IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.3604 OF 2023
WITH
INTERIM APPLICATION NO.2331 OF 2024
IN
ANTICIPATORY BAIL APPLICATION NO.3604 OF 2023

Nitin Subhash Kamlakar & Anr. .... Applicants

versus

The State of Maharashtra .... Respondent

…....

- Mr. Aditya A. Joshi, Advocate for Applicants.
- Mr. Shrikant H. Yadav, APP for the State/Respondent.
- Mr. Ramji Kotali, (appeared through VC), Advocate for Informant.

CORAM : SARANG V. KOTWAL, J.
DATE : 04th JULY, 2024

P.C. :

1. This is an application for Anticipatory Bail and the Interim Application is for extension of time of six months to deposit Rs.10 lakhs. Today, a common order is passed in the main Anticipatory Bail Application as well as the Interim Application for extension as prayed for.

2. The Applicants are seeking anticipatory bail in connection with C.R.No.266/2023, dated 16/09/2023, registered with Sawantwadi Police Station, Sindhudurg, under sections 323, 409, 420, 506 r/w 34 of the Indian Penal Code.

3. Heard Mr. Aditya A. Joshi, learned counsel for the Applicants, learned counsel Mr. Ramji Kotali, for the informant. and Mr. Shrikant H. Yadav, learned APP for the State.

4. The FIR is lodged by one Archana Khobrekar, who was a 73 year old lady. She was residing with her husband Gurunath, aged 77 years. Their son was residing at Goa. The informant was residing at Sawantwadi, District Sindhudurg. The informant's husband retired as a Forest Officer in 2004 and they were surviving on his pension. The accused Ravindra and his wife Riya were staying opposite of the informant's house. They had old relations from about 20 years. Ravindra was working as an agent with a Co-op Credit Society and Riya was working as an Anganwadi teacher. In September 2020, Riya approached the first informant and told the informant that she was knowing

about M/s. Kshitij Wealth Management LLP. If the informant invested in that company, she would get handsome returns. Riya told the informant that if the informant made investment in that company, about 1 ½ times of the investment would be returned in 42 months. The company was offering bonus of 1.5 % per month. If they invested Rs.5 lakhs they would get Rs.7,500/- per month bonus and would get Rs.7,50,000/- after 42 months of the investment of Rs.5 lakhs. On 09/09/2020, the informant had a discussion with the Applicant No.1, who was the owner of the said M/s. Kshitij Wealth Management LLP. He also told her about the same scheme. Because of his inducement, the informant entered into an agreement with him and gave Rs.5 lakhs in cash. The accused had promised in writing that the informant was to get Rs.7,500/- per month as bonus and Rs.7,50,000/- after 42 months. She was also given a cheque of Rs.7,50,000/- dated 10/03/2024. In November 2020, Riya told the informant about another scheme in which on the investment of Rs.1,00,000/-, the investor was to get Rs.1,20,000/-. The informant gave Rs.1,00,000/- more on 17/11/2020. Riya gave her a certificate of deposit in respect of that investment. It had signature of the Applicant No.1 and seal of the company. Even then, a post-dated cheque for Rs.1,20,000/- was given to her. In January 2021, Riya again approached the informant and this time told her about a new scheme of investment of Rs.5 lakhs. Again a post-dated cheque for Rs.6,00,000/- was given. When all these cheques were deposited by the informant, they were dishonoured. The informant requested Riya and the accused No.1 for refunding her money, but they did not refund anything. On 25/07/2022, both the Applicants, Riya, Riya's husband Ravindra and his relative Kiran Teli came to the informant's house. The informant was told that the Applicant No.2 was a Director of the said company. All of them promised that her money was safe. But she did not get the money. After that, the money was never refunded. Instead, on one occasion, Riya threatened the informant. On this basis, the FIR is lodged.

5. On merits, the offence is clearly made out. The informant and her husband had lost their life savings to the tune of the aforesaid amount. The informant was induced to invest on false promises. At the first instance on 08/01/2024, a

statement was made before the Court that to establish the bonafides of the Applicants, they were willing to pay an amount of Rs.15,00,000/-. The FIR was in respect of the amount of investment of Rs.11,00,000/-. The Applicants were willing to pay Rs.4 lakhs more as the informant had suffered financially for a couple of years. The Applicants needed a reasonable time to make the payment. Accordingly, indulgence was shown and the Applicants were permitted to pay Rs.5,00,000/- to the informant directly within a period of one week from 08/01/2024. They were permitted to deposit further amount of Rs.5,00,000/- upto 15/02/2024 and the balance amount of Rs.5,00,000/- upto 18/03/2024. Based on these submissions, made on the behalf of the Applicants, the indulgence was shown and they were protected by ad-interim relief. The Applicants paid Rs.5,00,000/- as the first installment. But the promised amount of Rs.10,00,000/- was never paid. Instead, the Interim Application No.1164 of 2024 for extension of the period to pay the balance amount was filed. Even that application was allowed vide the order dated 22/03/2024. The Applicants had undertaken to pay the balance amount in the extended period. However, that amount is not paid and today an Interim Application is moved for extension of period by six months for making that payment as promised.

6. It is quite clear that the Applicants are not honouring their commitment. The offer to make the payment had come from their side. It was submitted on their behalf that, to establish their bonafides, they were willing to pay that amount. After the amount of Rs.5,00,000/- was repaid, on the next occasion on 22/03/2024, a cheque for Rs.2,00,000/- was given to the learned counsel for the Intervenor in the Court. This fact is reflected in the order dated 22/03/2024. Learned counsel for the informant stated before the Court that the said cheque of Rs.2,00,000/- was dishonoured. Thus, the Applicants have not only breached their undertaking, but have given a cheque in the Court to the informant, which was also dishonoured. The conduct of the Applicants shows that they deserve no further sympathy. The offence is clearly made out. The amount of the informant is misappropriated. Therefore, I am not inclined to extend any further time to the Applicants. However, for

consideration of relief to the Applicants, I am inclined to protect the Applicant No.2 in this case because she has not played any major role in the offence as per the FIR and she is a lady. Therefore, on both these counts, I am inclined to protect her. However, no such benefit can be extended to the Applicant No.1 because there are serious allegations against him.

7. Hence, the following order :

<u>ORDER</u>

(i) Anticipatory Bail Application No.3604 of 2023 in respect of the Applicant No.1 Nitin Subhash Kamlakar is rejected.

(ii) In the event of her arrest in connection with C.R.No.266/2023, dated 16/09/2023, registered with Sawantwadi Police Station, Sindhudurg, the Applicant No.2 Gauri Nitin Kamlakar, is directed to be released on bail on her furnishing PR bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two sureties in the like amount.

(iii) The Interim Application No.2331 of 2024 in Criminal Anticipatory Bail Application No.3604 of 2023 is rejected.

(iv) Criminal Anticipatory Bail Application No.3604 of 2023 along with its Interim Application are disposed of.

(SARANG V. KOTWAL, J.)