IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3386 OF 2023
WITH
INTERIM APPLICATION NO.4579 OF 2023

Sh. Shashank Garg and Another ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. Brijender Chahar, Senior Advocate a/w. Mr. Vikas Deep (through VC) i/b. Ashley Cusher, for the Applicants.
Ms. Anamika Malhotra, APP, for the Respondent/State.
Mr. Rizwan Merchant a/w. Mr. Ramiz Shaikh and Mr. Aamir Qureshi i/b. Rizwan Merchant & Associates, for the complainant.
Mr. Rohan Bagade, API, EOW, Mumbai.

CORAM : N. J. JAMADAR, J.
DATE : DECEMBER 14, 2023

P.C.:

1. Heard the learned counsel for the applicant and the learned APP for the State.

2. This application is preferred seeking pre-arrest bail in connection with C.R. No. 176 of 2023 registered at M.R.A. Marg police station for the offences punishable under sections 120-N, 406, 409, 420, 467, 468 and 471 of Indian penal Code, 1860.

3. The first informant is a Director of M/s. Mehta Land and Developers Private Limited (M/s. Mehta). Late Paras Porwal (A/2)

and Ronny Porwal (A/3) were the partners of M/s. Yash Enterprises (Yash). Yash was developing a project of '141 Tenements' at Lower Parel, Mumbai. M/s. Mehta and Samay Estate Private Limited, of Seths, were induced by the Porwals to become partners in M/s. Yash by investing capital of Rs. 10 crores. Over a period of time the composition of Yash changed. As of July, 2014 there were 4 partners of Yash, namely, Paras Porwal (40% share in profit), M/s. Mehta (35% share), Samay (15% share) and Ronny Porwal (10% share).

4. The first informant alleged since there was no progress in the development of '141 Tenements' project, M/s. Mehta and Samay decided to retire from Yash. For the said purpose, the partners of Yash approached Prakash Bohra (A/1), the Chartered Accountant. Prakash Bohra was appointed as an Arbitrator. On 2nd August, 2019 Prakash Bohra prepared documents like Interim Consent Award, Retirement Deed, Power of Attorney, Declaration cum Indemnity, with the consent of the parties and all the parties admitted the contents thereof. It was, inter alia, agreed that late Paras Porwal and Ronny Porwal were to give a sum of Rs. 85 Crores within 120 days to M/s. Mehta and Samay. In accordance with the terms of the Interim Consent Award, a sum of Rs. 4.99 Crores only was paid at

the time of signing of the said award. Prakash Bohra, the first informant alleged, also prepared Final Award by assuring M/s. Mehta and Samay that Final Consent Award would be implemented after full implementation of the interim consent award. Though all the partners signed the Final Consent Award, yet, no date was put thereon.

5. The first informant alleged, Porwals did not pay the balance amount of Rs. 80.01 Crores in terms of the interim consent award. The first informant approached Porwals as well as Prakash Bohra. They bought time on one or the other pretext. In the month of October, 2022 Paras Porwal died by suicide. In one of the meetings with Ronny Porwal, it transpired that Imperious Reality LLP (Imperious) was introduced as a partner in Yash, and Ronny claimed that thenceforth 141 Tenements project would be developed by Imperious. Further inquiries revealed that Yash had instituted a suit against Imperious being Suit No. 1067 of 2019, and the said suit came to be decreed in accordance with the Consent Terms.

6. Upon perusal of the proceedings in the said suit, it transpired that on 1st July, 2019 Porwals had entered into an Investment

Agreement in respect of '141 Tenements' under which Rs. 30 Crores was to be invested by Imperious and, in consideration thereof, Imperious was to have 50% share in the said project. Initially Rs. 5 Crores were paid. It further transpired that the Final Consent Award was forged in as much as the date was put thereon by Prakash Bohra. M/s. Mehta and Samay were shown to have retired from Yash. Under the consent decree, an amount of Rs. 25 Crores was credited to the account of Yash by Imperious. However, out of the said amount, a sum of Rs. 20.58 Crores was diverted to the account of Combitic, another company of Shashank Garg, applicant No. 1. Imperious alleged that there was breach of the investment agreement and the consent decree and laid a claim of Rs. 127 Crores against Yash and Mr. Mehta and Samay were also sought to be held liable for the said claim.

7. Alleging that in pursuance of a criminal conspiracy Porwals and Prakash Bohra along with the applicants forged the Final Consent Award and defrauded M/s. Mehta and Samay to the tune of Rs. 207 Crores, the first informant lodged the report.

8. Mr. Brijender Chahar, learned Senior Advocate for the applicants submitted that the applicants had no role in the alleged

forgery and the dispute interse partners of Yash. The applicants came in the frame in the month of July, 2019 when they made investment of Rs. 30 Crores. The fact that the applicant invested Rs. 30 Crores is incontrovertible. The applicants were not at all privy to the resolution of partnership dispute under Interim and Final Consent Awards. The first informant specifically allegeed that Prakash Bohra forged the final consent award. Therefore, the allegations of forgery and fabrication of the documents, cannot be attributed to the applicants.

9. It was further submitted that the dispute is of civil nature. It has been given a colour of criminal prosecution. The applicants have cooperated with the investigation and furnished all the requisite information and documents and are still willing to cooperate with the investigation. Therefore, the applicants deserve pre-arrest bail.

10. Ms. Anamika Malhotra, learned APP for the State, stoutly resisted the prayer for pre-arrest bail. It was submitted that the money trail would indicate that out of the amount of Rs. 30 Crores, which the applicants claimed to have invested in Yash, a sum of Rs. 20 Crore was promptly diverted to the account of Combitek,

another entity of the applicants. This is a clear pointer to the fraud in pursuance of criminal conspiracy. The learned APP would urge that the applicants have not appeared before the investigating officer despite several notices. Therefore, having regard to a magnitude of the fraud, the custodial interrogation of the applicants is warranted.

11. Mr. Rizwan Merchant, learned counsel for the first informant/ intervener submitted that the applicants had resorted to malicious prosecution on the basis of forged and fabricated documents. When the Economic Offences Wing of Sonipat declined to register the first information report and filed a detail closure report, the applicants approached another police station and registered first information report. The informant party was required to approach the Punjab and Haryana High Court and seek stay to further investigation. In contrast, in connection with the instant first information report, the applicants have flatly refused to cooperate with the investigation.

12. Mr. Merchant submitted, according to his instructions, LOC has been issued against the applicants. Such conduct of the applicants dis-entitles them from discretionary relief of pre-arrest bail. Mr. Merchant would further urge that the contentions in the

application and the submissions canvassed on behalf of the applicants regarding nature of the transactions constitute the defense of the applicants. At this stage, this Court need not delve into those aspects of the matter. It was for the applicants to appear before the investigating officer and make a clean breast of the transactions. That having been not done, despite adequate opportunity, the applicants do not deserve any relief.

13. I have carefully considered the allegations in the first information report. I have also perused the material on record. I have noted the facts in a little detail, on purpose.

14. The material on record prima facie reveals that disputes arose interse partners of Yash. The disputes were sought to be resolved through arbitration by appointing Prakash Bohra (A/1) as the Arbitrator. Incontrovertibly, Prakash Bohra (A/1) prepared the interim award, final award and allied documents with the consent of the parties. Indisputably, the parties were *ad idem* the terms of resolution. The parties also agreed the terms of Final Award. The signing of Final Award also appears prima facie indisputable. The first informant alleges Final Award was not to be acted upon till the Interim Award was fully implemented. It was thus left un-dated.

Prakash Bohra (A/1) allegedly committed forgery by putting date of the Interim Award on the Final Award.

15. Evidently, till the execution of the Interim and Final Awards, the applicants were not in the frame. Prima facie, I find substance in the submissions of Mr. Chahar that the forgery cannot be attributed to the applicants.

16. As regards the allegations of cheating in pursuance of criminal conspiracy, there is material to indicate that the applicants parted with a sum of Rs. 30 Crores. At the heart of the controversy is the claim that M/s. Mehta and Samay were fraudulently ousted from the partnership. Whether the applicants were privy to the alleged act of fraudulently removing M/s. Mehta and Samay from the partnership firm and there was dishonest diversion of funds which Imperious had invested in Yash are the matters for investigation. I am, therefore, inclined to protect the liberty of the applicants while directing them to join in the investigation.

Hence, the following order.

ORDER

1] Interim Application No. 4579 of 2023 filed by the first informant stands allowed.

2] The first informant be impleaded as party-respondent No. 2 to this application.

3] Necessary amendment be carried out within a weeks time.

4] Issue notice to the respondents.

5] The learned APP waives notice to respondent No. 1.

6] Mr. Merchant waives notice for respondent No. 2.

7] In the meanwhile, in the event of arrest in C.R. No. 176 of 2023 registered at M.R.A. Marg police station, the applicants be released on bail on furnishing a P.R. bond in the sum of Rs.30,000/- with one or two sureties in the like amount, each.

8] The applicants shall cooperate with the investigation and attend MRA Marg police station, on 27^{th}, 28^{th} and 29^{th} December 2023 in between 10 am to 1 pm and, thereafter, as and when directed.

9] The applicants shall not tamper with the prosecution evidence and give threat or inducement to first informant, any of the prosecution witnesses or any person acquainted with the facts of the case.

10] The applicants shall furnish their specimen handwriting and signatures, if directed.

11] The applicants shall not leave the country without prior permission of the learned Metropolitan Magistrate exercising jurisdiction over MRA Marg police station.

Stand over to 18th January, 2024.

(N. J. JAMADAR, J.)