IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2481 OF 2023

Sanjay Laxmiprasad Pandey ...Applicant

Versus

State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1887 OF 2023

Ashutosh Kumar ...Applicant

Versus

State of Maharashtra ...Respondent

WITH

ANTICIPATORY BAIL APPLICATION NO. 1888 OF 2023

WITH

INTERIM APPLICATION NO. 2494 OF 2023

Monica Ashutosh Kumar ...Applicant

Versus

State of Maharashtra ...Respondent

Mr. Ashok Bhatia, for the Applicant in ABA/2481/2023, ABA/1887/2023 and ABA/1888/2023.
Smt. Ashwini Takalkar, APP for the State/Respondent.
Mr. Uday Warunjikar, a/w Dilip Shukla, for the Intervener.

CORAM: N. J. JAMADAR, J.
DATED: 18th DECEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the applicant, the learned APP for the State and the learned Counsel for the intervener.

2. These applications are for pre-arrest bail in connection with CR No.53 of 2023, registered with DCB-CID Police Station, (initially registered with Varsova Police Station, Mumbai, vide CR No.385/2023), for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 506 read with Section 34 of the Indian Penal Code, 1860 ("the Penal Code") and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. Ashutosh Kumar; applicant in ABA/1887/2023, claims to be a 1992 batch Civil Services Central Government Cadre Officer and currently posted as a Regional Director, Plastics Export Promotion Council.

4. Monica, applicant in ABA/1888/2023, is the wife of Ashutosh Kumar. She claims to be suffering from cancer.

5. Sanjay Pandey. applicant in ABA/2481/2023, is a Director of LFS Group of Companies.

6. Rajkumar Dadhich; the first informant and the applicant in IA/2696/2023 and IA/2694/2023, claimed to have became acquainted with the applicant Ashutosh Kumar (A1) through Babulal Meghwal. Ashutosh (A1) made a representation that he was a Senior IAS Officer, Monica (A2) was the Director of LFS Global Private Ltd. They had 9 to 10 companies, which were engaged in various business, including development of real estate, SRA Projects, Project Financing, and Film Industry. Ashutosh Kumar (A1) also represented to the first informant that if amounts were invested in the said ventures, the investor would get double the amount of investment under one year, with monthly royalty by way of profit.

7. In the month of June, 2017 accused No.1 induced the first informant to invest an amount of Rs.5,00,000/-. However, the first informant was made to draw a cheuqe on an account of KK Engineering of Babulal Meghwal and, on the next day, the said amount was transferred to the account of the applicant. The first informant alleged in the month of July, 2017 accused No.1 again called him, boasted about his position and power. Accused No.1 induced the first informant and his associates to invest the amount. A sum of Rs.40,00,000/- was paid in cash to accused No.1, and his associates, including accused No.2 and accused No.1's partner Manoj Patel and Manager; Sanjay Pandey; applicant in ABA/2481/2023. The first informant alleges that over a period of time till December, 2018, he was induced to part with a sum of Rs.1,45,00,000/- in cash and a sum of Rs.5,00,000/- through cheque. Like the first informant, other investors were also induced to invest various amounts aggregating to Rs.5,50,00,000/-.

8. As the profits were not returned as promised despite repeated demands, the first informant and other investors claimed to have entertained suspicion. Enquiries revealed that the accused had deceived them, the documents shown by Ashutosh Kumar (A1) to induce them to part with the amount were forged and fabricated, Accused No.1 was implicated in a number of offeces of cheating, he was prosecuted for the offences punishable under Prevention of Corruption Act. He had also deceived many other investors. When the first informant and other investors requested accused No.1 to return their amounts, accused No.1 threatened them with dire consequences.

9. Initially a complaint in writing was filed by the first informant. Notice was issued to the accused. The accused had preferred applications for pre-arrest bail apprehending arrest while the FIR was not yet registered. The learned Additional Sessions Judge was persuaded to reject the applications as there was credible material against the applicants. Eventually FIR came to be registered on 20th July, 2023, after which ABA/1887/2023 and ABA/1888/2023 were filed in this Court.

10. Mr. Bhatia, the learned Counsel for the applicants, submitted that the very factum of filing of the FIR is not free from infirmities. The first informant allegedly gave a complaint in writing at Andheri Police Station. The date on which the said complaint was filed, is not borne out by the said complaint. It was submitted that the concerned police station had furnished information under Right to Information Act that no such report was filed. Yet, the investigation was commenced and notices were issued to the applicants to join in the investigation even before lodging of the FIR. This, according to Mr. Bhatia, indicates the highly prejudicial and partisan manner in which the investigation has been carried out.

11. On the merits of the matter, Mr. Bhatia would urge that the perusal of the allegations in the FIR would indicate that except a sum of Rs.5,00,000/- which was transferred to the account of Babulal Meghwal, rest of the amounts running into the Crores, were allegedly paid in cash. Such allegations are inherently improbable. Moreover, the amounts were allegedly paid during the year 2017 – 2018. Yet, the FIR came to be lodged in the year 2023. Such inordinate delay coupled with the inherently improbable allegations in the FIR makes out a strong *prima facie* case in favour of the applicants.

12. It was further submitted that there is material to indicate that accused No.1 was a *karta* of M/s. Ashutosh Kumar HUF, and, in that capacity, a Director in the Companies, namely, LFS Global Pvt. Ltd and Shringar Realties Pvt. Ltd. There is nothing illegal in accused No.1 becoming a Director in those companies in the capacity of *Karta* of HUF, while holding a Civil Post in the Government, as the Service Rules permit. Mr. Bhatia further submitted that the amounts, which were credited to the account of the HUF, have been duly acknowledged in the balance conformation letters executed on behalf of the M/s. Ashutosh Kumar HUF.

13. Mr. Bhatia laid emphasis on the fact that Ashutosh Kumar (A1) had lodged a complaint on 6th April, 2023 of extortion against the first informant and others, who threatened to falsely implicate the applicant. Manoj Patel had also lodged a complaint against the first informant and others of extortion by giving threats of false implication. To give a counterblast to these complaints all the applicants have been falsely roped in.

14. In any event, according to Mr. Bhatia, the offences punishable under Sections 465, 467, 468 and 471 of the Penal Code cannot be said to have been made out as it is not alleged that the applicants had prepared any false documents. Since the applicants have roots in society, the applicants deserve the exercise of discretion.

15. Mr. Patil, the learned APP, resisted the prayers of pre-arrest bail. It was submitted that the applicants have induced the first informant and other four persons to part with a huge amount of Rs.5,50,00,000/-. It was submitted that there are statements of witnesses, which lend support to the claim of the first informant that the amounts were paid to the applicants. A false representation was made by the applicants to show that Ashutosh Kumar (A1) was entitled to a land vested in the State Government.

16. Mr. Patil further submitted that the antecedents of the applicants also dis-entitle them from the discretionary relief of pre-arrest bail. As may as six crimes have been registered against Ashutosh Kumar (A1) and two crimes each against Monica (A2) and Sanjay Pandey (A4), apart from the subject crime. Mr. Patil urged that Ashutosh Kumar (A1) is in a position to influence the witnesses and tamper with evidence.

17. Lastly, Mr. Patil submitted, the observations of the Division Bench in Criminal Application No.955 of 2023, preferred by the applicants to quash FIR No.385 of 2023 (DCB-CID CR No.53/2023), underscore the complicity of the applicants in the alleged offences in emphatic terms. In the face of those observations, according to Mr. Patil, the applicants do not deserve pre-arrest bail.

18. Mr. Warunjikar, the learned Counsel for the intervener, supplemented the submissions of Mr. Patil. Mr. Warunjikar urged that the contentions sought to be urged by the applicants are in the nature of defences, which can be considered at the stage of trial.

19. I have given anxious consideration to the rival submissions. First and foremost, the submission on behalf of the applicants that there was no complaint against the applicants when they were summoned to join in the investigation, looses significance as eventually the FIR came to be registered on 20th July, 2023.

20. The thrust of the submissions of Mr. Bhatia was on the point that the first informant and witnesses allegedly paid amounts in cash and that too prior to five years. Such allegations, according to Mr. Bhatia, do not deserve credence. In the face of such allegations, this Court has granted pre-arrest bail. Reliance was placed on a Division Bench judgment of this Court in the case of ***Pradeep Vyankatesh Balpande vs. State of Maharashtra and Anr.***[1] and an order passed by a learned Single Judge in the case of ***Nadeem Nafis Ahmed Khan vs. State of Maharashtra***[2]***.***

21. Mr. Bhatia would further urge that in a case of this nature where the first informant has indulged in an illegal transaction of investing the amount in cash, the loss must be allowed to lie where it falls and the Court cannot come to the aid of a party in an illegal transaction. Reliance was placed on the decision of the Supreme Court in the case of ***G. Pankajakshiamma and others and others vs. Mathaimathew (Dead) through LRs and Anr.***[3]***.*** Mr. Bhatia further submitted that custodial interrogation of the applicants for the recovery of the allegedly defrauded amount, also cannot be a valid consideration. The Court cannot, according to Mr. Bhatia, perform the role of a recovery agent for the first informant

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1 2021 ALL MR (Cri) 4069.

2 ABA/657/2022 dated 12th March, 2022

3 2004 DGLS (SC) 1198.

and the investors. Reliance was placed on the decisions of the Supreme Court in the cases of ***Dilip Singh vs. State of Madhya Pradesh and another***[4] and ***Ramesh Kumar vs. State of NCT Delhi***[5].

22. There can be no quarrel with the aforesaid propositions. Entitlement to pre-arrest bail turns on the nature of the accusation, gravity of the offences and a *prima facie* material in support of the accusation. The decision to grant bail in one case may not apply to another with equal force as one additional fact or absence of one fact makes a world of difference.

23. *Prima facie,* there is material to indicate that a sum of Rs.5,00,000/- was initially credited to the account of KK Engineering, of Babulal Meghwal, and it was thereafter transferred to the account of Ashutosh Kumar (A1). An endeavour was made on behalf of the applicant to explain away the said payment by pressing into service a statement of confirmation of accounts indicating the receipt of the said amount. It was urged that the said transaction had no connection with the alleged cheating. A document purported to be a promissory note seems to have been executed by

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4 (2021) 2 Supreme Court Cases 779.

5 (2023) 7 Supreme Court Cases 461.

Manoj Patel thereby promising to pay a sum of Rs.5,50,00,000/- on or before 31st September, 2019. In addition, the statements of Babulal Meghwal, Mannalal Gujar and Jaysing Hada, lend *prima facie* credence to the prosecution version. The time and place and circumstance in which the cash amounts were paid and the manner in which those amounts came to be routed, have also been adverted to by the aforesaid witnesses. The material on record further indicates that Sharayu Prasad Yadav, applicant in ABA/3029/2023, has also stated about the use of the account of his firm Obloom Resort Pvt. Ltd. for routing all the amounts.

24. In the face of the aforesaid material, at this stage, it would be hazardous to throw the version of the first informant and the investors overboard. It may be relevant to note that the major submissions now sought to be canvassed were urged before the Division Bench, in the quashing application. It would be appropriate to extract the observations of the Division Bench in the judgment in Criminal Application No.955 of 2023, which read as under:

> "12. Perusal of the FIR would indicate that, the amount of Rs.1,45,00,000/- is alleged to have been handed over in cash to the Applicant No.1 in the presence of Babulal Meghwal, Jaysing Hada and Mannalal Gujjar. Learned APP

has tendered the record of investigation which includes over the statements of the witnesses. Perusal of the statements of Babulal Meghwal, Jaising Hada and Mannalal Gujjar discloses that, they have corroborated the statement that, the money was handed over in their presence to the Applicants. As far as the role of the Applicant No.2 is concerned, in the meeting of July, 2017, when the sum Rs. 40,00,000/- was handed over in cash to the Applicants and the documents pertaining to the Kanjurmarg-Bhandup Land were shown, she was present and had assured the Respondent No.2 that, the assurance is being given by the Applicant No.1 who is a highly placed Government officer and it has to be trusted. The cash amount is alleged to be handed over to the Applicants.

13. From the allegations, prima facie it appears that, the Applicant No.2 had received the cash amount alongwith Applicant No.1and had misrepresented about the business. The Applicant No.2 had a role to play in the entire conspiracy. It needs to be noted that, Section 34 of the IPC has also been applied in the present case. The money had been handed over in her presence and the misrepresentation is that, the investment is to be made in LFS Global Pvt. Ltd. of which Applicant No.2is a director and that the said Company was handling the development projects as well as financing film projects.

14. Considering the allegation in the FIR and the investigation which has been carried out by the Police, the statement of the First Informant as recorded in handing over the sum of Rs. 1,50,00,000/- has been corroborated by three witnesses. As such, merely because the amounts were alleged to have been paid in cash, cannot be a reason to disbelieve the First Informant. At the time of the quashing of the proceedings, the veracity of the allegations is not required to gone into and it will be a matter of trial as to how such huge amounts of cash was generated by the First Informant. The uncontroverted allegations reflected in the material on record, prima facie reveals the complicity of the Applicants in the alleged offences and points out to the commission of the alleged offences by the Applicants.

15. Mr. Lala, learned counsel for the Applicants after deliberations sought permission to withdraw the Application. However,we are not inclined to permit the Applicants to withdraw the Application. This is for the reason that, the FIR as well as investigation which has been carried out in the said crime reveals shocking state of affairs. The Applicant No.1 is stated to be highly placed Government Officer presently working as a Regional Director of Plastics Export Promotion Council.

16. The statements of the witnesses prima facie indicate that, the Applicant No.1 by misusing and misabusing his official position, have deceived the First Informant and

others and induced them to part with a huge amount of about Rs. 5,50,00,000/- under the guise of investing in various SRA/MHADA projects and other development projects assuring them of handsome return of profit.

17. What is startling is that, such a highly placed official has been charged in six crimes which are lodged in Delhi, Mumbai and Rajasthan. Not only that, the Power of Attorney which the witnesses claimed to have been shown to them to induce them to invest into the development project is in respect of land admeasuring about 63.55,225.7 sq. mtrs. bearing Survey No. 275 situated at Village Kanjur Taluka. This huge tract of land, according to the communication of the City Survey Officer,belongs to Maharashtra State Government. This indicates that, not only private individuals are sought to be deceived, but it appears that there is a larger and wider conspiracy to deal with Government land without any authority of whatsoever nature in that behalf.

18. We are also shocked to note that, the investigation discloses that, as per the ROC details, the Applicant No. 1 is shown to be the director in various companies, the details as under :

Name of the Person	**Name of the Company**	**Post held by the Applicant**	**Period of the Holding Post**
Ashutosh Kumar	LFS Aviation Pvt. Ltd.	Managing Director Director	2011 to 2014 2017 to 2019
Ashutosh Kumar	LFS Constructions Pvt. Ltd.	Managing Director Director	2011 to 2014 2017 to 2019
Ashutosh Kumar	LFS Distilleries Pvt. Ltd.	Director	2017 to 2019
Ashutosh Kumar	LFS Pharma & Healthcare Pvt. Ltd.	Director	2017 to 2019
Ashutosh Kumar	LFS Infrastructure Pvt. Ltd.	Managing Director Director	2011 to 2014 2017 to 2019
Ashutosh Kumar	LFS Power and Natural Resources Pvt. Ltd.	Managing Director Director	2011 to 2014 2017 to 2019
Ashutosh Kumar	LFS Chemicals & Fertilisers Pvt. Ltd.	Managing Director Director	2011 to 2014 2017 to 2019

19. We have our own doubts as regards the permissibility of an Government Officer to occupy the post of Managing Director/Director in private limited companies, considering

that the Central Services (Conduct) Rules, 1964 prohibit a Government Servant from engaging directly or indirectly in any trade or business except with the previous sanction of the Government. Considering the material which is unearthed against the Applicants which reveals startling state of affairs, we find it to be of utmost importance that the investigation is not stiffled but is necessarily required to be continued.

20. It is necessary to trace the money trail so as to investigate as to whether the amounts are being laundered through various companies incorporated by the Applicants in which either the Applicants or their associates have been shown as a directors of the company. We find that there is much more than meets the eye and the FIR cannot be quashed at this stage.

21. We are completely satisfied with the manner in which the investigating officer has conducted the investigation in the present matter. However, considering the fact that the Applicant No.1 is stated to be an IAS officer, we feel that the present investigating officer may have his own limitations. As such, we direct the investigation to be conducted by the Deputy Commissioner of Police and the investigation to be supervised by the Joint Commissioner of Police of the said Department. The Deputy Commissioner of Police may take the help of the present investigating officer or other officers to assist the investigation.

The Application stands dismissed in the above terms."

25. The aforesaid observations emphasised the necessity of investigation, in clear and explicit terms. Custodial interrogation of the applicants Ashutosh Kumar and Sanjay Pandey appears to be indispensable for a fair and effective investigation. I find substance in the submission of Mr. Warunjikar, the learned Counsel for intervener, that the explanation sought to be offered on behalf of the applicant Ashutosh Kumar is in the nature of a defence, which is required to be tested at the trial. At this stage, to unearth the fraud in all its facets, ascertain the identity of the persons privy to the fraud and also have a money trail, custodial interrogation of the applicant Ashutosh Kumar and Sanjay Pandey seems to be warranted.

26. As regards Monica Ashutosh Kumar, applicant in ABA/ 1888/2023, the only allegation against Monica in the FIR appears to be that in the month of July, 2017, when Ashutosh Kumar (A1) was making an effort to induce the first informant and his associates to invest the amount by showing them the documents, without furnishing copy thereof, the first informant and his associates demanded copies of those documents and thereupon Monica alongwith other accused tried to reason with them by asserting that why they were not believing a person holding such a high position. Except the said incident in the month of July, 2017, no role of any inducement for, or even presence at the time of, delivery of the rest of the amount is attributed to applicant Monica. On rest of the occasions, the first informant alleged, apart from Ashutosh Kumar (A1), Manoj Patel and Sanjay Pandey were present and they collected and counted the cash amount. In the aforesaid view of the matter, I am persuaded to hold that the applicant Monica deserves exercise of discretion.

27. Hence the following order:

: O R D E R :

(i) Applications of Ashutosh Kumar; applicant in ABA/1887/2023 and Sanjay Pandey; applicant in ABA/2481/2023, stand rejected.

(ii) Application of Monica Ashutosh Kumar; applicant in ABA/1888/2023, stands allowed.

(iii) In the event of arrest of Monica Ashutosh Kumar; applicant in ABA/1888/2023, in CR No.53 of 2023, registered with DCB-CID Police Station, (Initial CR No.385/2023 registered with Varsova Police Station, Mumbai), the applicant be released on bail on furnishing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

(iv) The applicant shall cooperate with the investigation and attend DCB-CID Police Station on 28th and 29th December, 2023 and 4th and 5th January, 2024 in between 10.00 am. to 1.00 pm. and, thereafter, as and when directed by the Investigating Officer.

(v) The applicant shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.

(vi) The applicant shall regularly attend the proceedings before the jurisdictional Court.

(vii) It is clarified that these *prima facie* observations are confined to determine entitlement to pre-arrest bail only.

Applications stand disposed.

In view of disposal of ABA/1888/2023, IA/2694/2023 does not survive and stands disposed.

[N. J. JAMADAR, J.]