IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2329 OF 2024

Anuj Baburam Kumar … Applicant
Vs.
State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.3467 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.2329 OF 2024

Mr. Satyavrat Joshi (through VC) i/b. Ms. Reena Prajapati for Applicant.
Ms. Megha S. Bajoria, APP for Respondent-State.
Mr. Kuldeep U. Nikam a/w. Mr. Om N. Latpate for Applicant in IA/3467/2024.
Mr. Chandan, API, Vimantal Police Station, Pune City.

CORAM : MANISH PITALE, J.
DATE : SEPTEMBER 11, 2024

P.C. :

. Heard Mr. Joshi, learned counsel for the applicant, Ms. Bajoria, learned counsel for the respondent-State as also Mr. Nikam, learned counsel for the first informant.

2. The applicant is apprehending arrest in connection with FIR No.0324 of 2024 dated 03.07.2024 registered with Vimantal (Airport) Police Station, District - Pune, for offences under Sections 316(2) and 318(4) of the Bhartiya Nyaya Sanhita, 2023 (BNS). The offences pertain to criminal breach of trust and cheating.

3. The informant approached the police in July 2024, alleging that the applicant had induced her into investing substantial amount of money on the promise of entering into a joint business of opening a badminton academy. It is her case that she made investments through a common friend, believing the word of the applicant. But, subsequently, she came to know that the applicant had unilaterally executed a leave

and licence agreement for the premises with the original owner, in his own name and the name of the informant did not reflect anywhere.

4. It is alleged that, at this stage, when she threatened to approach the police, on 16.03.2023, the applicant executed a memorandum of understanding (MoU), showing investment of Rs.35 lakhs on his part and Rs.16 lakhs on the part of the informant. The MoU contemplated formation of Limited Liability Partnership (LLP) between the applicant and the informant, which would eventually run the business of the badminton academy. The profit sharing was also specified in the MoU along with contemplation of forming the LLP. It is alleged that when the informant found that at the ground level, a number of works were incomplete, she invested further amounts by making payments directly to vendors and traders for arranging furniture etc. for the academy. It is the case of the informant that she had come from Dubai due to family reasons and made investments at Pune with the belief that the aforesaid joint business would be undertaken with the applicant, having invested a huge amount of Rs.30,28,308/-. No steps were taken by the applicant in terms of the promises made to her, thereby indicating that she had been cheated.

5. The learned counsel for the applicant submits that in the present case, a commercial / civil dispute is sought to be given the colour of criminality. It is the case of the applicant that the badminton academy has now started business and it is breaking even and therefore, the stage of sharing of profits is yet to arrive and the grievances made by the informant are purely of a commercial nature, with no indications of any criminality on the part of the applicant. It is submitted that execution of the MoU, which is annexed to the intervention application filed by the first informant, itself demonstrates that the parties mutually agreed for an arrangement with which the informant now appears to be dissatisfied and such a situation cannot lead to criminal prosecution. It is submitted

that in any case, the applicant is ready to co-operate with the investigation and no case is made out for physical custody of the applicant.

6. On the other hand, the learned APP has vehemently opposed the present application. She has referred to the investigation papers and it is brought to the notice of this Court that investment on the part of the informant, in the present case, started as far back as on 21.12.2022. There is documentary material to support the assertions made by the informant of having invested the aforesaid huge amount. There is no explanation on the part of the applicant as to where the invested amount has gone and in what manner, steps have been taken in terms of the MoU for forming the LLP. It is submitted that the ingredients of the offences registered against the applicant are clearly made out as there was inducement from the very beginning with dishonest intention of cheating the informant.

7. The learned counsel appearing for the intervenor / first informant supports the submissions made by the learned APP. He specifically invited attention of this Court to various clauses of the MoU, particularly those indicating the steps that the applicant was obligated to undertake, including giving weekly reports of revenue generation. It is submitted that now the badminton academy is up and functioning and the informant has been duped, having invested such a huge amount on the false promises given by the applicant.

8. This Court has considered the material on record in the light of the submissions made by the learned counsel for the applicant, learned APP for the State and the learned counsel appearing for the first informant.

9. In the present case, no doubt, the parties appear to have engaged with each other with the intention of undertaking joint business. It is the

case of the informant that she had to come down from Dubai due to family reasons and that she intended to invest in business. She came in touch with the applicant through a common friend and on the impression given by the applicant of starting the business of opening a badminton academy, the informant was convinced to invest amounts from December 2022 onwards. The statement of the informant gives the details of transferring such amounts from December 2022 onwards. The statement shows that more than Rs.20 lakhs were already transferred by the informant to the applicant and yet, she found that the leave and licence agreement, pertaining to the premises in which the badminton academy was to be opened, was executed only in the name of the applicant. When the informant threatened that she would approach the police, on 16.03.2023, the aforementioned MoU was executed. It is relevant to note that the MoU specifically contemplates transferring of the leave and licence agreement in the name of the LLP, that was contemplated under the MoU. There were specific mutual obligations laid down in the MoU, including the obligation on the applicant to transfer all licences in the name of the proposed LLP. The applicant was also obligated to submit weekly reports regarding revenue generation and expenses.

10. It is the case of the informant that none of these obligations were satisfied by the applicant although the informant had already invested more than Rs.20 lakhs in the said business. Thereupon, the informant has specifically stated about the amounts that were transferred to traders / vendors in order to arrange furniture etc. for the academy as the works pertaining to the academy were found to be incomplete on her visit to Pune. It is for this reason that the informant claims that she has invested an amount of Rs.30,28,308/- in the business and yet, the LLP contemplated under the MoU is not executed and the applicant has refused to respond to the enquiries made by the informant; while on the

other hand, he allegedly indulged in violent behaviour with the informant.

11. One way of looking at this situation could be to treat this as purely a commercial / civil dispute. But, it is to be analyzed as to whether the informant, in the facts of the present case, has triggered the criminal justice system as an arm-twisting tactic in the backdrop of the commercial / civil dispute. A perusal of the material on record, including the investigation papers certainly does not give an impression that the criminal process has been misused by the informant to arm-twist the applicant. On the other hand, the material on record does make out a *prima facie* case against the applicant of having induced the informant with dishonest intention from the inception and when the informant did put pressure upon him, he executed the aforesaid MoU, only to postpone the necessity of satisfying his obligations as per the impression given to the informant. A *prima facie* case is indeed made out by the informant to the effect that she was induced into investing huge amounts for the joint business and later, it was found that the applicant not only failed to abide by his obligations, but refused to entertain requests made by the informant for an explanation as regards the huge amount invested on her part.

11. The investigating authority, in such a situation, cannot be restricted from undertaking all necessary steps for a comprehensive investigation and no case is made out for granting anticipatory bail. Hence, the application is dismissed. Needless to say, the observations made in this order are only for the purpose of deciding this anticipatory bail application.

12. In the light of dismissal of the application, the intervention application is also disposed of.

(MANISH PITALE, J.)