IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3324 OF 2024

1. Smita Bharat Pathare
2. Pritesh Bharat Pathare … Applicants

Vs.

State of Maharashtra … Respondent

WITH
INTERIM APPLICATION (ST.) NO.25669 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3324 OF 2024

Mr. Nikhil Wadikar i/b. Mr. Niranjan Kandade for Applicants.
Ms. Megha S. Bajoria, APP for Respondent-State.
Ms. Krupali H. Rajani for Applicant in IAST/25669/2024.
Mr. Suraj Jadhav, PSI, Kharghar Police Station, Navi Mumbai.

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

P.C. :

. Heard Mr. Wadikar, learned counsel appearing for the applicants, Ms.Bajoria, learned APP appearing for the respondent-State, and Ms.Rajani, learned counsel appearing on behalf of the first informant (intervener).

2. In this application, the applicants are apprehending arrest in connection with FIR No.0317 of 2024 dated 07.10.2024 registered with Kharghar Police Station, Navi Mumbai, for offences under Sections 406, 420, 504 and 506 of the Indian Penal Code, 1860 (IPC).

3. The informant, in the present case, has levelled serious allegations against the applicants with regard to the manner in which they allured her and her husband into investing into business of opening a cafe. It is the case of the informant that from the very inception, with a dishonest

intent, the applicants allured the informant and her husband to part with substantial amounts of money in order to open the cafe. It is stated that the cafe did start functioning from February 2024, but the promised memorandum of understanding (MoU), that would eventually lead to execution of partnership deed between the parties, was never taken up seriously by the applicants, despite the informant pursuing the matter relentlessly. In the meantime, the informant and her husband invested a huge amount of Rs.38.5 lakhs into the cafe and as on today, they neither have access to the cafe nor they have been paid any amount towards earnings, despite an understanding between the parties when the venture was taken up.

4. The learned counsel for the applicants submits that the dispute between the parties is essentially a civil / commercial dispute and it is deliberately being given a colour of criminality, only with the intention to arm-twist the applicants. It is submitted that the documents on record, including *WhatsApp* chats would show that joint efforts were made to open the cafe and that, certain differences arose between the parties. These differences could have been sorted out, but for the fact that the informant has now triggered the criminal process, only with a view to pressurize the applicants.

5. The learned APP, on the other hand, submits that the informant had approached the police as far back as on 23.07.2024 itself although the FIR was eventually registered on 07.10.2024. It is submitted that the documents on record and the material gathered during the course of investigation sufficiently indicates the dishonest intention on the part of the applicants from the very inception, and therefore, no indulgence may be shown to the applicants. It is brought to the notice of this Court that the applicant No.2 has criminal antecedents and this aspect also needs to be taken into consideration.

6. The learned counsel for the intervener (first informant) has vehemently opposed the present application. It is submitted that despite huge amount being invested by the informant and her husband, the applicants have completely shut them out from the business of the cafe and this was their intent right from the beginning. It is submitted that from July 2024 onwards, even the QR Code in the cafe was changed, as a consequence of which, all the earnings are going to the private accounts of the applicants and the informant has been completely deprived of any amount from the said business. It is submitted that neither MoU nor partnership deed has been executed and therefore, there is enough material to show criminal intent of the applicants.

7. This Court has considered the rival submissions in the light of the material placed on record. Even according to the informant, the interaction between the parties started with the intent of a commercial venture in the form of a cafe being opened, considering the fact that the applicants were already in the said business. In that sense, the inception of the interaction between the parties was for starting the commercial venture. It appears that even according to the applicants, substantial amounts were invested by the informant and her husband and thereafter differences arose between the parties. The nature of disputes can be termed as a commercial dispute, but the real question is as to whether the applicants had dishonest intention from the inception to cheat the informant and her husband.

8. There is documentary material on record to show as to the manner in which the investment was made by both the parties. But, it is evident that the major share of investment was indeed that of the informant and her husband. Having looked at the material on record, it appears that there is *prima facie* material to indicate that the applicants failed to live up to the promise given to the informant and her husband, despite the

fact that they did invest substantial amount in the aforesaid commercial venture. But, the crucial question is as to what purpose would be served by insisting upon the physical custody of the applicants. The applicant No.1 is a lady, aged about 64 years and obviously a senior citizen. There is some dispute about the criminal antecedents of the applicant No.2 as the learned counsel for the applicants states, on instructions, that the applicant No.2 has been acquitted of one of the offences registered against him.

9. Be that as it may, on instructions, the learned counsel for the applicants has made a statement that, if ultimately, the grievance of the informant and her husband pertains to the amount they invested and the returns that they expect from the same, such a dispute can be settled by sitting across the table and making *bona fide* efforts for a mutual amicable settlement. Although this is not a forum for settling the dispute, this Court is of the opinion that since most of the material pertaining to investigation would necessarily be documentary in nature and considering the approach now being shown by the applicants to reconcile and settle the dispute as also to find a middle ground, it would be appropriate that for a limited period, interim relief is granted and the progress of the discussions between the parties is monitored so that final orders can be passed in the present application.

10. In view of the above, list the application for further consideration on 18.12.2024, to be listed at the top of the supplementary list.

11. In the meanwhile, there shall be interim relief in the following terms:-

A. Till the next date, in the event the applicant is arrested in connection with FIR No.0317 of 2024 dated 07.10.2024 registered with Kharghar Police Station, Navi Mumbai, they shall be released on bail on furnishing PR Bond of Rs.50,000/- each with one or two sureties in the like amount to the satisfaction of the trial Court;

B. The applicants shall remain present before the investigating officer on 13.12.2024 and 14.12.2024 between 10:00 a.m. and 12 noon and thereafter, as and when called. They shall co-operate with the investigation;

C. The applicants shall abide by their undertaking to make sincere efforts to settle the dispute with the informant and her husband. It is to be noted that this is purely a voluntary statement made by the applicants before this Court.

D. The applicants shall not influence the informant, witnesses or any person concerned with the case and they shall not tamper with the evidence.

12. In case any of the aforesaid conditions is violated, the present order would be liable to be cancelled.

(MANISH PITALE, J.)

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