IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 227 OF 2024

Kamisha Danbahadur Singh & Anr. .... Applicants

versus

The State of Maharashtra .... Respondent

…….

- Mr. Hrishikesh Chavan, i/b. Rajesh Kinnekar, Advocate for Applicants.
- Ms. Mahalakshmi Ganapathy, APP for the State/Respondent.
- Mr. Ayush Pasbola, for the Intervenor/Org. Complainant.

CORAM : SARANG V. KOTWAL, J.

DATE : 25th JANUARY, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.393/2023, dated 19th December, 2023, registered with Naupada Police Station, Thane City, under Sections 420, 464, 465, 467, 468, 471, 506, 120-B r/w 34 of the Indian Penal Code, 1860.

2. Heard Mr. Chavan, learned counsel for the Applicants, Ms. Ganpathy, learned APP for the State and

Mr. Ayush Pasbola for the Intervenor.

3. The FIR is lodged by one Mr. Sunil Limaye. He stated that on 21st July, 2022 he became partner of M/s. Joshi Enterprises alongwith two other partners Mr. Kaustubh Kalke and Mr. Jayantilal Jain. As per their Partnership Deed, the other two partners were having 27.5% share each and the informant had 45% share in their Partnership. On that day, one of the earlier partners Harshit Jain, who was Jayantilal Jain's son, had retired from the partnership firm. On 21st July, 2022, the Admission-Cum-Retirement Deed was executed. The informant, Mr. Kalke and Mr. Jayantilal Jain, were the Authorized Signatories of M/s. Joshi Enterprises. In January, 2023, the informant's partner Mr. Kalke took Rs.6,50,00,000/- from the informant in the name of the Firm. They had bank accounts in Thane Janata Sahakari Bank Ltd. The informant was not shown the Audit Report. In January, 2023, Mr. Kaustubh Kalke introduced Applicant No.1 to the informant. He told the informant that the Applicant No.1 was to be made a partner. He

further told the informant to give the consent letter. However, the informant refused. The informant was earlier receiving messages about the bank transactions from the aforesaid bank, but from April 2023 he stopped getting messages from the bank. He made enquiries and it was told to him that M/s. Joshi Enterprises was represented by both the Applicants and there was no further connection of the informant with the Firm. The informant was shocked. He made further enquiries with the bank officers, but he was not given information, instead the bank accounts were debit freezed. The informant obtained a copy of the Admission-cum-Retirement Deed dated 25th January, 2023 from one of the Societies whose redevelopment work was to be carried out by their firm. He came to know that in that Deed, the Applicants were inducted as the new partners and it was mentioned that the informant, Mr. Kalke and Mr. Jayantilal Jain had taken retirement. Mr. Kalke gave some advertisement in a newspaper. But ultimately, no corrective measures were taken. The informant inspected the documents with the Registrar of Firms. He saw a copy of the Admission-cum-

Retirement Deed dated 25th January, 2023. Purportedly it had his signature though, he had not signed any such document. On this basis the FIR is lodged.

4. Learned counsel for the Applicants submitted that the FIR is filed by the informant as an afterthought. The Applicant No.1 himself had approached the police, mentioning the harassment caused by the informant to these Applicants. The informant was unable to raise finances and therefore he, on his own had retired from the partnership firm. The Applicants are reputed builders and they were able to bring the finances. The evidence in this case is based only on the documents which are already collected or can be collected by the investigating agency. For that purpose, the Applicants' custody is not necessary. The Applicants have invested substantial amount in the firm, and in fact, they are the victims in the entire dispute.

5. Learned counsel for the informant as well as learned APP opposed these submissions. Learned counsel for the informant submitted that, initially, aforementioned Mr. Kalke

had projected as if he was with the informant and therefore no immediate steps were taken by the informant, in the hope that the matter could be sorted out. Finally, it was not done, hence the FIR is lodged.

6. Learned APP produced certain important statements of the witnesses recorded during the investigation. One such statement is of Notary Ms. Aarti Kulkarni, she has stated that the present Applicant was not present for signing the document. One Advocate Mr. Birendrakumar Singh has stated that he had certified the copies of the Partnership Deed dated 25th January, 2023. However, at that time, the said Deed was not notarized. There is statement of one Mr. Tejas Upadhyaya. He has stated that Deed dated 25th January, 2023 was signed by Mr. Kalke, Mr. Jayantilal Jain and both the Applicants in front of the witnesses, but the informant had not signed it though he was present. The informant had left the place without signing that document. The other partner Mr. Jayantilal Jain has also supported the informant's case.

7. I have considered the submissions and I have perused the statements and documents relied on by the learned APP. As can be seen from the statements given by these witnesses, it is quite clear that the prosecution's case is supported by their statements that the informant had not signed the Partnership-Cum-Retirement Deed dated 25th January, 2023. He had not even signed the notarized form which was to be submitted with the Registrar of the Firms. Based on those documents the informant's power to operate the bank account, was taken away and subsequently the bank accounts were operated by both the Applicants.

8. The informant had invested huge amounts in the projects of the partnership firm and he was removed fraudulently from that firm. There is nothing to show that while retiring from the firm, the informant was paid any dues. Therefore, it is difficult to believe that without receiving any money, he would just retire from the firm, after investing the huge amount in the firm. The bank accounts were operated by

the Applicants. The informant's authority was taken away to operate the bank accounts, this has caused loss to the informant personally. Thus, all the offences are clearly made out against the Applicants. The investigation is not restricted to the documents pertaining to the Partnership-cum-Retirement Deed. The money lost by the informant has to be traced. The exact role of the Applicants and the other persons involved, needs to be found out. For all these reasons, the Applicants cannot be protected under Section 438 of the Cr.P.C. Their custodial interrogation is necessary.

9. The Anticipatory Bail Application is rejected.

(SARANG V. KOTWAL, J.)