IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.195 OF 2024

Sunil Ramchand Jethani .... Applicant
versus
State of Maharashtra .... Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO.196 OF 2024

Dilip Meghraj Karia .... Applicant
versus
State of Maharashtra .... Respondent

…….

- Mr. Wesley Menezes a/w Stevan Anthony a/w Waqar Pathan, Advocate for Applicant in both ABAs.
- Ms. Pallavi N. Dabholkar, APP for the State/Respondent in ABA/195/24.
- Ms. M. H. Mhatre, APP for the State/Respondent in ABA/196/24.

CORAM : SARANG V. KOTWAL, J.
DATE : 23rd JANUARY, 2024

P.C. :

1. In both these matters, a common order is passed today, because they arise out of the same registered offence.

2. The Applicants are seeking anticipatory bail in

connection with C.R.No.538/2023, dated 06/11/2023, registered with Mahim Police Station, Mumbai, under sections 406, 409, 420 r/w 34 of the Indian Penal Code.

3. Heard Mr. Wesley Menezes, learned counsel for the Applicant and Ms. Pallavi N. Dabholkar & Ms. M. H. Mhatre, learned APPs for the State.

4. The subject matter is about alleged misappropriation committed in Vivekanand Co-operative Housing Society. The period of misappropriation is between 01/04/2016 to 31/03/2021, for which the statutory re-audit was conducted and the misappropriation was noticed. At the relevant time Applicant Sunil Jethani was the Chairman and the Applicant Dilip Karia was the Secretary on the Managing Committee. The FIR is lodged by the Auditor Manisha Patil. She was directed by the District Deputy Registrar Co-operative Society, Mumbai, to conduct re-audit for that period in respect of the said society. According to her, there was some malpractice and misappropriation of funds. The main allegations are that M/s.

Arham Buildcare and M/s. Architectural Waterproofing Corporation were given contract for various works. The society wanted repairs of the road and renovation of Bal Mandir Hall. There was also requirement of maintenance and repairs of building Nos.5, 6, 8 and 9. The allegations are that M/s. Arham Buildcare were given the amount of Rs.25,50,442/- in excess and M/s. Artchite was given Rs.25,75,910/- additional than what was agreed and sanctioned by the society. There are allegations that the bank guarantee worth Rs.4,24,454/- given by M/s. Architectural Waterproofing Corporation was remitted back to their account, thus causing financial loss to the society.

5. Learned counsel for the Applicant submitted that there are rival groups in the society and the present FIR is a result of the misinformation provided by the rival group. He submitted that there was a theft in the society's office in March 2021, for which a private complaint is lodged by the Applicant in Metropolitan Magistrate's Court. He submitted that police had not taken cognizance of the complaint of theft. Therefore he had

to approach the Metropolitan Magistrate's Court. In that complaint, the Magistrate had directed the same Mahim police station to conduct inquiry u/s 202 of Cr.P.C. As of today that report is still awaited. He submitted that the case of the Applicants is that, in that incident all the relevant books, resolutions, documents relating to the contract etc. were stolen. Only selected information was provided by the opposite group to the auditor and therefore based on the wrong assumption, this FIR is lodged.

6. Learned APP submitted that the contractor Nitin has given a statement mentioning that the Applicants had taken Rs.20 lakhs from him out of the amount which was paid to him from the society's account. Therefore, according to her, the Applicants are the beneficiaries of the misappropriated amount. She submitted that the society had also sent a notice to the contractor mentioning that excess amount was paid to him. The excess amount was paid without any resolution and unauthorisedly.

7. I have considered these submissions. At this stage, the Applicants' claim is that there was theft in the society's office and the important documents were stolen. These submissions will have to be dealt with by the investigating agency. As pointed out by the learned counsel, a private complaint is filed in that behalf, in which order for inquiry under 202 of Cr.P.C. is passed. It is being inquired by the same police station. However, the Investigating Officer is different. Both the Investigating Officers will have to co-ordinate with each other in respect of the allegations of theft of documents. Therefore, as of today, I am inclined to protect the Applicants by way of ad-interim relief with directions to them to attend the police station and to cooperate with the investigation so that the investigating agency can take further steps in the investigation.

8. Hence, the following order :

ORDER

(i) In the event of their arrest in connection with C.R.No.538/2023, dated 06/11/2023, registered with Mahim Police Station, Mumbai, till the next date, the Applicants are directed to be released on bail on their furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) each, with one or two sureties each, in the like amount.

(ii) The Applicants shall attend the concerned Police Station from 12/02/2024 to 15/02/2024 between 01.00 to 05.00 p.m. and thereafter as and when called and shall cooperate with the investigation.

(iii) This order shall operate till 05/03/2024.

(iv) Stand over to 05/03/2024.

(SARANG V. KOTWAL, J.)