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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.3615 OF 2022

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Priyanka Swapnil Alande

... Applicant

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Anshuman R. Asare with Mr. Ankur Pahade, Mr. Sanjay Kokane and Mr. Swapnil Phatangare for the applicant.

Mr. Amit A. Palkar, APP for respondent No.1/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 11, 2023

RC.:

1. Apprehending arrest in connection with C.R. No.1102 of 2019 registered with Pimpri Police Station for the offences punishable under Sections 420, 406 and 409 read with 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, in the year 2017, LLP was formed by the informant Satish Bhimsen Agarwal along with Tejas Ravindra More, Swapnil Vilas Alande, Jignyasa Chetan Patil alias Jignyasa Tejas More and applicant-Priyanka Swapnil Alande etc. The LLP was in the name Swaroopa Homes Pvt. Ltd. It was agreed to develop Plot Nos.7 and 8 out of Gat No.92 Mouje Chikhale,

Taluka Haveli, District Pune. Accordingly, loan of Rs.21 crore was sought for. It was sanctioned by SBI. However, amount of Rs.12,28,00,000/- was misappropriated for the purpose otherwise than the development of the above property. Accordingly, the informant lodged the report.

3. The applicant, therefore, filed application under Section 438 of the Criminal Procedure Code, 1973 before the learned Additional Sessions Judge-13, Pune by order dated 17 December 2022. The applicant, therefore, filed present anticipatory bail application.

4. On perusal of the report, it appears that the allegations against the applicant is misappropriation of loan sanctioned by Bank in favour of partnership firm. The loan was sanctioned for the purpose of carrying out construction; however, according to informant, the amount was utilized for personal purpose.

5. In so far as complaint filed by partner against co-borrower for offence under Section 406 of the Indian Penal Code, 1860, the Apex Court in its authoritative pronouncement in **Velji Raghavji Patel v. State of Maharashtra** reported in AIR 1965 SC 1433 while considering the provisions of the Partnership Act *qua* Section 406 of the Indian Penal Code, 1860 observed that in case of partnership, every partner has dominion over the partnership property by reason of the fact that he is a partner. Unless prosecution establishes dominion over asset of partnership by special agreement between the parties, the element of entrustment would be absent. It is held that in absence of such agreement

receipt of profit by the partner cannot be said to have been received in a fiduciary capacity. In the facts of the case, filing of report is a dispute between partners inter se in relation to partnership property.

6. Apart from the aforesaid circumstances, accused No.1 has been released under Section 438 of the Criminal Procedure Code, 1973 and another co-accused is granted regular bail. The applicant has, therefore, made out a prima facie case for grant of relief.

7. However, it is made clear that the observations in the present order shall not prejudice the prosecution lodged by the Bank against the partners as the allegations made by the Bank operate in independent sphere. Hence, following order:

a) In the event of arrest of the applicant in connection with .R. No.1102 of 2019 registered with Pimpri Police Station for the offences punishable under Sections 420, 406 and 409 read with 34 of the Indian Penal Code, 1860, he be released on bail on furnishing P.R. Bond in the amount of Rs.1 lakh with one or two sureties in the like amount;

b) The applicant shall remain present before the investigating officer on 12, 14 and 17 July 2023 between 11.00 a.m. to 2.00 p.m. and thereafter as and when called by the concerned investigating officer;

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

d) The applicant 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 his 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;

8. The anticipatory bail application stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)