLICATION NO. 139 OF 202

Dinesh Shankarrao Kunden & Anr. … Applicants
V/s.
The State of Maharashtra … Respondent

Mr. Dnyaneshwar Jadhav a/w. Mr Dhavan Shah i/by Legasis Partners, for Applicant/Intervener in IA.

Mr. Niranjan Mundargi i/by Mr. Shantanu Phanse, for the Applicant in ABA.

Mrs. Veera Shinde, APP for the State-Respondent.

Mr. Amol Kale, API with Mr. K.D. Chaudhary, PSI, EOW, Pune City.

CORAM : AMIT BORKAR, J.

DATED : JUNE 23, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.07 of 2018 registered with Vishrambaug police station for the offences punishable under Sections 406, 408, 409, 420, 465, 467, 468, 471, 472 r/w 34 of the Indian Penal Code, 1860 (for short 'IPC'), applicants have filed present anticipatory bail application seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.).

2. One Geeta Jaydeep Kher lodged a report alleging that her husband and applicant No.1 were college friends. In August 1999, the applicants said to the informant and her husband that they had experience in the business of Saree and Dress materials and offered to start a partnership business in the name of their wives. Accordingly, on 10 October 1999, a partnership deed was executed between the informant and the applicant No.2 name M/s Pratima Silks. The profit share was agreed to be equal. The informant and applicant No.2 opened a bank account with City Union Bank, and in the year 2003, another account was opened with HDFC Bank. According to the informant, she signed blank cheques and handed over those cheques to the applicants. Applicants were looking after the entire business and obtaining informants' signatures whenever required.

3. Applicants acquired a Debit and Credit Card swiping machine from HDFC Bank in 2003-2004. The amount deposited in the account of the partnership. However, in 2010, the informant and her husband realized that most of the cheques of M/s Pratima Silk were issued in the name of M/s. K.K. Enterprises. On enquiry, it was revealed that the applicants are the partners of M/s. K.K. Enterprises. The informant confronted applicant No.1 on this he gave reasonableness answers. The informant demanded accounts from the applicants. However, applicants avoided furnishing accounts. According to informant applicant No.1, in connivance with Vijay Tilekar, Ravi Kunden and V. Ramesh (working staff of M/s. Pratima Silks tampered with the bill books, printed various books appearing the same number, generated false bills, and showed sale profit. In July 2017, the informant and her husband came to know about an account opened by the applicants in the name M/s. K.K. Enterprises in Axis Bank and another account with Bank of India, which were in the name of applicant No.2, where the amount obtained from the swiping machine was deposited. It is alleged that on 30 March 2016, applicant No.2 transferred an amount of Rs.9 lakhs by way of blank cheques signed by the informant. Apprehending arrest applicants have filed applications under Section 438 of Cr.P.C. before learned Sessions Judge, which came to be rejected by an order dated 10 January 2022. Aggrieved thereby, the applicants have filed the present anticipatory bail application.

4. On 24 January 2023, this Court protected applicants by interim continuation protection granted by learned Sessions Judge.

5. Moreover, applicants were directed to attend the concerned police station. The said order is in force till today. No material is placed on record that applicants have violated the terms of the interim order. Nothing is produced on record to show that applicants have not cooperated with the investigation.

6. I have perused the report and material on record, along with the audit report by P. R. Gund & Co. According to the informant, she handed over signed blank cheques to applicant No.2. According to the informant, applicants misused such blank cheques to transfer the amount of partnership in the applicants are partners. Prima facie, once it is accepted that the informant signed the cheques, the presumption of legally recoverable liability gets attracted. However, prima facie, it appears that the returns filed by the partnership firm(M/s. Pratima Silks), which are signed by the informant, show M/s. K.K Enterprises as a Creditor from 2001 to 2022. Therefore, the nature of the relationship of M/s. Pratima Silks with M/s. K.K. Enterprises is a matter of investigation. However, since the signature on the cheques is not a matter of dispute, it needs to be investigated as to whether the amounts of the cheques were transferred without the consent of the informant and what the effect of the signature of the informant had on the authority of the M/s. K.K. Enterprises to hold such an amount.

7. The relationship of partners with each other in the context of an offence under Section 406 of IPC was the subject matter of issue before the Apex Court. In the case **Velji Rabhavji Patel vs State of Maharashtra** reported in 1965 AIR 1433, 1965 SCR (2) 429, the Apex Court, in the context of allegations of misappropriation of partnership property by a partner, held that before a person can be said to have committed criminal breach of trust, it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion that every property owner has over his property. However, it is not dominion of this kind which satisfies the requirements of s. 405. In order to establish "entrustment of dominion" over property to an accused person, the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. By the special agreement, if in the absence of such special agreement, a person received the money, he cannot be said to have received it in the fiduciary capacity or, in other words, cannot be held that he was entrusted dominion of the partnership.

8. On prima facie consideration of material on record, at this stage, it does appear there was no special agreement between the informant and the applicant No.2. On the contrary, it appears that from the allegations in the report that the informant handed over signed blank cheques to the applicants. At this stage of the investigation, there is material on record to indicate the capacity of applicant No.1 to deal with M/s. Pratima Silks. In the context of an offence under Section 406 of IPC, the role of Applicant No.1 and Applicant No.2 needs to be segregated during the investigation.

9. As far as an offence under Section 420 of IPC is concerned, according to the allegations in the report, business between the informant and applicant No.2 commenced in 1999. Alleged misappropriation started in the year 2003-2004. Therefore, at this stage, there appears to be no dishonest intention at the inception of the transaction between the informant and applicant No.2.

10. Regarding the allegations of an offence under Sections 406, 408, 409, 420, 465, 467, 468, 471, 472 r/w. 34 of IPC applicants have attended investigation at least for last two years. In the facts of the case, the allegations constituting the offence are documentary in nature. According to the applicants, they have handed over the necessary documents to the investigating agency and are ready to cooperate with investigating agency; they will submit all other documents or material as required by investigating agency.

11. Considering the overall nature of the allegations and the material on record, also looking to the fact that the applicants have been protected by this Court by interim order, the applicants have cooperated with the investigation. The said order deserves to be confirmed. Hence, the following order:

a) In the event of arrest both the applicants in connection with C.R. No.07 of 2018 registered with Vishrambaug police station for the offences punishable under Sections 406, 408, 409, 420, 465, 467, 468, 471, 472 r/w 34 of IPC, they be released on bail on furnishing P.R. bond of Rs.1,00,000/- each, along with one or two sureties in the like amount.

b) Applicants shall remain present before the concerned police station on 26th, 28th and 30th June 2023 between 11:00 am to 2:00 pm thereafter, as and when called by the investigating officer.

c) Applicants shall not directly or indirectly make any inducement, threat or promise to any witnesses acquainted with the facts of the case so as to dissuade them from disclosing such facts to the court or to any police officer.

d) Applicants shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police.

e) The applicant shall, at the time of execution of the bond, furnish their address and mobile number to the investigating officer and the Court concerned and shall not change the residence till the final disposal of the case.

12. The anticipatory bail application stands disposed of.

(AMIT BORKAR, J.)