

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.104 OF 2022
WITH
INTERIM APPLICATION NO.1086 OF 2022

Dhananjay Sharadchandra Kulkarni and Others ...Applicants
vs.
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.105 OF 2022
WITH
INTERIM APPLICATION NO.1084 OF 2022

Mahesh Avinash Sakhalakar and Others ...Applicants
vs.
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.106 OF 2022
WITH
INTERIM APPLICATION NO.1082 OF 2022

Sarthak Diliprao Palkar and Another ...Applicants
vs.
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.107 OF 2022
WITH
INTERIM APPLICATION NO.1080 OF 2022

Gitesh Sahebrao Gaikwad and Ors. ...Applicants
vs.
The State of Maharashtra ...Respondent

Mr. Manoj Mohite, Senior Advocate a/w. Ms. Neha Sule i/b. Ms.
Shivani Nayak, for the Applicants in ABA No. 104 of 2022.
Mr. Aabad Ponda, Senior Advocate a/w. Ms. Varsha Bhosale, Mr.

Bhushan Mahadik i/b. Mahadik and Associates, for the Applicants in ABA No. 105 of 2022.

Mr. K.N. Kandekar, Senior Advocate a/w. Ms. Manvita Malpekar i/b. Shaunak Sawant, for the Applicants in ABA No. 106 of 2022.

Mr. K.N. Kandekar, Senior Advocate a/w. Ms. Pallavi Pakale, Mrs. Nikita Pawar i/b. Ms. Miloni Shah, for the Applicants in ABA No. 107 of 2022.

Mrs. Mankuwar Deshmukh, Special P.P. for the State.

Mr. Girish Kulkarni, senior advocate a/w. Mr. H.S. Kadam and Mr. Dhanawade, for the Complainant/ first informant.

Mr. Krupashankar Pandey a/w. Mr. Heramb Kamda, for the Interveners.

Mr. Sandip Jagtap, PI, Satara City police station.

CORAM :	N. J. JAMADAR, J.
RESERVED ON :	20th DECEMBER, 2023
PRONOUNCED ON :	21st FEBRUARY, 2024

ORDER:

1. These applications are for pre arrest bail in connection with C.R. No. 1067 of 2021 registered at Satara City police station initially for the offences punishable under sections 120-B, 381, 403, 406, 408, 415, 418, 420, 463, 465, 468, 469, 481, 500, 477(A) of Indian Penal Code, 1860 (the Penal Code). Subsequently, an offence punishable under section 467 of the Penal Code has been added.

Background facts and Position of the parties :-

2. Prasanna Deshmukh, the first informant, is the Managing Director of Utopia Optovision Private Limited (Utopia). Mahesh Sakhalkar, the applicant in ABA No. 105 of 2022 (accused No. 1),

Mrs. Gauri Deshmukh, the wife of the first informant, and Sandip Borse constituted the first Board of Directors of Utopia, which was established in 2008. Sandip Borse resigned from the Board of Directors. Since 11th March, 2008 the first informant, Mrs. Gauri Deshmukh and Mahesh Sakhalkar (accused No. 1) have been the Directors of Utopia. Utopia is engaged in the business of manufacturing of machine solutions primarily for the pharmaceutical sector.

3. Sarthak Palkar, the applicant in ABA No. 106 of 2022 (accused No. 13), was working in the Sales and Marketing Department of Utopia since May, 2010. Mrs. Kiran Palkar, the applicant No. 2 in ABA No. 106 of 2022 (accused No. 15), is the wife of applicant No. 1.

4. The applicant Nos. 3 to 9 in ABA No. 107 of 2022 were all working with Utopia in different departments/capacities.

5. Radinik Technologies Private Limited is a private limited company (Radinik). Dhananjay Kulkarni (accused No. 10) and Sunanda Kulkarni (accused No. 11), the applicant Nos. 1 and 2 in ABA No. 104 of 2022, are the Directors of Radinik. Dhananjay Kulkarni had started M/s. Radinik Technologies, a sole proprietorship firm, in the year 2004. Radinik Technologies Private

Limited was formed in the year 2017. Radinik was engaged in the business of supplying software required by Utopia and its customers.

Prosecution Case :-

6. The first informant alleged, Mahesh Sakhalkar (accused No. 1) was handling the day to day activities of Utopia like marketing, design, purchase, production, dispatch and services and all the employees were working as per the instructions of Mahesh Sakhalkar (accused No. 1).

7. The first informant alleged that the applicants and the co-accused in pursuance of a criminal conspiracy to defraud Utopia, committed multiple acts of commission or omission which constituted grave offences of theft, cheating, forgery and falsification of accounts. It was, inter alia, alleged in the month of December, 2019. Mahesh Sakhalkar (accused No. 1) with a mala fide motive tendered resignation from the Board of Directors of Utopia. Subsequently, Mahesh Sakhalkar withdrew the same and continued to work with Utopia. However, Mahesh Sakhalkar (accused No. 1) indulged in various illegal and fraudulent acts and, eventually, again tendered resignation on 17th May, 2020. A series of resignations followed. The rest of the applicants and other co-accused who were working with Utopia tendered resignations one after another within

a short span of time and, subsequently, joined Radinik with whom Utopia had business dealings since a long time.

8. Sensing foul play, the first informant caused a third party internal stock audit through an Auditor, namely Jivan Jagtap & Company. In the meanwhile, inquiries with the employees, including the applicants and co-accused, revealed that the applicants and the co-accused had hatched a conspiracy to defraud Utopia by resorting to disingenuous criminal devices. During the course of audit, Nitin Chikurde (accused No.8), the applicant No. 3 in ABA No. 107 of 2022, allegedly admitted that stock worth Rs. 41,19,597/- was deficit in store department. The audit report by Jivan Jagtap & Company revealed that there were large scale discrepancies in the stocks and thus a fraud had been played on Utopia.

9. In substance, the first informant alleged that Mahesh Sakhalkar (accused No. 1) and Dhananjay Kulkarni (accused No. 10) in pursuance of a conspiracy with other employees of Utopia and/or the Directors and employees of Radinik and/or Radinik Technologies Private Limited defrauded Utopia broadly in the following manner :

(i) The accused stole Utopia's designs.

(ii) Certain goods were sold to M/s. Saran Machineries LLP at a

lower price at the behest of Mahesh Sakhalkar and employees and thereby Utopia was defrauded to the tune of Rs. 1,15,26,647/-

(iii) Though 15 bills were allegedly raised on Utopia, the softwares/ services thereunder were never delivered. The accused persons, especially the Directors and employees of Radinik resorted to forgery and fabrication of those bills.

(iv) Towards the aforesaid bills a sum of Rs. 3,52,53,850/- was dishonestly siphoned off.

(v) Lastly, by not making the correct entries in the stock/ inventory register of Utopia, the accused defrauded Utopia to the tune of Rs. 8,62,16,195/-

10. Utopia was thus defrauded, to the tune of Rs. 13,64,71,876/-. There was theft of material in the form of stock worth Rs. 8,62,16,195/-. Utopia was defrauded to the tune of Rs. 3,52,53,850/- on the strength of forged, fake bills and invoices, and a wrongful loss of Rs. 1,15,26,647/- was caused to Utopia, by selling the material at deflated price.

11. As noted above, consequent to allegations of forgery of documents, a charge u/s.467 of the Penal Code came to be added.

12. Apprehending arrest, the applicants and co-accused had

approached the Court of Session. As the learned Additional Sessions Judge declined to exercise discretion, the applicants have approached this Court.

Proceedings in Applications:

13. On 20th January, 2022 when the applications were listed before this Court, it was stated that Devdatt Kane (accused No. 12) and Dinesh Phalak (accused No. 19), the applicant Nos. 3 and 4 in ABA No. 104 of 2022 (the employees of Radinik) and Tanmay Ransingh (accused No. 3) and Gitesh Gaikwad (accused No. 2), the applicant Nos. 1 and 2 in ABA No. 107 of 2022, (the former employees of Utopia) had already been arrested.

14. Noting the aforesaid fact, the applications of above named applicants came to be disposed of as having been rendered infructuous. After hearing the parties and noting their submissions, this Court was, however, persuaded to grant ad-interim relief to the rest of the applicants. Thus, the applicants are on interim bail since then.

15. In the aforesaid backdrop, the first informant has filed Intervention Applications. The first informant has also filed affidavit and documents in opposition to the prayers of pre-arrest bail.

16. The applicants in ABA Nos. 104 of 2022 and 107 of 2022 have also filed replies to these Intervention Applications. The applicants have placed on record certain documents.

17. Shivaji Bhosale, the then API, EOW, Satara has filed an affidavit in justification of addition of charge under section 467 of the Penal Code.

18. At the outset, another development which deserves to be noted, is the fact that the first informant, being aggrieved by the alleged improper and biased investigation, had preferred Writ Petition No. 627 of 2023, wherein by an order dated 14th March, 2023, a Division Bench of this Court directed the Superintendent of Police, Satara to cause an inquiry in the role of various investigating officers, who investigated the instant crime, and also supervise the investigation. A couple of affidavits were filed by the Superintendent of Police, Satara in the said Petition. I shall advert to the said aspect a little later.

Submissions :-

19. In the backdrop of the aforesaid material, I have heard Mr.

Manoj Mohite, learned Senior Advocate for the Applicants in ABA No. 104 of 2022, Mr. Aabad Ponda, learned Senior Advocate for the applicants in ABA No. 105 of 2022, Mr. K.N. Kandekar, learned counsel for the applicants in ABA No. 106 of 2022 and ABA No. 107 of 2022, Mrs. Deshmukh, learned Additional Public Prosecutor for the State and Mr. Girish Kulkarni, learned senior Advocate for the first informant, at length. The learned counsel took the Court through the pleadings and documents placed on record.

20. Mr. Manoj Mohite would submit that the instant prosecution is a classic example of wreaking vengeance by resorting to prosecution in connection with a purely civil dispute, and that too by a party who is in default. Mr. Mohite, submitted that since the month of December, 2019, Radinik had been relentlessly pursuing Utopia to clear its outstanding payments. More than half a dozen communications were addressed. In response thereto, the first informant on behalf of Utopia, had paid a sum of Rs. 10 lakhs and unequivocally acknowledged the liability to clear the balance amount. At no point of time had Utopia ever raised any dispute about the non delivery of software and/or services by Radinik. Mr. Mohite laid emphasis on the fact that there are contemporaneous documents which dismantle the first informant's version that the requisite software and services were not rendered. Attention of the

Court was invited to the documents which allegedly evidence the supply of software and services by Radinik.

21. Mr. Aabad Ponda submitted that the material on record would indicate that the said Mahesh (A1) had laid a claim against the first informant and other Director of Utopia for his share in the profits and with a view to obviate the payment of the said amount, the first informant has resorted to a false prosecution. Mr. Ponda took the Court through the documents evidencing the resignation tendered by the applicant Mahesh Sakhalkar (accused No. 1) and the genesis of the first information report in the alleged threat by Aniruddh Desai (accused No. 4) to commit suicide on account of alleged harassment at the hands of first informant.

22. Mr. Ponda would submit that there are voluminous documents which evidence the delivery of the goods and services. The allegations of fraud and forgery are thus wholly false and actuated by malice. Mr. Ponda laid emphasis on the fact that the applicants and the co-accused have cooperated in the investigation. They are on interim bail for almost two years. The investigation has reached an advanced stage. Thus, at this stage, the custodial interrogation of the applicant is not at all warranted. On the other hand, Mr. Ponda would urge that the reports of the investigation agency especially

the affidavit of Superintendent of Police, Satara indicate that the first informant has not rendered requisite cooperation in the investigation, and even did not furnish necessary documents for an independent third party audit by an auditor appointed by Satara police. In this view of the matter, the interim bail deserves to be made absolute.

23. Mr. K.N. Kandekar supplemented the submissions of Mr. Mohite and Mr. Ponda. It was urged that the applicants who were former employees of Utopia, have been unnecessarily dragged in the prosecution. No grievance was ever made while these applicants were in the employment of Utopia. The employer has resorted to a criminal proceeding after employees were constrained to resign from Utopia on account of the circumstances brought about by the acts and omissions on the part of the Directors of Utopia.

24. In opposition to this, Mrs. Mankuwar Deshmukh, learned Additional P.P, made strenuous effort to draw home the point that the applicants and co-accused defrauded Utopia in pursuance of a well planned conspiracy, for years. En masse resignations of employees of Utopia, after the resignation of Mahesh Sakhalkar (accused No. 1), can not be said to be a matter of sheer co-incidence. In pursuance of the criminal conspiracy, Utopia was defrauded to

the tune of Rs. 13,64,71,876/-. Elaborating the submissions, Mrs. Deshmukh laid emphasis on the report of CA Jivan Jagtap & Company which indicates that there was discrepancy of stock work Rs. 8,62,16,195/-. Miss Deshmukh inviting the attention of the court to the report submitted by Nitin Chikurde (accused No. 8) the then head of the stores department, acknowledging that there was discrepancy of stock worth Rs. 41,19,597/-. Reference was made to the statement of witnesses Harshal Bhambere reflecting upon the role of Nitin Chikurde (accused No. 8) and Aniket Bobde (accused No. 9). Thus, the custodial interrogation of the applicants is indispensable to unearth and trace the stocks so siphoned of, urged Mrs. Deshmukh.

25. Mrs. Deshmukh further urged that the intrinsic evidence of invoices and bills indicates that on the strength of forged and fabricated documents, huge payments were made to Radinik. Attention of the Court was invited to the copies of the bills, purchase orders and the statement of witnesses to bolster up the submissions that Utopia was defrauded to the tune of Rs. 3,52,53,850/- by using forged and fabricated documents. Mrs. Deshmukh would further urge that the discovery made by Gitesh Gaikwad (accused No. 2) led to the recovery of the property of Utopia to the tune of Rs. 20,70,600/-. Furthermore, analysis of the hard disk, laptop and

pendrive, recovered from the office of Radinik, has revealed that huge data of Utopia has been dishonestly and fraudulently transferred to Radinik. What accentuates the situation, according to Mrs. Deshmukh, was the brazen manner in which the seized equipment and properties were shifted by the applicants in ABA No. 104 of 2022 without intimation to the investigating agency. This circumstance of hampering and tampering with evidence singularly dis-entitles the applicants from the relief of pre-arrest bail, urged Mr. Deshmukh.

26. Mrs. Deshmukh further submitted that the applicants Sarthak Palkar (accused No. 13) and Kiran Palkar (accused No. 15) fraudulently purchased equipment from Utopia at a throw away price in the name of an entity M/s. Saran Machineries LLP and sold the same equipment to the customers of Utopia at high cost and thereby defrauded Utopia to the tune of Rs. 1,15,26,647/-. The custodial interrogation of Mahesh Sakhalkar (accused No. 1), Sarthak Palkar (accused No. 13) and Kiran Palkar (accused No. 15) is indispensable to unearth the fraud, and the beneficiaries of those fraudulent transactions.

27. Mr. Girish Kulkarni, learned senior advocate for the first informant submitted that since inception the investigation has been

designedly defective and biased. The first informant was constrained to approach this Court seeking direction for impartial investigation. Yet, the investigating agency continues to conduct investigation in a manner which favours the accused. The interim audit report submitted by PSAC & Associates, appointed by Satara police to carry out a forensic audit of Utopia, is a link in the chain of the partisan steps taken by the investigating agency. Mr. Kurkarni would urge that, at this stage, the Court may not delve into the said report.

28. Mr. Kulkarni submitted with a degree of vehemence that the removal of the seized articles which were kept with Radinik for safe keeping, and the resultant tampering therewith is a factor which can not be lightly brushed aside. Hampering and tampering with evidence and witnesses is writ large. Therefore, these applications deserve to be rejected.

Consideration:

29. Evidently, the allegations against the applicants and co-accused have their genesis in the internal management of Utopia as well as the business dealings Utopia had with Radinik. Mahesh Sakhalkar (accused No. 1), the then Director of Utopia and Dhananjay Kulkarni (accused No. 10), the Director of Radinik, were allegedly two principal confederates, in the alleged conspiracy to

defraud Utopia. As a part of this larger conspiracy, allegations of commission of various offences have been attributed to the rest of the applicants and the co-accused. The prosecution alleges eventually Mahesh Sakhalkar (accused No. 1) and most of the applicants and co-accused joined Radinik and, thus, the acts and omission on the part of the applicants and co-accused/employees of Utopia while they were working with Utopia were driven by dishonest and fraudulent intention.

30. In the aforesaid broad nature of allegations, the trigger for the dispute between the first informant and Mahesh Sakhalkar (accused No. 1), on the one part, and Utopia and Radinik, on the other part, are required to be noted.

31. Qua Mahesh Sakhalkar (accused No. 1), as is evident, the trigger for the dispute was the resignation of Mahesh Sakhalkar. On 30th December, 2019 Mahesh Sakhalkar had initially tendered the resignation. It was withdrawn. Later on, Mahesh Sakhalkar again tendered resignation by addressing a letter to the Board of Directors on 20th May, 2020. It was preceded by an email to the first informant which adverts to certain reasons. Prima facie, it appears that a wedge was driven between Mahesh Sakhalkar (accused No. 1) and the first informant.

32. It would be contextually relevant to note that Tanmay Ransing (accused No. 3) tendered resignation on 2nd December, 2020; Aniket Bobde (accused No. 9) resigned on 10th March, 2021 and Nitin Chikurde (accused No. 8) resigned on 1st April, 2021. In the FIR, the first informant alleged that after Tanmay Ransing (accused No. 3) and Gitesh Gaikwad (accused No. 2) resigned on 2nd December, 2020, they refused to execute a non-disclosure agreement.

33. Cumulatively, attendant circumstances allegedly gave rise to suspicion. A third party auditor, namely Jivan Jagtap & Company submitted its report on 3rd June, 2021. FIR came to be lodged on 27th November, 2021 after about one and a half year of Mahesh Sakhalkar (accused No. 1) tendering the resignation.

34. In the circumstances of the case, this time lag, prima facie assumes significance. The lodging of the FIR in which prime role was attributed to Mahesh Sakhalkar (accused No. 1) after about one and a half year of his resignation, cannot be brushed aside as completely innocuous, since, as noted above, the friction arose when Mahesh Sakhalkar (accused No. 1) had initially tendered resignation in the month of December, 2019. The allegations are thus required to be considered keeping this aspect in view.

35. With regard to the dispute with Radinik, it is necessary to note that Radinik had been pursuing payments of the outstanding amounts since two years prior to the lodging of the FIR. On 31st December, 2019, Radinik asserted on account of huge outstanding amount, it was not possible to continue the business relationship and declared that Radinik would not be able to accept any further purchase orders w.e.f. 1st January, 2020. On 26th February, 2020 the total outstanding for three financial years 2016-17, 2017-18 and 2018-19 was stated to be in the range of 4.5 Cores.

36. A series of communications followed. The response of Utopia dated 8th June, 2020 wherein Utopia refers to payment of Rs. 10 lakhs and readiness to release the payment in respect of all the supplies made by Radinik till date, prima facie, nowhere reveals that, at that point of time, there was any dispute or demure about the sale and delivery of the products and services.

37. In the reply dated 28th June, 2020, disapproving the proposal of Radinik to allow it to provide services directly to the clients of Utopia, the first informant again reiterated willingness of Utopia to pay outstanding dues. Evidently, the said communication was made after a month of Mahesh Sakhalkar (accused No. 1) severing ties

with Utopia. Yet, in the said communication, there is no reference to any non delivery of the product and services much less any fraudulent acts.

38. The aforesaid correspondence, prima facie, indicates that there was a claim by Radinik in respect of non payment of the price of products and services supplied by Radinik to Utopia. It is in this backdrop, the allegations in the FIR need to be considered. The Court has the benefit of investigation in the interregnum.

39. The main plank of the allegations in the FIR as regards the wrongful loss to Utopia is based on the discrepancy in the stock, as pointed by M/s. Jivan Jagtap & Company. As against this, the applicants have relied on the audited statements of Utopia prepared by Godbole and Company, the statutory auditors of Utopia. Those audit reports are signed by first informant in his capacity of a Director of Utopia. Those audit reports show that the value of stocks as of 31st March, 2021 was 4.40 Crores only.

40. In the backdrop of aforesaid discrepancy in the financial position/statements of Utopia the investigating agency appointed an independent auditor, PSAC & Associates, after the Superintendent of Police started supervising the investigation. Executive summary of

the interim report submitted by PSAC & Associates, CA deserves extraction. It reads as under:-

(a) It is observed from the documents obtained from Axis Bank, which is the Bank of the Company Utopia Optovision Private Limited, that the authorized signatories in the Bank were Mr. Prasanna Deshmukh and Mrs. Gauri Deshmukh. Hence it can be concluded that the authority and responsibility of the payments made by the Company was with them. The Complainant themselves must have signed the payment order to Radinik for these invoices claimed to be fake.

(b) It is also observed that the Managing Director Mr. Prasanna Deshmukh has signed the VAT Audit Report for the period 1 April 2017 to 30th June 2017 where Utopia Optovision Private Limited has taken the complete VAT credit for the Invoices claimed to be fake.

(c) The Police Department has also obtained confirmations independently from one the ultimate customers of Utopia Optovision Private Limited namely CIPLA Ltd., confirming whether the Dongles (supplied by Radinik to Utopia to be assembled with its machine/printers and supplied to the ultimate customer) were actually received by them. CIPLA Limited vide email has confirmed the dongles available with them currently along with the unique dongle number. If the product purchased from Radinik Technologies Pvt. Ltd. by the complainant was also further supplied by them to their customer CIPLA Ltd., why are the invoices and PO's relating to these claimed as fake. It can be asserted that the Invoices are not fake.

(d) The Stock report submitted by CA Jivan Jagtap according to which the complainant has claimed a difference of 8.62 crores in its inventory, is completely vague and does not provide any clear evidence with regard to difference in the recorded and physical Inventory of the Company. While calculating the difference in actual and recorded inventory the closing and opening balances are completely ignored. In fact, even the book value of the inventory in the Books of accounts as on 13.01.2021 was not more than 4.93 crores, so the missing inventory cannot be more than that. The Report submitted by CA Jivan Jagtap hence has a lot of errors and is not clear in terms of finding the value of difference in the physical and book inventory and hence can be ignored.

(e) As per the stock audit conducting by Bindu and Associates, a third-party professional firm, appointed by the Axis Bank directly, the stock as on 13/01/2021 is Rupees 493.38 lacs (4.93 crores). Such stock is also physically verified by them on test check basis. (Refer point no B).

41. I am conscious that the report of PSAC & Associates is an interim report. It is also true that reservations have been expressed by Mr. Kulkarni, learned senior counsel for the first informant, and even allegations are made against the third party auditor. However, the interim report cannot be jettisoned away as independent audit was considered necessary by the investigating agency.

42. I have perused the reasons ascribed by the PSAC & Associates in support of its conclusions. It would suffice to note that the basis of stock audit report of Jivan Jagtap & Company, the edifice of the allegations in the FIR, is questioned by PSAC & Associates by ascribing prima facie sustainable reasons. A bare perusal of the report of Jivan Jagtap & Company indicates that the analysis was made as per the management representation and the auditor had not carried out physical verification of the stock. PSAC & Associates inter alia refers to the stock statement dated 14th April, 2021 submitted by the first informant to the Axis Bank wherein the stock was valued at 4,40,74,856/- as of 31st March, 2021.

43. Secondly, the allegations that no product and services were

rendered under invoices which were allegedly forged and fabricated, is prima facie shown to be incorrect not only with reference to the documents which the Radinik presses into service but also with reference to the facts ascertained by police during the course of investigation. To the affidavit of the Superintendent of Police, Satara in Writ Petition No. 627 of 2023 dated 8th November, 2023, a copy of inquiry report dated 29th April, 2023 by Sub-Divisional Police Officer, Satara (Rural) is annexed. It is inter alia recorded that during the course of investigation, it was found that the products and equipment were installed by Radinik in the machines with the customers of Utopia. In this context, the third party independent auditor, PSAC & Associates, after verification of the documents qua each of the invoices, records that if the products purchased by Utopia from Radinik have been supplied by Utopia to its customers, the invoices cannot be termed fake. Prima facie, the findings in interim report appeal to reason.

44. The endeavour of Mrs. Deshmukh as well as Mr. Girish Kulkarni to bolster up the prosecution version by reference to the statements of witnesses and the alleged intrinsic discrepancies in the documents, in the face of the aforesaid evaluation, does not merit countenance. The allegations are required to be appreciated in the light of the consistent demand by Radinik for outstanding

payment and acknowledgment of liability by Utopia. The delay in lodging the report also deserves to be taken into account.

45. In any event, the facts unearthed during the course of investigation and the internal report of PSAC & Associates, prima facie create doubt regarding the genuineness of the prosecution version. In the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of pre-arrest bail. (**Siddharam Satlingappa Mhetre v. State of Maharashtra**¹).

46. In the case of **Sushila Aggarwal and Others vs. State (NCT of Delhi) and Anr.**², the Constitution Bench of the Supreme Court, enunciated that the Courts ought to be generally guided by the considerations such nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while assessing whether to grant or refuse anticipatory bail. It is trite, a balance has to be struck by the Court between two factors, namely, no prejudice should be caused to the free, fair and full investigation and yet there should be prevention of harassment, humiliation and unjustified detention of the accused.

47. On the aforesaid touchstone, in the facts of the case,

1 (2011) 1 SCC 694.

2 (2020) 5 Supreme Court Cases 1

considering the prelude to the occurrence, the prima facie doubt about the genuineness of the allegations, which emerges from the material collected during the course of investigation, and the apparent animosity on account of parting of ways by Mahesh Sakhalkar (accused No. 1) and other employees of Utopia, as well as the commercial dispute between Utopia and Radinik, at this length of time, the custodial interrogation of the applicants does not seem warranted.

48. Before parting, it must be noted that the affidavit of the Superintendent of Police indicates that the seized articles which were removed by Radinik allegedly without intimation to the investigating officer, in the opinion of the investigating agency did not form part of the evidence. Moreover, after an independent forensic auditor PSAC & Associates came to be appointed, the accused, who were summoned, did appear before the auditor and submitted the documents. In contrast, the first informant did not furnish the requisitioned documents. I am, therefore, not inclined to accede to the submissions that there is possibility of hampering and tampering with the investigation.

49. Resultantly, the applications deserve to be allowed and the order of interim bail is required to be made absolute.

Hence, the following order.

ORDER

- 1] The applications stand allowed.
- 2] The order of interim bail dated 20th January, 2022 is made absolute on the terms and conditions incorporated therein.
- 3] In addition, the applicants shall appear before the investigating officer as and when directed.
- 4] The applicants shall regularly attend the proceedings before the jurisdictional Court.
- 5] In view of the disposal of the applications, all Interim Applications also stand disposed.

(N.J. JAMADAR, J.)