IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.794 OF 2024

1. Mahesh Ramdas Sondekar, &
2. Mohini Mahesh Sondekar. .... Applicants

Versus

The State of Maharashtra .... Respondent

.....

WITH
INTERIM APPLICATION NO.1287 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.794 OF 2024

Mr. Kuldeep S. Patil, Advocate i/b. Arjun Pawar, Shrikant Patil, for the Applicant.

Ms. Rajeshree V. Newton, APP for the Respondent-State.

Mr. Advait U. Shukla, Advocate for the Intervenor.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th MARCH, 2024

P.C. :

1. The Applicants are seeking anticipatory bail in connection with C.R.No.20/2022 registered at Sangavi Police Station on 18.1.2022 under sections 420, 463 read with 34 of IPC. Subsequently more offences are added and now the offences are under Sections 420, 408, 409, 463, 465, 467, 468, 471, 120-B read with 34 of IPC.

2. Heard Mr. Kuldeep Patil, learned counsel for the Applicant, Ms. Rajeshree Newton, learned APP for the Respondent-State and Mr. Advait Shukla, learned counsel for the Intervenor.

3. The FIR is lodged by one Dattatraya Khune. He has stated that he was a Chartered Accountant. The Applicant Mahesh was his client since 2010. The informant was looking after the audit work of the Applicant Mahesh's various businesses concerning hotels, restaurants, tours travels business etc.. Till 2013, the informant was paid his fees. From 2014-2020 there were dues of Rs.14,50,000/- payable to the informant in respect of his work he had done for the Applicants' firms and their own personal income tax returns. In January, 2021, the Applicant Mahesh approached him. The informant asked for his dues. At that time the Applicant Mahesh suggested to him that instead of paying the fees he could get a luxury car by taking loan from a Bank and that he would pay the installments on that loan. On 20.3.2019, Mahesh again came to the informant's office and told him that the vehicle was ready

for delivery. Therefore, the informant, his wife Shilpa and both the Applicants went to M/s. Flyga Auto at Baner on 24.3.2019. They took delivery of the car. At that time, nobody asked for any document from the informant. The informant brought the car home. Thereafter he took the car for RTO passing. There also nobody asked for any documents. Subsequently the SBI, Pimple Saudagar Branch sent him an intimation letter that there were dues to the tune of Rs.2,56,00,000/- on the vehicle loan. Thereafter the informant received an Advocate's notice on 6.5.2020. From that notice he came to know that the Applicant Mahesh had prepared forged documents. He had colluded with the Bank Manager of SBI at Pimple Saudagar Branch and created a loan transaction One loan account was opened. From that account, Rs.2,56,00,000/- were transferred to the bank account of Flyga Auto. The excess amount of Rs.1,99,00,000/- was pending with the auto dealer's account. That amount was transferred to the informant's account and thereafter it was directly transferred to the account of the Applicant No.2 Mohini. Based on these allegations, the FIR is lodged. His dues were to the tune of Rs.14,50,000/- and the aforesaid huge amount was used in the fake loan transaction.

4. Learned counsel for the Applicants made the following submissions :

i. The Applicants are the victims at the hands of the present informant. The entire transaction was the brain-child and idea of the informant himself. He was the auditor and, therefore, he knew all the financial transactions of the Applicants. Using that position, he framed the present Applicants.

ii. The informant had taken the delivery of the car. Therefore, it is not possible to believe that he would simply take delivery of the car without insisting on any documentation.

iii. Learned counsel submitted that the informant's firm was looking after the audit of the Applicants' entities.

iv. He relied on one email which the informant's firm has sent to the Applicant No.2 mentioning the net-worth certificate as of 31.3.2020. That particular certificate mentions that there was a liability of Rs.1,91,00,000/- in favour of the first informant Dattatraya. Learned counsel, therefore, submitted that it shows that said amount of Rs.1,91,00,000/- was taken from the informant by the Applicant by way of hand-loan. That is how it is reflected as liability against the Applicants in favour of the first informant. Since the informant's firm has affixed its seal on the net-worth certificate, it is clear that the informant was aware of the stand taken by the Applicants.

v. Learned counsel further relied on the chats exchanged between the informant and the Applicant No.2 wherein he has stated that he was filing the said complaint against the bank and there was no indication that he had any grievance against the present Applicants. The informant in fact had told the Applicant No.2 that the police might ask them to give statement in connection with that case. He, therefore, submitted that both the parties knew about the real state of affairs and no offence is committed by the Applicants.

vi. Learned counsel further relied on the letter sent by the Regional Manager of SBI dated 3.10.2018 wherein it was mentioned that the bank would sanction car loan of Rs.1.50 Crores each for both the Applicants out of which Rs.50 Lakhs would be refunded to them by the dealer in each case. It was specifically mentioned in that letter that this arrangement would help the bank officers in achieving their budget. Learned counsel, therefore, submitted that there was nothing unusual or wrong in the entire transaction and it was showing the marketing policy of the bank to achieve their objective. Therefore, there was no criminality in the entire transaction.

vii. Learned counsel based these submissions on the additional compilation of documents which he had tendered in the Court. Same is taken on record and marked 'X collectively' for identification.

viii. Shri Patil further submitted that the informant himself has paid certain installments of the loan taken for the vehicle. Therefore, it cannot be said that he was not aware of the loan account.

5. Learned counsel for the first informant submitted that the net worth certificate is prepared by the employee from the informant’s office. Even before that the informant had approached the police and had given his complaint on 21.11.2020 making all these allegations. Therefore, this will show that these allegations are not made as an afterthought and the net worth certificate relied on by learned counsel for the Applicants will make no difference.

6. Learned counsel for the informant submitted that the installments paid by him were paid after he had made the complaint before the police and he was required to pay the installments because the bank was taking action for recovery of the loan amount. It in fact emphasises the fact that the informant was the victim in this case. However, at this stage Shri Patil pointed out that the informant had paid the installments in January, 2020 i.e. much before the complaint was lodged by him with the police in November, 2020.

7. Learned APP submitted that though the concerned loan account was opened in the State Bank of India in the name

of the first informant, it was linked with the phone number of the Applicant No.1. This itself shows that it was operated by the Applicant No.1.

8. She submitted that the investigation has revealed that the bank officer Shri Patkar is also deeply involved in this transaction. There are statements of the bank employees who had stated that when the amount of Rs.1,99,00,000/- was returned in the said loan account in the name of the present first informant, Mr. Patkar has instructed the subordinate staff to transfer that amount in the personal account of the Applicant No.2. She submitted that thus the beneficiary of this all fraudulent transaction are definitely the Applicants themselves. It was quite clear that the luxury car was worth around Rs.50 Lakhs for which huge amount of Rs.2,50,00,000/- loan was sanctioned. It was diverted to the dealer's account. It was brought back to the fraudulent loan account in the name of the first informant and thereafter the money was transferred to the Applicant No.2's account. Thereafter the loan was not repaid and the money was misappropriated.

9. I have considered these submissions. From the discussion hereinabove it is more than clear that it is a big fraud played with definite design. False and fake loan transaction account was opened. The price of the car was much lesser. Loan for the amount which was much more than the price of the car was sanctioned. It was paid to the dealer's account from which substantial amount was brought back in the concerned loan account and then it was routed to the Applicant No.2's account from where it was siphoned off. The money was misappropriated. The money trail is clear. Loan of the bank was not repaid and hence huge amount was misappropriated. From the documents which are available, the bank transactions clearly show that the money had ultimately gone to the Applicant No.2. The investigation carried out so far reveals the clear role played by the Applicant No.1. The FIR itself mentions that the Applicant No.1 had approached the informant and had given him that idea of getting that car. Apart from that, as submitted by Shri Patil appearing for the Applicants, the bank had given some proposal. It appears that from the record that the Applicant No.1 has himself used that facility and instead of

genuinely taking loan for purchasing the car and availing of that particular scheme the money was siphoned off and the loan was not repaid.

10. In this view of the matter, there is sufficiently strong material against the Applicants. Apart from that there are certain issues which will have to be explained by the informant himself as is clear from the discussion above. The investigating agency is free to take steps in accordance with law in that behalf. However, that does not absolve the Applicants for the role played by them and the material collected against them. Therefore, their custodial interrogation is absolutely necessary. Huge amount of the public money in the form of loan from the bank is misappropriated. The Applicants cannot be protected under Section 438 of Cr.P.C. The Application is, therefore, rejected. In view of disposal of main application, nothing survives in Interim Application, the same is also disposed of.

(SARANG V. KOTWAL, J.)

Deshmane (PS)