2024:BHC-AS:36764

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2140 OF 2023

Dilip Kundandas Dulani ... Applicant
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1697 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.2140 OF 2023

Parmanand K. Hinduja … Applicant/Intervener
and
Dilip Kundandas Dulani ... Applicant
versus
The State of Maharashtra … Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.2135 OF 2023

Kamlesh Dilipkumar Dulani ... Applicant
versus
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.1696 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.2135 OF 2023

Parmanand K. Hinduja … Applicant/Intervener
and
Kamlesh Dilipkumar Dulani ... Applicant
versus
The State of Maharashtra … Respondent

Mr. Ashutosh Gole with Mr. Girish Paryani i/by A and G Legal Associates, for Applicants.
Mr. A.A.Naik, APP, for State.
Mr. Karansingh Rajput i/by Mr. Nilesh Kumbhar, for Interveners.

CORAM: N.J.JAMADAR, J.

DATE : 11 SEPTEMBER 2024

P.C.

1. The applicants, father and son duo, have preferred these applications for pre-arrest bail in connection with C.R.No.232 of 2023 registered with Ulhasnagar Police Station, Dist. Thane, for the offences punishable under Sections 120-B, 420, 406, 506 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (the MPID Act, 1999).

2. Mr. Parmanand Hinduja, the first informant and the Applicant in the Intervention Applications, became acquainted with the applicants through a common friend Mr. P.M.Hasani. The applicants made a representation to the first informant that they were engaged in the business of manufacturing of pressure cookers. The applicants were intending to expand the business, and for that purpose, they were in the process of acquiring land. The first informant alleged, the applicants induced him to invest the amount in the said business with a promise of lucrative returns. The first informant, thus, invested an amount of Rs.5

Lakhs through banking channel. Initially, as promised, a sum of Rs.30,000/- was paid to the first informant in two installments towards the return of investment. Thereafter, the applicants committed defaults in payment of the interest, as promised. In the month of December 2022, when the first informant approached the Applicants, the latter flatly declined to refund the amount and, instead, threatened the first informant with dire consequences. Upon inquiry, it transpired that the applicants had deceived other investors in a similar fashion. Thus, the first informant lodged the report.

3. Apprehending arrest, the applicants approached the Court of Session. As the Court of Session declined to exercise discretion in favour of the applicants, they have preferred these applications.

4. On 29 August 2023, this Court was persuaded to protect the liberty of the applicants as a statement was made that on account of the loss in the business, the applicants could not refund the amount and there was no intention to deceive the investors, and to show their bonafide, the applicants were willing to deposit a sum of Rs.25 Lakhs. The applicants have deposited the said amount of Rs.25 Lakhs.

5. Mr. Gole, learned Counsel for the Applicants submitted that,

pursuant to the aforesaid order of interim bail, the applicants have appeared before the Investigating Officer and rendered necessary co-operation in the investigation. The applicants have disclosed the state of their business affairs before the investigating agency earnestly. Though the applicants had shown willingness to deposit further amount of Rs.15 Lakhs, yet on account of the pressing situation which warranted the applicants to deposit the amount to obviate an action by the bank to take possession of the house premises of the applicants, they could not honour the said commitment.

6. Mr. Gole further submitted that even if the prosecution case is taken at par, the intent to defraud cannot be discerned. The first informant and other investors had invested the amounts as the business was then flourishing. On account of the slow down of the business, post Covid-19 Pandemic, the applicants could not refund the amounts and, eventually, the properties of the firms of the applicants were required to be liquidated to repay the debt raised from the banks.

7. In any event, having regard to the nature of the accusation, at this length of time, the custodial interrogation of the applicants is not at all warranted. Therefore, the order of interim bail be made absolute, urged

Mr. Gole.

8. Mr. Naik, learned APP, resisted the prayer for pre-arrest bail. It was submitted that there were as many as 20 victims. The amount, which the applicants deceived the investors to part with, by making a false representation of lucrative returns, has increased to 1,35,25,000/-. There is no bonafide intention to repay the amount. Thus, to unearth the money trail and trace the amount which has been siphoned off by the applicants, their custodial interrogation is warranted.

9. Mr. Rajput, learned Counsel for the Intervener stoutly resisted the prayer for pre-arrest bail. It was submitted that the applicants, instead of investing the amount in the business, had converted the amount which was invested by the investors for their personal use and repayment of the earlier loans. Moreover, the material on record would indicate that the applicants had received a sum in excess of Rs.13,50,00,000/- by the sale of leasehold rights in the premises in MIDC, wherein manufacturing units were being operated. However, the said amount has been diverted for other purposes instead of repaying the amount of innocent investors. This underscores that the applicants had no bonafide desire to return the amount and their dishonest intention since the inception of

the transaction.

10. I have carefully perused the material on record and given anxious consideration to the submissions canvassed across the bar. Prima facie, there is material to indicate that the first informant and other victims, who are the members of the same community, were induced to invest the amount with the applicants. By and large, there is not much dispute over the fact that the investors had invested the amount, though the parties are at issue over the repayment in full or part, qua each of the investors. A pivotal question that would warrant adjudication at the trial would be, whether the intention of the applicants was dishonest since the inception of the transaction ?

11. Prima facie, it appears that the investors were made to believe that the capital was required for expansion of the business. The first informant does not claim that the amount was accepted by way of deposit. In contrast, the first informant alleges that a representation was made to invest the amount for the expansion of the business. In this context, the period during which the investments were made assumes significance.

12. In the Interim Application, the first informant/Applicant has

annexed a chart (Exhibit A) containing particulars of the investments. It appears that almost the entire amount was invested by the investors in the year 2019 and prior thereto. Some investors had invested the amounts as back as 2015 and 2016

13. It is in the aforesaid backdrop, the contention on behalf of the applicants that on account of the exigency of the situation which arose due to Covid 19 Pandemic, they suffered loss in the business and, resultantly, could not honour their commitment, would warrant consideration, at the trial.

14. It is pertinent to note that there is material to indicate that the applicants had acquired leasehold rights in the plots and, subsequently, those leasehold rights were sold under registered instruments. Mr. Rajput, learned Counsel for the Applicant/Intervener may be justified in canvassing a submission that the applicants had not accounted for the entire amount of sale proceeds. However, there is material to indicate that a substantial amount was utilized to clear the dues of the GP Parsik Sahakari Bank Ltd. In these circumstances, whether the offence punishable under Section 3 of the MPID Act, 1999, can be said to have been prima facie made out, appears debatable.

15. Likewise, the question as to whether the intention of the applicants was dishonest since the inception of the transactions appears to be a matter for trial, especially in view of the fact that the investors were investing the amount since the year 2015. At this stage, the fact that the applicants have deposited a sum of Rs.25 Lakhs in this Court, deserves to be taken into account.

16. In the totality of the circumstances, the custodial interrogation of the applicants does not seem warranted as the investigation has reached an advanced stage and the offences revolve around documents and most of the transactions are through banking channels.

17. The applicant – Dilip is 72 years of age. It is true, most of the victims are also of advanced age. Yet that cannot an overwhelming consideration in depriving the applicants of their personal liberty. I am, therefore, impelled to make the order of interim bail absolute.

18. Hence, the following order :

ORDER

(i) The Applications stand allowed.

(ii) The order dated 29 August 2023 granting interim bail to the applicants is made absolute on the terms and conditions incorporated therein.

(iii) The applicants shall henceforth appear before the Investigation Officer as and when directed.

(iv) The applicants shall regularly attend the proceedings before the jurisdictional Court.

(v) The amount of Rs.25 Lakhs deposited by the applicants along with the interest accrued thereon, be transferred to the Court of Judicial Magistrate, First Class, exercising jurisdiction over Ulhasnagar Police Station.

(vi) Upon transfer of the said amount, the learned Magistrate shall invest the same in an interest bearing deposit account.

(vii) The said amount shall abide the decision in the trial arising out of C.R.No.232 of 2023.

(viii) Interim Applications also stand disposed.

(ix) By way of abundant caution, it is clarified that the observations made hereinabove are confined for the purpose of determination of the entitlement for pre-arrest bail only.

(N.J.JAMADAR, J.)