IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1026 OF 2020

Tirtharaj Kailas Gaikwad .... Applicant
Versus
The State of Maharashtra .... Respondent

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WITH

ANTICIPATORY BAIL APPLICATION [STAMP] NO.1878 OF 2020

Hariram Ganpati Pillay .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Sarang Aradhye, Advocate a/w. Gauri Velankar, Shantanu Gaurav, Saarth Chordia for the Applicant in ABA/1026/2020.

Mr. Aditya Mokashi, Advocate a/w. Swapnil Telang, i/b. R.B. Mokashi & Associates for the Applicant in ABA/st/1878/2020.

Ms. Sharmila S. Kaushik, APP for the Respondent-State.

CORAM : SARANG V. KOTWAL, J.

DATE : 17th JANUARY, 2024

P.C. :

1. Both these applications are decided by this common order because they arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.84/2020 registered at Nasik Road Police Station on 3.2.2020 under sections 419, 420, 465, 467, 468, 471 read with 34 of IPC.

3. At the outset, it must be noted that these Applications are pending since 2020. The Applicant Tirthraj was protected by an interim order dated 21.8.2020. The Applicant Hariram was not protected by any interim order and; yet he was not arrested by the investigating agency. It clearly indicates that the investigating agency is not interested in arresting the Applicant Hariram. The investigation papers are produced before me. After perusing the investigation papers, I am of the opinion that the investigation is carried out in most unsatisfactory manner.

4. Heard Mr. Sarang Aradhye, learned counsel for the Applicant in ABA/1026/2020, Mr. Aditya Mokashi, learned counsel for the Applicant in ABA/st/1878/2020 and Ms. Sharmila Kaushik, learned APP for the Respondent-State.

5. The FIR is lodged by Yashwant Wagh who was the Branch Manager with Union Bank of India, Jail Road Branch, Nasik Road. The FIR mentions that their bank used to disburse loan by taking Kisan Vikas Patra as security. The present FIR pertains to two transactions in the name of both these Applicants. The informant's bank had disbursed Rs.18 Lakhs by way of loan on 30.12.2016 against the security of Kisan Vikas Patra purportedly issued by the Sub-Postmaster, Dunge Post Office, Bhiwandi, District-Thane. The amount was deposited in those two separate loan accounts on 30.12.2016 and on that date itself an amount of Rs.16,20,000/- each was transferred in the account held by Radhika Enterprises, Bhandup, Mumbai owned by one Radhaben Patel. Subsequently installments of the loan were not paid and

inquiries were made and it was found that the Kisan Vikas Patras which were submitted as a security were forged.

6. Learned counsel for the Applicants submitted that they have not signed any application-form for obtaining the loan. The Applicant Tirtharaj has a savings account in the bank. The Applicant Hariram wanted to open an account but he had not opened the account. Both the Applicants had given their KYC documents to the bank. Those documents were misused and these loan accounts were opened in which the loan amounts of Rs.18 Lakhs each were sanctioned and deposited. They submitted that this offence is committed behind their back. They had never applied for any loan. They are not concerned for transfer of that amount of Rs.16,20,000/- each in favour of Radhika Enterprises from their respective accounts. They had not instructed the Bank nor they had signed any transfer form for transferring that amount in the name of Radhika Enterprises. They, therefore, submitted that the Applicants have not committed this offence.

7. Learned counsel for the Applicants further submitted that the offence is registered in the year 2020 and for about four years the investigating agency did not carry out any investigation regarding the loan application etc.

8. Both learned counsel for the Applicants submitted that both the Applicants have attended the concerned police station and have cooperated with the investigation.

9. Learned APP produced the investigation papers before me. But in the investigation papers there is no definite material showing that the Applicants have applied for the said loan amount.

10. Learned APP submitted that out of the balance amount of Rs.1,80,000/- some amount was spent in Goa by using ATM Card. Even in that direction no investigation was carried as to whether the Applicants had received those ATM cards through any courier service or through any bank officers. The investigation for four years has led the investigating agency to nowhere. For four years, there is hardly any

investigation in the right direction. Though the Applicants were available and have cooperated with the investigation, as of today, the investigating agency has not verified the genuineness of signatures on the loan applications. There is no investigation as to how the amount was transferred to Radhika Enterprises. For four years there is hardly any material against the present Applicants. Therefore, there is a reasonable scope to believe that somebody from the bank had misused the Applicants' KYC documents to commit this fraud. The major amount is transferred in the account of Radhika Enterprises. Even the owner of Radhika Enterpries, namely, Radhaben Patel is not arrested. Therefore, it is quite obvious that the investigation is quite unsatisfactory. As of today, except for the bare allegations unsupported by documents there is no material against the present Applicants. Hence, they can be protected by an order of anticipatory bail. They are required to cooperate with the investigation. If during investigation some concrete material surfaces against the Applicants, then the investigating agency is at liberty to prefer an application for cancellation of this order. In this view of the matter, following order is passed:

ORDER

(i) In the event of their arrest in connection with C.R.No.84/2020 registered at Nasik Road Police Station, the Applicants are directed to be released on bail on their furnishing PR bonds in the sum of Rs.30,000/- each (Rupees Thirty Thousand Only) with one or two sureties each in the like amount.

(ii) The Applicants shall attend the concerned police station from 5.2.2024 to 8.2.2024 between 1.00 p.m. to 5.00 p.m. and thereafter as and when called. The Applicants shall cooperate with the investigation.

(iii) In case, if the investigating agency comes across another definite incriminating material against both the Applicants, they are at liberty to prefer an application for cancellation of this order.

(iv) With these observations, the Applications are disposed of.

PRADIPKUMAR PRAKASHRAO DESHMANE

Digitally signed by PRADIPKUMAR PRAKASHRAO DESHMANE Date: 2024.01.23 14:02:30 +0530

(SARANG V. KOTWAL, J.)

Deshmane (PS)