IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.94 OF 2024

Ms. Nandita Saha ...Applicant
Versus
State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 97 OF 2024

Ms.Raadhika Nanda ...Applicant
Versus
State Of Maharashtra ...Respondent

Mr. Abhishek Yende a/w Surbhi Agrawal and Vishal Dhasade Advocate for the Applicant.

Ms. Mahalakshmi Ganpathy, APP for State/ Respondent in both ABAs.

Mr. Gaurish Satpute h/f Mr. Dinesh Kadam and Amar Thakur for Intervenor in both IA.

CORAM : N. J. JAMADAR, J.
DATE : 14th AUGUST 2024

PC.:

1. Heard the learned Counsel for the parties.

2. These applications are for pre-arrest bail in connection with C.R. No.434 of 2023, registered with M.I.D.C. Police Station, Mumbai, for the offences punishable under Sections 406, 409 and 420 read with Section 34 of the Indian Penal Code, 1860.

3. Mr. Deven Jawaharlal Bafna, who claims to be a partner of Oberoi Mega Entertainment LLP (OMEL) has lodged the report with the allegations that as two partners of the said firm had experience in film production and organisation of events related to films, pursuant to the discussion between one of the partners of the said firm, who is an actor (actor-partner) and the Sanjay Saha (A1), it was decided to form M/s. Anandita Entertainment LLP for film production. Nandita Saha (A2), Applicant in ABA/94/2024, and Radhika Nanda (A3), Applicant in ABA/97/2024, were to have 33.34% and 33.33% share in the partnership and the actor-partner was to have 33.33% share.

4. Eventually, in the month of February, 2021 a film titled "Gunshe" was decided to be produced. The actor-partner incurred expenses towards the fees of another lead actor, director and script-writer from his personal account. In the meanwhile, when the details of the investments made by Oberoi Mega Entertainment LLP in M/s. Anandita Entertainment LLP were scrutinized, it transpired that the applicants and the co-accused had siphoned off huge amount which was credited to the account of M/s. Anandita Entertainment LLP for various purposes unconnected with the business of the said firm. The

applicant and the co-accused thus had a wrongful conversion of the funds credited by Oberoi Mega Entertainment LLP. Upon further enquiry, it transpired that a sum of Rs.95,72,814/- was siphoned off and Sanjay Saha (A1) had also misappropriated a sum of Rs.60,00,000/- received towards the remuneration of the actor-partner for participating in the various events. The applicants and the co-accused Sanjay Saha (A1) and others thus defrauded the actor-partner to the tune of Rs.1,55,72,814/-.

5. On 15th January 2024, this Court was persuaded to grant interim bail observing, *inter alia,* as under:-

> "6. Learned counsel for the applicants submitted that the F.I.R. itself shows that, all the decisions were taken by Shri. Sanjay Saha. The main allegations against the present applicants are that, Rs.5 lakhs were invested in the Tata AIG Life Insurance in the name of applicant Nandita Saha and Rs.10 lakhs were taken by the applicant Raadhika Nanda by way of her salary. Learned counsel submitted that the clauses in the agreement make provision for such payment. The agreement is dated 01.12.2020. The clause No.21 mentions that all the partners were to have rights, title and interest in all the assets and properties in proportion of their profit sharing ratio. The partners could draw remuneration subject to profit of the LLP and approval of all the partners. The agreement also provided for welfare of the partners as mentioned in Clause 38(m). Thus, the allegations attributed against the present applicants are covered under these clauses. In any case, at the highest, this dispute is between the partners interse and for that criminal offence is not made out.
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> 7. Considering these submissions, learned counsel for the applicants has made out a case for grant of ad-interim relief."

6. Mr.Yende, the learned Counsel for the applicants submitted that the co-accused Sanjay Saha (A1), against whom the allegations of fraud and misappropriation are primarily made, has already been enlarged on bail by this Court by an order dated 29th February 2024. The allegations qua Ms. Nandita Saha (A2) are that a sum of Rs.5 lakhs was misappropriated to purchase an insurance policy in her name. Qua Raadhika Nanda (A3), it is alleged that Rs.10 lakhs were misappropriated under the pretext of salary to Raadhika Nanda (A3). In fact, the limited liability partnership agreement (Exhibit-C), especially clauses 38(m) and 44, provide for incurring of expenses for the welfare of the partners and payment of remuneration to the partners. Therefore, the allegations of wrongful conversion are ex-facie unsustainable. It was further submitted that the applicants have co-operated with the investigation and further custodial interrogation of the applicants is not warranted.

7. Ms.Ganapathy, the learned APP, resisted the prayer for pre-arrest bail. It was submitted that Raadhika Nanda (A3) has antecedents. FIRs have been registered against Raadhika Nanda (A3) for commission of offences of cheating in relation to the transactions in the entertainment industry. Therefore, the

applicants do not deserve pre-arrest bail.

8. Mr.Satpute, the learned Counsel for Intervenor, strongly opposed the prayer for pre-arrest bail. It was submitted that the applicants are the beneficiaries of the fraud. The parties had clearly agreed that no remuneration or salary would be paid to the partners until the business of partnership firm generated profit. Inviting the attention of the Court to the FIR No.34 of 2022 registered against Raadhika Nanda (A3), co-accused Sanjay Saha (A1) and others for the offences punishable under Sections 413, 420, 465, 468, 471 read with 34 of the Indian Penal Code, 1860 and Sections 66C and 66D of the Information Technology Act, 2000, the learned Counsel for Intervenor resisted the prayer for pre-arrest bail.

9. I have carefully perused the allegations in the FIR and the material on record. Evidently, the alleged offences have their genesis in the partnership disputes. It appears that the trigger for the dispute was purported release of a film "*Haddi*" on the OTT platform. An order passed by this Court in Commercial Arbitration Petition (L) No.24521 of 2023 dated 4th September 2023 indicates that the Court was not persuaded to grant ad-

interim relief of stay to the release of the said film. Co-accused Sanjay Saha (A1) was impleaded in the said petition as a party Respondent No.1.

10. In the aforesaid backdrop, the allegations of cheating and misappropriation of the amount are required to be appraised. *Prima facie*, clauses 38(m) and 44 in the LLP agreement support the submission on behalf of the applicants that the LLP agreement provides for incurring of expenses for the welfare of the partners and payment of remuneration to the partners. The amount of expenses allegedly incurred for Nandita Saha (A2) and the amount paid to the Raadhika Nanda (A3) cannot be said to be huge. The question as to whether there was a fraudulent or dishonest intention since the inception of the transaction and whether the same acts would constitute offences of cheating and criminal breach of trust simultaneously, would warrant adjudication at an appropriate stage in the proceedings before the learned Magistrate.

11. Co-accused Sanjay Saha (A1), who is allegedly the prime character in the fraud, has been enlarged on bail. The applicants are women. Investigation seems to be practically complete as

charge-sheet has been lodged. The applicants appear to have roots in society. Possibility of fleeing away from justice and tampering with the evidence, appears to be remote. I am, therefore, inclined to make the order of interim bail absolute.

12. Hence, the following Order:-

ORDER

(i) The order of interim bail dated 15th January 2024 is made absolute on the terms and conditions incorporated therein.

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

(iii) Applications stand disposed.

(N. J. JAMADAR, J.)