**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

924 ANTICIPATORY BAIL APPLICATION NO.426 OF 2024

DIPAK HARIBHAU SONAWANE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

WITH

ANTICIPATORY BAIL APPLICATION NO.427 OF 2024

SUDEEP RAMESH MAHORE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicants : Mr. Munde Suresh Walmikrao.
APP for Respondent/s-State : Mr. S. P. Sonpawale.
Advocate for Respondent No.2 to assist APP : Mr. S. S. Thombre.
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CORAM : S. G. MEHARE, J.
DATE : 04.10.2024

PER COURT :-

1. Heard the learned counsel for the applicants, the learned APP for the respondent-State and learned counsel for respondent No.2.

2. The applicants seek pre-arrest bail in Crime No.195 of 2022, registered with Kranti Chowk Police Station, District Aurangabad, for the offences punishable under Sections 420, 465, 468, 471 read with Section 34 of the IPC.

3. The prosecution case in brief was that the applicants with other persons told the complainant that they make the CSR funds available. Believing in the assurance of the applicants and other co-accused and on their say the complainant has transferred Rs.20,00,000/- through RTGS in the account of one Roshni Transport. That time, one of the co-accused Pallavi issued a cheque of Rs.20,00,000/- to the complainant to win over the confidence of the complainant that if they could not arrange for the CSR fund, they would return the fee. Thereafter, they were in communication. The accused assured the complainant that the responsible officers of the Daimand India Pvt. Ltd. Mumbai were coming to Aurangabad. They will inspect the papers and relevant documents of the trust/society. The complainant requested them to transfer the CSR fund. However, co-accused Pallavi and an unknown person flee away in a car. After following them, only Pallavi returned and assured him that the funds would be released. Following them for one month, he was told that the representatives of the Mahindra Susten Ltd. Mumbai would come. The earlier company would not release CSR funds. Again, the same request was made to him to keep all his papers ready. They met him at Kala Ganpati Mandir,

CIDCO, Aurangabad. He got suspicious. Therefore, they asked for the identification proof of one Amol Dipak Ghorpade and they examined him and doubted that the authority letter, identity card and bank statements were false and bogus. It is a fact that the cheque issued to the complainant was presented to the bank for encashment, it was dishonoured. Therefore, the complainant filed a proceeding under Section 138 of the N.I.Act against Pallavi. Thereafter, the FIR was registered making the above allegations.

4. Further facts of the case were that one of the co-accused was granted anticipatory bail. The applicants secured the anticipatory bail from the learned Sessions Court on the ground of parity to the said co-accused. The Sessions Court believed them. However, later on, it transpired that they obtained the anticipatory bail from the learned Sessions Court by misrepresenting the facts. Hence, the bail granted earlier was cancelled on 17.02.2023. The applicants had impugned the said order before this Court vide Writ Petition No.310 of 2023. This Court pronounced the judgment on 25.10.2023 upholding the order of the learned Additional Sessions Judge. Then, the applicants approached the Hon’ble Supreme Court. The Hon’ble Supreme Court had granted them interim

protection for a few days. However, on 21.02.2024, the Special Leave Petition was dismissed. Thereafter, again the applicants approached the learned Sessions Court for anticipatory bail, which was registered as criminal Bail Application No.403 of 2024. The learned Sessions Judge again dismissed the application recording the findings of the earlier conduct of the applicants and in view of the order of this Court and the order of the Hon'ble Supreme Court. Thereafter, again the applicants approached this Court by way of the present applications.

5. On the earlier rejection of the bail applications, learned counsel for the applicants would submit that the applications of the applicants were never decided on merit. The earlier bail application was just granted on parity and no Court touched the merit. However, he argued before the Court that the Court did not grant him bail only on parity but also on merit. The Court did not accept his argument and specifically observed that the contention of the learned counsel for the petitioner that the order of bail was granted on merit as well as on merit does not find place in the impugned order passed by the learned Additional Sessions Judge. The learned Judge who had granted anticipatory bail had cancelled the said bail by recording the observations that the previous order was granted

on presumptions of granting bail to co-accused and the bail is on parity. In such a situation, it is not opened for this Court to replace the said findings that the order of pre-arrest bail was also on merit. Apart from this, even perusal of the order dated 21.11.2022 whereby the bail was granted also did not indicate clearly that the bail granted was on merit as well as on parity. In the absence of any such specific observations therein, it is difficult for this Court to accept the contention of the learned counsel for the applicants that the bail was granted on merit as well. Referring to this finding of the Court, the learned counsel for the applicants has vehemently argued at length that the right to seek anticipatory bail on merit was not touched any time before. Therefore, their applications would be considered on merit.

6. He further argued that the applicants have no role to play in this case. Though not pleaded, for the first time he argued that applicant Sudeep runs the computer centre. He was imparting training to the various persons through the complainant's society. The society used his phone numbers for communication with other co-accused. There are no specific allegations against applicant Deepak Sonawane that he played a role that he was a member of the gang. He has vehemently

argued that the complaint is vague. A complaint is silent about filing proceedings under Section 138 of the N.I.Act. The complainant is a big man. He is the brother of Ex-MLA. He is consistently threatening the applicants and telling them that if his money is returned, he will withdraw the complaint. He also alleged against the investigating agency that they did not inquire with the applicants when they were attending the Police Station as per the order of this Court granting interim protection. Even if the complaint is accepted as it is, it is barely a civil contract. Not performing the civil contract does not give rise to the criminal proceeding. The complainant has no explanation as to why had transferred Rs.20,00,000/- to Roshan Transport without verifying the facts. The complaint is also silent about the benefits, the applicants have received from this transaction. They do not know Pallavi Khavankar, who had issued a cheque to the complainant. The FIR was lodged after five months that too at night hours. What was the urgency for the complainant to file the FIR at such late hours?

7. He relied on the case of ***Sarabjit Kaur Vs. State of Punjab and another ; (2023) 5 Supreme Court Cases 360*** and vehemently argued that the Hon'ble Supreme Court has held that a breach of contract does not give rise to criminal

prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Merely an allegation of failure to keep up promise will not be enough to initiate criminal proceedings. The facts of that case were that the appellant before the Hon'ble Supreme Court had entered into an agreement to purchase a plot. The date of the execution of the sale deed was also agreed. However, it was discovered that the vendor was not the owner of the property. The appellant had received Rs.5,00,000/- as earnest money. The date of the sale deed was extended on receipt of an additional sum of Rs.75,000/-. The complaint was filed by one Darshan Singh S/o Jangir Singh with reference to the same alleged agreement to sell. However, against property dealer Manmohan Singh in the aforesaid complaint, the reference was made to two other transactions entered into by Darshan Singh and the prayer was that the amount of Rs.29,00,000/- be recovered from the property dealers. Under this premise, the Hon'ble Supreme Court held as mentioned above.

8. He further relied on the case of ***Jay Shri and another Vs. State of Rajasthan ; Criminal Appeal No.0330 of 2024 (Arising out of SLP (Crl.) No.14423 of 2023), dated 19.01.2024***. In this case, the Hon'ble Supreme Court held that a mere breach of

contract does not amount to an offence under Section 420 and Section 406 of the IPC unless the fraudulent or dishonest intention is shown right from the beginning of the transaction. The Court has referred to the case of Sarabjit Kaur (supra). Further, it has been observed that this Court has time and again cautioned about converting purely civil disputes into criminal cases. It seems that the Supreme Court was satisfied that it was a civil-like dispute. The anticipatory bail was granted to the applicants.

9. Learned APP has strongly opposed the application. He read the complaint lodged before the Superintendent of Police and argued that the Commissioner of Police sent the complaint to the Police Station and then the crime was registered. It was transpired in the investigation that the identity cards and bank statements mentioned in the complaint were fake and forged. The applicants were on WhatsApp chat which goes to show that they were giving dry promises to the complainant about the CSR fund. One of the accused Pallavi sent some documents to the complainant to win over his confidence that they were genuine. Applicant Sandip also sent a few documents to the complainant. All accused were in contact with each other. When the interim protection was granted to

the applicants on condition to attend the Police Station, they did not deposit their mobile phones. However, he has no document or written instructions that any such inquiry was made. No agreement or any document about the contract was produced to believe that there was a civil contract. Even at the time of amending the application, no such facts regarding the agreement between the parties were brought to the light. As time passed, the complainant learnt that all the accused had systematically cheated him and got the money transferred in the name of Roshni Transport making him believe that they were the genuine persons and had contact with the companies to provide the CSR. Their earlier conduct on securing the bail by suppressing the facts is one of the strong circumstances to believe that since inception they had intention to cheat the complainant. Earlier the applicant tried to secure the bail on merit. But neither the High Court nor the Supreme Court considered it. Therefore, it cannot be said that these are the first bail applications on merit. The offence is serious. Many more persons might have been cheated. They wanted to seize their mobiles and relevant documents. Therefore, their custodial interrogation is essential.

10. Learned counsel Mr. Thombre for the victim has reiterated the arguments of the learned APP and added that since inception the applicants had intention to cheat the complainant. They pretended that they were the responsible officers of the company and they could easily make the CSR fund available. Therefore, the complainant fell prey to their false promises and paid them Rs.20,00,000/-. He also argued that after dishonour of the cheque, the complainant contacted the applicants for a refund of his money. They assured him to repay, but they did not. He further argued that they have also played fraud with the Court while obtaining the anticipatory bail. This Court in writ petition No.310 of 2023 has specifically observed that purity of the process of law is of paramount importance. Any order obtained by misrepresentation or fraud is a nullity. Any amount of justification for the grant of anticipatory bail even having regard to the merit of the case is not sufficient to maintain such an order, once there is a fraud/misrepresentation with the Court. He would submit that this Court in the above order has declined the bail to the applicants even on merit for the reasons that they had played a fraud with the Court. He further argued that the earlier bail application was argued on merit and the above findings would reveal that the merits of the case were also considered in SLP

before the Hon'ble Supreme Court. Therefore, these applications cannot be considered unless the applicants show the change in circumstances.

11. Learned counsel for the applicants replied that the applicants posted e-mail to the Investigating Officer. However, he never called them for further investigation. The police did not investigate the crime properly. They were lethargic and working on the say of the complainant who is a powerful person. To this date, they have not inquired about Roshni Transport and co-accused Pallavi. The applicants are the soft target to recover the money under the pressure of police as they are easily available in Aurangabad. He prayed that the applicants have merits. Nothing is to be recovered and discovered from them. Therefore, their custodial interrogation is not essential. The interim protection granted to them may be confirmed.

12. The first question is whether these applications would be considered again in view of the findings of this Court in Writ Petition No.310 of 2023. On the arguments advanced by the learned counsel for the applicants in that writ petition, the Court observed that the bail granted by the learned Additional

Sessions Judge was not solely on the ground of parity. However, it is allowed on merit. Though the Court in paragraph No.6 has observed that the contention of the learned counsel for the petitioner that the order of bail was granted on merit as well as on parity does not find place in the impugned order of the Additional Sessions Judge, it has been further observed in paragraph No.7 that any amount of justification for the grant of anticipatory bail even having regard to the merit of the case is not sufficient to maintain such order. This finding crystallizes that the case of the applicants was also considered on merit. However, since they have played a fraud/ misrepresentation with the Court they do not deserve anticipatory bail. The findings of this Court in the above writ petition were confirmed. Reading these findings, it could be said that the applicants' anticipatory bail applications were also dealt with having regard to the merits of the case. Therefore, the applicants were to show the change in circumstances. However, they have no case as such. They are coming with a case that their applications were ever not decided on merit. Hence, they deserve anticipatory bail on merit. As far as the merit of the case as argued at length by all parties, there appears snail's speed investigation on the part of the Investigating Officer. The total non-cooperation with the learned APP in not supplying the entire papers and supplying the bald information to the learned APP about the refusal of the applicants to submit their mobile handsets and raises a doubt that the investigating Officer is not interested in finding the truth. Considering the way of investigation perhaps he might be under pressure or may be acting on the instructions of the brother of the Chairman of the society, who is an Ex-MLA. However, there is no material placed before the Court to believe such allegations at this juncture.

13. Be that as it may, the papers produced on record, particularly, the WhatsApp chats reveal that the applicant Sudeep was in contact with the complainant and he was replying to the queries of the complainant. In one of the WhatsApp chats, he replied that he would inform him after asking the present applicant Deepak. The chat show some connection of the applicants with the crime. As far as the case laws relied upon by the applicants are concerned those are distinguishable on facts. Considering the allegations it could not be said that it is a civil contract. The money was paid to one of the co-accused as consultancy fees. Against that consultancy fees, the applicant did not pay a single penny from any company and intellectually avoided keeping their words

and promises. The persons who were brought to Aurangabad being the representatives of the few companies were also fake. Many documents were exchanged between the complainant and the co-accused Sudeep. It seems from the arguments of all sides that nobody is coming to the Court with complete facts. Only the suitable facts to make out their cases were brought. However, what the material produced before the Court is sufficient to prima facie believe the nexus of the applicants with the alleged crime. They were the persons promising the complainant to make the CSR fund available for the society of the complainant on paying a consultancy fee of Rs.20,00,000/-.

14. The above discussion led this Court to conclude that the applicants do not deserve anticipatory bail as prayed. Hence, both bail applications stand dismissed.

15. Learned counsel for the applicants prays for continuing the interim protection. The facts of the case as discussed above reveal that the applicants were enjoying protection from arrest by obtaining orders from the Courts, due to which also the investigation is stalled. Considering the facts of the case and the conduct of the applicants, the Court is of the view that it

would be inappropriate to extend the interim protection as prayed for. Hence, the prayer is rejected.

(S. G. MEHARE, J.)

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