IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3318 OF 2022
WITH
INTERIM APPLICATION NO. 322 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 3318 OF 2022

1. Mr. Sarfaraz Abu Harera Malik
2. Mr. Mohammed Mobin Chowdhary …. Applicants

v/s.

The State of Maharashtra and anr. …. Respondents

WITH
INTERIM APPLICATION NO. 4215 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO. 3318 OF 2022

Mohd. Naeem Khan ….Applicant/ Intervenor

v/s.

The State of Maharashtra and ors. …. Respondents

Mr. Kamlesh Mishra a/w. Mr. Bipin Chandra for the Applicants in ABA/3318/2022
Mr. R.M. Pethe, APP for the State.
Mr. R.A. Shaikh a/w. Mr. Hasan Sayed for the Intervenor in IA/4215/2022.
Mr. Sumeet Jagtap i/b. Samsulla Chaudhary for Respondent/ Victim No.2.
Mr. S.C. Shendge, API, Sakinaka Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 06th MARCH, 2023.

P. C. :-

. This is an Application under section 438 of Cr.P.C. filed by the aforesaid Applicants for pre-arrest bail in C.R.No.2097/2022 registered with Sakinaka Police Station, Mumbai for offences punishable under sections 406, 420 of the Indian Penal Code.

2. Heard learned counsel for the Applicants, learned APP for the State and learned counsel for the Intervenor – Complainant. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The FIR reveals that the Applicants claimed to be the partners of Pro Nirman Solutions, a firm dealing with scrap material. In April 2021, the Applicant No.1 told the Complainant that the firm was issued a work order for demolition of chimney and removal of scrap material for an amount of Rs.63,13,000/-. The Applicant informed the Complainant that he was unable to pay the security deposit of Rs.15,00,000/- and requested the Complainant to pay Rs.10,50,000/- on an assurance of sharing 50% of the tender amount. The Complainant accepted the offer and deposited an amount of Rs.8,00,000/- in the account of the firm and paid Rs.2,50,000/- in cash. On 07/06/2021, the Applicant No.1 told him that he had to pay Rs.2,00,000/- to the Officer of Shree Cement Limited, Banger and under this pretext, he transferred an amount of Rs.2,00,000/- in his

account and in return asked cash of Rs.2,00,000/-. He claims that he had paid to the Applicant – Sarfaraz Malik an amount of Rs.2,00,000/- in cash in presence of Amir Ali, Maniyar and Israr Mohammed Chowdhary.

4. The Complainant claims that the work of demolition was being delayed. Hence, he sent a legal notice to Pro Nirman Solutions and learnt that there was no such work order in favour of Pro Nirman Solutions. The Complainant, therefore, demanded refund of the money. The Applicant issued two cheques dated 21/10/2021 and 25/10/2021 drawn on Axis Bank, which were dishonoured. Upon persistent insistence, the Applicants returned Rs.2,00,000/- by RTGS but refused to pay the balance amount of Rs.8,50,000/-. He has further stated that thereafter, the Applicants issued another cheque for Rs.4,00,000/- but the said cheque also could not be honoured because of 'stop payment' instructions given by the Applicants. He has stated that the Applicants refused to pay the balance amount of Rs.8,50,000/- and further threatened him. Having realized that he has been cheated, the Complainant lodged the FIR, based on which the aforesaid crime has been registered.

5. The FIR prima facie reveals that the Applicants had induced the Complainant in paying Rs.10,50,000/- alleging that they have received work order for demolition of chimney when in fact, no such work order was issued in favour of the firm. The work order which is placed on record by the Applicants is dated 29/05/2017 and the work referred to in the said work order was to be completed within seven days from the date of the said work order. The said work order does not pertain to the work of demolition of chimney which was allegedly entrusted to the Applicants in the year 2021.

6. The records also prima facie reveals that the Applicants had also taken money from another victim – Hakikullah Mehandi Hasan Khan on the same pretext that he had obtained work order in favour of Pro Nirman Solutions and that he was unable to deposit Rs.10,00,000/- as security deposit. The Applicant No.1 had induced said Hakikullah Khan in paying him total amount of Rs.10,00,000/- on an assurance that he would give him share of 45% on total amount of Rs.63,13,000/-. The statement of the said victim also prima facie reveals that the Applicants had showed him one sale order of Shree Cement Limited, Banger, Rajasthan and had induced him to pay Rs.30,00,000/-. He told the 2nd victim to adjust the amount of

Rs.10,00,000/- paid towards security deposit for demolition of chimney and pay the balance amount of Rs.20,00,000/-. This witness has paid an amount of Rs.20,00,000/- by RTGS in the Axis Bank account No.918020071090667 of Pro Nirman Solutions. He has stated that the Applicants had also told him to lift the scrap material within one week as per the sale order. He subsequently learnt that Shree Cement Limited, Banger had not issued any such order for removal of scrap material. He has stated that the work order as well as sale order shown to him was forged. He has further stated that when he asked the Applicants to return the money, they issued three cheques for Rs.10,00,000/- each which were dishonoured. He claims that the Applicants refused to repay the money on the one pretext or the other.

7. The material on record prima facie reveals that no work order was issued in favour of the firm despite which the Applicants had induced the Complainant as well as witness/Victim No.2 in paying them total amount of Rs.40,00,000/-. It is to be noted that the Applicants had filed consent terms before this Court indicating that they had entered into a settlement with the witness – Hakikullah Khan. The details of the amount payable to the witness were mentioned in Clause (2) of the consent terms. It is on the basis of this settlement

that this Court had granted interim relief to the Applicants. Mr. Sumeet Jagtap learned counsel appearing on behalf of the victim states that the Applicants had not paid the amount as agreed in the said consent terms. The records thus reveals that the Applicants had obtained interim relief under a false pretext of settlement.

8. Considering the above facts and circumstances and particularly the conduct of the Applicants, in my considered view, this is not a case for grant of pre-arrest bail. Hence, the Application is dismissed. Interim Applications stand disposed of in view of dismissal of the Anticipatory Bail Application. Request to continue the interim relief for a further period of four weeks is rejected.

(SMT. ANUJA PRABHUDESSAI, J.)

PREETI H JAYANI

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