IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2434 OF 2023

Kashinath Nama Pokala @ Pokla and anr. ...Applicants

Versus

State of Maharashtra ...Respondent

Mr. Chaitanya Pendsse, i/b Vainyak Patil, for the Applicants.
Mrs. Ashwini Takalkar, APP for the State/Respondent No.1.
Mr. Pramod Pawar, for the Complainant.

CORAM: N. J. JAMADAR, J.
DATED: 6th SEPTEMBER, 2023

ORDER:-

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with CR No.443 of 2022, registered with Shahapur Police Station, Thane Rural, for the offences punishable under Sections 403, 406, 420 and 465 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3. Hari Pokala, the grandfather of Laxman Ambo Pokala, the first informant, and Dhau Antu Pokala, the grandfather of Kashinath Pokala, applicant No.1, had purchased agricultural lands situated at Mauje Kothare, Taluka Shahapur, District Thane. Those agricultural lands were acquired by the competent authority for Mumbri Dam Project under a Deed executed on 28th September, 2021. Total compensation of Rs.4,34,00,000/- was determined. After deducting 10% of the compensation amount towards Class-II occupancy and making payment of Rs.9,75,000/-, each, to four children of Dwarki Gira, the daughter of Dhau, the Government credited a sum of Rs.3,54,75,963/- in the joint account of first informant's father Ambo Pokala and applicant No.1 on 6th October, 2021. The branch of Hari Pokala and that of Dhau Pokala had 50% share each, therein.

4. First informant alleged a sum of Rs.1,77,37,500/- was to be paid to his father Ambo. The applicant allegedly took Ambo Pokala to Bank of Maharashtra, Aasangaon Branch. He was made to put signature on the documents and an amount of Rs.1 Crore was transferred to the account of Ambo Pokala. They were informed that the balance amount would be paid after a week. It, however, transpired that the applicants and other fraudulently got transferred the amount of Rs.77,37,500/- to the account of applicant No.1. Furthermore, a sum of Rs.13,12,000/- was transferred to the account of the applicant in TDC Bank, Shenav. Thus, the first informant lodged the report.

5. Apprehending arrest, the applicants approached the Court of Session. By an order dated 9th March, 2023, the learned Additional Sessions Judge declined to exercise the discretion in favour of the applicants.

6. Mr. Pendse, the learned Counsel for the applicants, submitted that in fact the father of the first informant was entitled to only 1/3rd of the amount which fell to the share of Hari Pokala. Yet, a sum of Rs.1 Crore was transferred to the account of Ambo Pokala, the father of the first informant. Since the father of the first informant had put thumb impression on the documents to withdraw the amount, the allegations that the applicants had withdrawn the said amount fraudulently are *prima facie* untrue. It was further submitted that, at any rate, all the offences revolve around the documents and thus can be investigated fully without insisting for the custodial interrogation of the applicant. The Court may, therefore, put the applicants to terms.

7. In opposition to this, the learned APP stoutly submitted that a clear case of fraud is made out. Inviting the attention of the Court to the extracts of accounts which indicate that on 12th October, 2021 only a sum of Rs.1 Crore came to be transferred to the account of Ambo Pokala, the father of the first informant, from the joint account of Ambo Pokala and applicant No.1, (wherein the Government had credited a sum of Rs.3,54,77,953/- on the previous day) and on the very day a sum of Rs.1,74,00,000/- was transferred to the account of applicant No.1 Kashinath and subsequently various sums were credited to the account of applicant Kashinath in quick succession, the learned APP submitted that applicant No.1 had got the aforesaid amount transferred to his account by practicing deception. It was further submitted that during the course of the investigation, it transpired that, at one stage, applicant No.1 had shown willingness to refund the excess amount which he had got transferred in connivance with applicant No.2.

8. Since the fact that on the very day i.e. 12th October, 2021, different amounts were got credited to the account of Ambo Pokala, the father of the first informant, and the applicant No.1 though they were to share the amount of compensation in equal proportion and subsequently from the said joint account the amount was transferred to the account of accused No.1 in various tranches is borne out by the extracts of the joint account and the account maintained in the name of applicant No.1, a strong *prima facie* case is made out against the applicants.

9. Mr. Pendse attempted to salvage the position by submitting that applicant No.1 may be permitted to offer adequate security to cover the excess amount. As regards applicant No.2, it was urged that he is not the beneficiary of the alleged fraud.

10. I find it difficult to accede to these submissions. The *prima facie* involvement of applicant No.2 is borne out by the material on record. The offer to furnish security for the defrauded amount does not dilute the gravity of the offences. Custodial interrogation of the applicants is indispensable for an effective and complete investigation, unearth the fraud in all its facets and also ascertain the money trail. Hence, the application deserves to be rejected.

11. The application stands rejected.

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

[N. J. JAMADAR, J.]