IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1373 OF 2024

Shreyas Madhav Salao ...Applicant
vs.
The State of Maharashtra ...Respondent

Mr. Taraq Sayed a/w. Mr. Parth Phadtare i/b. Mr. Pratap Nimbalkar, for the Applicant.
Mr. Swapnil Sangle i/b.Mr. Prajit Sahane, for Ori. Complainant.
Mrs. Mahalaxmi Ganapathy, APP, for the Respondent/State.

CORAM : N. J. JAMADAR, J.
DATE : OCTOBER 7, 2024

P.C.:

1. This application is preferred seeking pre-arrest bail in connection with C.R. No. 21 of 2023 registered with EOW, Unit-V, Mumbai, initially registered at Worli police station vide C.R. No. 332 of 2023 for the offences punishable under sections 406, 409 and 420 read with 34 of Indian penal Code, 1860.

2. In fact this is the second application for pre-arrest bail. First application filed by the applicant came to be disposed of as withdrawn, on 12th September, 2023. This second application came to be preferred on the premise that in the intervening period the dispute, between the applicant (A2) and the first informant, has been amicably resolved and the applicant has paid a sum of Rs. 1.81 Crores towards the satisfaction of the first informant's claim.

3. In view of the aforesaid development and submissions, by an

order dated 4th July, 2024, this Court was persuaded to grant interim bail, noting the consent of the first informant. The observations in paragraph Nos. 4 to 9 of the said order, which note the gist of the prosecution case, the subsequent development in the nature of settlement of dispute between the applicant and the first informant, the resistance to pre-arrest bail, on the part of the prosecution, and the reasons which weighed with this Court to grant interim bail, read as under:-

> 4] The gravamen of indictment against the applicant and the co-accused is that, during the period January, 2022 to December, 2022 the applicant and the co-accused Pritish Mungmode induced the first informant to invest the amount by making a false representation that if the investment is made in purchasing the scrap of Khaitan Chemicals and Fertilizers Pvt. Ltd. and Damodar Vally Corporation Ltd., the first informant would earn lucrative returns. The first informant claimed to have invested an amount of Rs. 18.20 Crores comprising of the amounts of Saroj Bhosale and Rajesh Kothari. However, the applicant and the co-accused, neither returned the amount nor paid the return thereon, as promised.
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> 5] The learned counsel for the applicant submitted that the transaction was of commercial nature. A MOU was executed between the parties. The transaction, however, did not materialize. Eventually, the first informant and the applicant have amicably resolved the dispute. The first informant has executed a declaration to the effect that the dispute between the applicant and the first informant has been amicably resolved as the applicant has paid 1.81 Crores towards the full and final settlement of the claim of the first informant.
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> 6] The first informant has appeared before the Court and filed affidavit to the effect that the first informant has received a sum of Rs. 1.81 Crores from the applicant towards the satisfaction of his claim and he has no grievance against the applicant

> and no objection for grant of pre-arrest bail.
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> 7] The learned APP resisted the prayer for bail. It was submitted that the settlement has been arrived at between the applicant and the first informant only and there are other victims who have been defrauded.
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> 8] I have considered the material on record. Prima facie, it appears that the first informant and the other victims were induced to part with the amount under the cloak of a legitimate commercial transaction. Documents were executed between the parties incorporating the terms of the transactions. Whether the intention of the applicant was dishonest since the inception of the transaction, would be a matter for investigation.
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> 9] Since the first informant has filed affidavit to the effect that he has received a substantial amount of Rs. 1.81 Crores towards satisfaction of his claim, for the present, the liberty of the applicant can be protected while directing him to join in the investigation. If the investigation reveals the complicity of the applicant qua the amount invested by the victims, the same can be considered at the stage of final decision of this application.

4. As noted in paragraph Nos. 8 and 9 of the aforesaid order, the aspect of entitlement to pre arerst bail, deserves to be appreciated in the context of the amount invested by the victims, the dispute with whom still subsists.

5. Mr. Sayed, the learned counsel for the applicant, submitted that the amount allegedly paid by the victim was not credited to the account of the applicant. Those amounts were credited to the account of Pritish Mungmode (A1) who has been arrested. All the transactions were through banking channels. The genesis of the alleged offences is in purely commercial transactions evidenced by

the articles of agreement between the investors and Pritish (A1); to which the applicant is albeit a party as a guarantor. The amounts invested by the investors were duly transferred to the companies wherefrom the scrap was to be lifted. As the accused could not pay the balance amount within the stipulated period, the contracts were terminated. However, there was no intent to deceive. At best, it was a case of failure of purely commercial transaction. Therefore, the applicant who has settled the dispute with the first informant by paying a sum of Rs. 1.81 Crores and is not otherwise privy to the alleged fraud, deserves protection from arrest.

6. Ms. Ganapathy, the learned APP resisted the prayer for bail. It was submitted that the fact that the applicant has settled the dispute with the first informant by paying an amount of Rs. 1.81 Crores does not dilute the gravity of the offences. Apart from the first informant, there are two other victims namely Rajesh Kothari and Saroj Bhosale. The statements of those victims were tendered for the perusal of the Court. It was submitted that the victims have categorically stated that the applicant had induced them to part with the amount by making a false representation of lucrative return. Since the applicant is the Director of Popular Espat Industries Private Limited along with Pritish (A1), the applicant can not be heard to urge that the amount was credited to the

account of Pritish (A1) and, therefore, the applicant can not be roped in for the offence of cheating. It was further submitted that the inquiries have revealed that substantial amounts have been transferred and/or paid to the applicant by the companies in whose account the victims were induced to invest the amount.

7. Mr. Sangle, the learned counsel for the victims (except the first informant and his family members) submitted that though initially there was a commercial transaction between the parties, yet, the fact that the intent of the applicant and the co-accused was dishonest since inception can be inferred from the fact that even after the forfeiture of the earnest money deposited by the accused with the companies from whose premises the scrap was to be lifted and gate passes revoked, the applicant and the co-accused induced the victims to pay further amount. It was urged with a degree of vehemence that the fact that the applicant has settled the dispute with the first informant does not absolve the applicant from the serious charge of cheating and criminal breach of trust. The custodial interrogation of the applicant is, therefore, necessary.

8. I have given anxious consideration to the rival submissions. I have perused the statement of Rajesh Kothari and Saroj Bhosale. Rajesh Kothari categorically states that he had invested an amount of Rs. 5.20 Crores in the project to lift the scrap from Damodar

Vally Corporation Limited. The said amount was transferred by way of investment to the account of Pritish (A1), maintained with ICICI Bank. Saroj Bhosale, the other victim, refers to a number of transactions. With regard to the transaction of Damodar Vally Corporation Limited, Saroj Bhosale also states that by returning the initial investment along with profit thereon, Pritish (A1) induced her to invest a sum of Rs. 2.50 Crores by transferring the amounts in tranches of 50 lakhs and 2 Crores to the account of Pritish (A1).

9. Prima facie, it does not appear that the victims had transferred any amount in the personal account of the applicant. Undoubtedly, the record maintained with the Ministry of Corporate Affairs indicates that the applicant and Pritish (A1) were the Directors of Popular Espat Industries Private Limited. I find substance in the submissions of learned App and the learned counsel for the victims that the mere fact that the amount was not credited to the personal account of the applicant may not be of decisive significance.

10. However, what is of material significance is the fact that the said amounts invested by the investors were transferred to the accounts of the companies from whose premises the scrap was to be lifted. Implicit in the contention on behalf of the victims that, even after the earnest money deposited by the accused was forfeited and

gate passes revoked, the accused collected further amount from the investors, is the fact that the initial transaction was not fraudulent. Prima facie, it appears that the transaction fell through on account of failure on the part of accused to comply with the terms thereof, within the stipulated period. In this backdrop, the fact that amounts were not credited to the personal account of the applicant assumes significance.

11. Moreover, liberty of the applicant has been protected pursuant to the composition of the dispute with the first informant. The amounts were transferred to the account of the co-accused through banking channels. The transactions are evidenced by documents. Consequently, the offences can be said to revolve around the documents. The custodial interrogation of the applicant thus does not seem warranted to facilitate further investigation. I am, therefore, inclined to make the order of interim bail absolute.

Hence, the following order.

ORDER

1] The order of interim bail dated 4th July, 2024 is made absolute on the terms and conditions incorporated therein.

2] The applicant shall regularly attend the proceedings before the jurisdictional Court.

3] It is clarified that these prima facie observations are confined to determine entitlement to pre-arrest bail only.

Application disposed.

(N. J. JAMADAR, J.)