IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.980 OF 2023

1. Pooja Hanmant Chougule, &
2. Hanmant Tatoba Chougule. .... Applicants

Versus

The State of Maharashtra .... Respondent

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WITH
INTERIM APPLICATION NO.4671 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.980 OF 2023

Mr. Anand S. Patil, Advocate for the Applicants.
Ms. Rajeshree V. Newton, APP for the Respondent-State.
Mr. M.V. Thorat, Advocate for the Intervenor in IA/4671/2023.

CORAM : SARANG V. KOTWAL, J.

DATE : 19th MARCH, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.4/2023 registered at Shiroli MIDC Police Station, District-Kolhapur on 10.1.2023 under sections 406, 418, 420, 465, 467, 468, 471, 477-A of IPC.

2. Heard Mr. Anand Patil, learned counsel for the Applicants, Ms. Rajeshree Newton, learned APP for the Respondent-State and Mr. M.V. Thorat, learned counsel for the Intervenor.

3. The FIR is lodged pursuant to the order passed by the learned Magistrate under Section 156(3) of Cr.P.c.. The complainant is the Proprietor of M/s. Aditi Stone Crusher, Shiroli Pulachi Private Limited. The complainant is in the business of stone excavation. The land at Survey No.187 is totally admeasuring 136 H & 11 R. Out of that land, 4 H 90 R property is owned by the Forest Department. The accused – Applicants are the office bearers of Panchadhara Mahila Khan Majoor Wa Audigik Sahakari Sanstha Limited, Top, Taluka – Hatkangale, District – Kolhapur (hereinafter referred to as 'the said Society'). The Applicant No.1 is the founder Chairman and the Applicant No.2 is the Secretary of the said Society. On 18.9.2019, the Additional Chief Forest Officer had sanctioned permission for excavation in that land. The Applicants represented to the complainant that they did not have

sufficient man power, did not have the working capital and they did not even have the amount to pay royalty and, therefore, the Applicants told the complainant that they would sub-let that work to the complainant. From the money received from the complainant, they would pay the royalty and since the permission is granted the complainant could start excavation. Accordingly, an agreement was executed. The Applicant No.1 executed a Power of Attorney in favour of the complainant's husband. The complainant started the excavation work from 10.10.2020. In the meantime, the complainant arranged for loan from the bank and other financial institutions. They initially paid Rs.1,31,00,000/- to the Applicants and subsequently also paid Rs.90 Lakhs. Thus, in all the complainant paid Rs.2,12,00,000/- to the Applicants. Some of the amounts, out of this amount, were paid in cash. There is a reference to a Tripartite agreement between the bank sanctioning the loan, the complainant and the Applicants. After about three months, the Applicant No.1 forced the complainant to stop the work. She told the complainant that the law did not permit the Applicants to sub-let that work. The Applicants promised to return the complainant's amount. In the meantime, interest on the loan amount mounted to Rs.12 Lakhs. The installments of the Bank were also not paid. The Applicant No.1 told the complainant that sub-letting that work would be in violation of the permission and, therefore, the Government was likely to take away the entire work from her. Thus, the complainant lost their amount of Rs.2,12,00,000/-. They did not earn anything from the transaction; and thus, their amount was misappropriated. On this basis, the FIR is lodged.

4. Learned counsel for the Applicants submitted that the Applicants are the office-bearers of the said Society and, therefore, there cannot be any vicarious liability fastened on them. The entire transaction is in the nature of business transaction and, therefore, if there is any dispute, it can only be a civil dispute. There was no criminal offence involved. None of the ingredients of any of the offences is made out. The police also did not register the FIR initially, but, it was

registered only pursuant to the order passed under Section 156(3) of Cr.P.C.. The Applicants had to pay huge amount of GST to the Government and, therefore, the amount given by the complainant was utilized for that purpose. There was no misappropriation of amount. The Government has imposed penalty to the tune of Rs.22 Crores on the Applicants which shows that they have not misappropriated any amount.

5. Learned counsel for the first informant – intervenor submitted that there are bank transactions showing transfer of amount to the said Society from the complainant's firm. Huge amount of Rs.2,12,00,000/- was paid by the complainant to the Applicants' Society. The amount which is paid in cash was paid under receipts, which are signed by the Applicant No.1. The permission given by the Government contains a specific clause that the forest land proposed to be diverted was not to be transferred to any other agencies, bank or persons without prior approval of the Central Government. Therefore, the Applicants were aware of this fact and yet concealing this fact, huge amount was taken from the

complainant. After receiving that amount within three months the work was stopped. The amount was not returned.

6. Learned APP produced the investigation papers before me and she submitted that the investigating agency has collected the office copies of the aforementioned agreement, tri-party agreement and the power of attorney which support the complainant's case. She submitted that there is one offence registered against the Applicants vide C.R. No.12/2023 under Section 379 read with 34 of IPC on 19.1.2023 at the same Shirioli MIDC police station.

7. I have considered these submissions. As far as C.R. No.12/2023 is concerned, it is in respect of theft of stones and illegal transportation of those stones excavated from the same property. Thus, in the year 2023 also the Applicants were continuing with excavation in that property and they were doing it illegally as per the allegations in the said FIR.

8. As far as the present case is concerned, the investigation papers include the Notarized agreement dated

3.8.2019 between the complainant and the Applicants, which is signed by the Applicant No.1 which mentions that the Applicants were giving those rights for excavation for a period of ten years from 25.10.2019 to 25.10.2029.

9. There is another Memorandum of Understanding between the same parties executed in August, 2021 regarding receipt of money. There are receipts signed by the Applicant No.1 about receiving cash amount. There is a power of attorney executed by the Applicant No.1 in favour of the complainant's husband in respect of the same property. There is a tripartite agreement dated 2.2.2022 between the Chairman of Veershaiv Co-operative Bank Limited, the complainant and the Applicants' Society. In that agreement also there is a reference to the permission given by the Government of India for excavation in that land. There is a reference of mortgage of the property.

10. Thus, it is quite clear that the Applicants had executed various documents for raising money from the complainant and starting the stone crushing work. Inspite of

the permission dated 24.7.2019 incorporating a condition that it could not be transferred to any other person without prior approval of the Central Government. Therefore, all this is done by the Applicants knowing fully well that they could not transfer that work further and raise money. Thus, the money was taken from the complainant on false representation by inducing them into raising that amount. The money taken by the Applicants was misappropriated. There is no substance in the arguments that the Applicants are only the office bearers of the said Society. They are controlling the Society. The Applicant No.1 has signed important documents in this transaction. I do not find substance in the submission that it is purely a civil dispute.

11. As discussed earlier, the ingredients of cheating and misappropriation are made out. In this view of the matter, considering the gravity of the offence and the need of custodial interrogation of the Applicants, the protection under Section 438 of Cr.P.C. cannot be granted. The Application is

rejected. With rejection of the main application, intervention application is also disposed of.

12. At this stage, Shri Patil submitted that the ad-interim protection granted to the Applicant be continued. I have perused the order dated 5.4.2023. On that day, the matter was adjourned at the request of learned APP and till the next date the Applicants were protected from arrest. No arguments were advanced or considered. Thereafter the matter did not reach. Therefore, I am not inclined to continue that ad-interim relief.

(SARANG V. KOTWAL, J.)

Deshmane (PS)

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