MHCC050064492021

IN THE COURT OF SESSIONS, AT DINDOSHI
(BORIVALI DIVISION), GOREGAON, MUMBAI
ANTICIPATORY BAIL APPLICATION NO.1790 OF 2021
(C.R.NO. 871/2021)
(CNR NO. MHCC05-006449-2021)

1. Palangat Raghavan Nair
Age 61 Years, Occupation: Business,
Having Office at :
Topline Consultancy,
Asia Pacific Pvt. Ltd., 403,
Corporate Park, Turbhe Naka,
Navi Mumbai.
Permanently residing at:
Arya Plaza, Ground Floor,
Near Central Bank, Malayinkeezhu
P.O., Trivandrum 695571, Kerala.

2. Vijaya Sree Nair W/o Raghavan Nair
Age 62 Years,
Permanently residing at:
Arya Plaza, Ground Floor,
Near Central Bank, Malayinkeezhu
P.O., Trivandrum 695571, Kerala.

3. Colonel Dileep Kumar Nair
Age 60 Years Occupation: Retired Colonel,
Residing at Puthenkalizheel House,
Kizhakkupuram P.O., Pathanamthitta,
Kerala 689653. **.... Applicants/Accused**

V/s.

State of Maharashtra
At the instance of MIDC Police Station **.... Respondent**

Ld. Advocate Shri K.B. Sharafuddin for Applicants/Accused.
Ld. Addl.P.P. Shri R.C. Savle for State.
Ld. Advocate Shri Nikhil Wagle for Intervener.

CORAM: H.H.THE ADDITIONAL SESSIONS JUDGE
SHRI. KRUPESH VIJAY MORE
(C.R.NO.4)
DATE : 16TH FEBRUARY, 2022.

O R D E R

1. Apprehending their arrest in connection with C. R. No. 871 of 2021 registered in MIDC Police Station for the commission of the offence punishable u/Secs. 420, 406 r/w Sec. 34 of The Indian Penal Code, 1860 applicants namely Palangat Raghavan Nair, age 61 Years, Vijaya Sree Nair W/o Raghavan Nair, age 62 Years and Colonel Dileep Kumar Nair, age 60 years have approached this Court for the protection in the form of anticipatory bail under the provisions of Sec. 438 of The Cr.P.C.

2. Investigating Officer and learned Addl.P.P. were directed to file reply, accordingly, detail reply is filed by the Investigating Officer vide **Exh. 3**, which is counter signed by the Ld. Addl.P.P. Original complainant also filed intervention application at **Exh. 7** and took strong objection for releasing the applicants on anticipatory bail.

3. Heard Ld. Advocate Shri K.B. Sharafuddin for Applicants/Accused, Ld. Addl.P.P. Shri R.C. Savle for State as well as Ld. Advocate Shri Nikhil Wagle for Intervener at length.

4. Brief contents of FIR registered by Intervener/Complainant are as follows;

Complainant Shri Anil Chandran is working as Project Head in Construction Company. Their company is doing the business of stone mining and crushing.

5. In the year 2017, there was program of their community at Vashi and in that program, complainant was introduced with applicant No.1 Palangat Raghavan Nair. Applicant No.1 informed complainant that he is the owner of the Topline Consultancy Asia Pacific Pvt. Ltd. and their company developed land and give guidance. Thereafter, there were telephonic talks between them on some occasions.

6. In November 2017, applicant No.1 came to the office of complainant and informed that he is having Power of Attorney of 500 acres of land situated at Panvel, Tal Raigad and he was negotiating with Lala Land Development Company situated in USA. He informed that he was authorized to deal with the said land. Applicant No.1 further informed complainant that complainant will get contract of around Rs.50 Crores and to complete the legal formalities, amount of Rs.25 Lakhs was required. Believing on the words of applicant No.1, amount of Rs.25 Lakhs was paid by cash, cheque and NEFT.

7. On 27/8/2018 applicant No.2 Vijaya Sree Nair and another Directors of the company came to the office of the complainant and showed the papers of the land and handed over the same. Thereafter, they took complainant to one place which was at the distance of 3 kms. from Panvel and introduced to some people. Those people informed complainant that applicant No.1 was having 500 acres land in their village.

8. Even after passing of six months, no contract was given by the applicants to the complainant's company, therefore, in April 2019, complainant went to the office of applicant No.1 and it was found that office was closed since last six months. Complainant went to the house of applicant No.1 but it was found that he was not residing on the address. Complainant tried to contact applicant No.1 on mobile phone but applicant No.1 gave evasive answer. Hence, complainant demanded amount of Rs.25 Lakhs to the applicant No.1. Applicant No.1 promised to give back the amount but did not repay the amount. Hence, complainant lodged FIR against applicants in MIDC Police Station, and accordingly, FIR is registered under the above mentioned sections.

9. Ld. Advocate for applicants/accused Shri K.B. Sharafuddin argued that the facts narrated by the complainant at the time of lodging the FIR are twisted. In fact, there was hand-loan transaction between complainant and applicants and the amount was given as friendly loan. After transaction, pandemic started, therefore, applicants' company started to face financial crunch and could not return the amount of the complainant. It is contended that complainant has already taken undated cheques from the applicants and blank stamp papers (promissory note) which *prima-facie* show that the amount was given as loan. Complainant already took cheques as a security against the loan transaction. In view of the above facts, the intention of the applicants is not malafide. Transaction between complainant and applicants is of civil nature. Applicants have already informed complainant that they are ready to pay the amount of complainant in 10 installments. They are ready and willing to pay the friendly loan if sufficient time is granted. It is contended that both the applicants are more than 60

years old. They are permanent residents of Mumbai having good reputation. They will suffer irreparable loss, if arrested by the police. Hence, it is prayed that application be allowed.

10. Application is strongly opposed by the Investigating Officer contending that notice under section 41 of Cr.P.C. was issued to both the applicants but they did not remain present in the police station for enquiry. The call detail records of mobile phone of the applicants have to be collected to show their involvement in the crime. Both the applicants are not co-operating in the investigation and absconding. Their names are appearing in the FIR. Case of cheating is made out *prima-facie*. If the applicants are granted anticipatory bail, they are likely to destroy important evidence of the case. House and office search of applicants is necessary for facilitating further investigation. If the applicants/accused are granted anticipatory bail, they are likely to pressurize complainant and other prosecution witnesses, therefore, it is prayed that application be rejected.

11. Ld. Advocate for the intervener Shri Nikhil Wagle argued that, it is admitted by both the applicants that they have received amount of Rs.25 Lakhs from the complainant. There is no merit in the contention of the applicants/accused that the said amount was given as friendly loan. Both the applicants/accused in furtherance of their common intention, cheated complainant by misleading that they were in negotiation in respect of 500 acres land at Panvel and took amount of Rs.25 Lakhs under pretext that complainant will get huge profit for his business of stone crushing. It is the specific case of the complainant that applicant No.1 took complainant to one place which was around 10 kms. from Panvel and introduced them to the native villagers and

deceived complainant to believe that land belongs to the applicants/accused. However, after payment of Rs.25 Lakhs, complainant neither received any work order nor received any payment back. Hence, complainant started pursuing the applicants for the repayment of his amount but both the applicants avoided to make payment. Hence, it is prayed that application be rejected.

12. It is important to note that during the pendency of the application, again Ld. Advocate for the applicants/accused submitted that applicants are ready to repay the amount of complainant as agreed in installments. Accordingly, the matter was referred for mediation and both the parties appeared before the Judge Mediator and Judge Mediator submitted report dated 4/1/2022 that the matter was settled between the parties and the parties were to file Consent Terms before this Court. However, thereafter, applicants/accused have only sought adjournment on the ground of covid infection and accident which was also graciously granted by this Court to them but no further willingness is shown by both the applicants to amicably settle the matter. This conduct of both the applicants also make it clear that they are just killing the time and avoiding to settle the matter.

13. Both the applicants have taken huge amount of Rs.25 Lakhs from the complainant by deceiving him that they are going to acquire 500 acres land in Panvel. Not only this, but they took complainant to one village near Panvel and showed them and deceived by introducing the native people and saying that they are the owners of the said land. No documents are shown by the applicants to substantiate their case that they were in negotiation of 500 acres land with the company situated in the USA. Only on the basis of all the photocopies of blank

stamp papers and blank cheques, it cannot be concluded at this stage that the amount was given as friendly loan for which blank stamp papers and cheques are already taken. In view of the fact that both the applicants are not denying that they have taken amount of Rs.25 Lakhs from the complainant and failed to repay the same.

14. Considering the gravity of the offence, custodial interrogation of both the applicants is necessary to seize the documents in respect of the transaction which is alleged to have been pretended by both the applicants. It is also necessary to find out call detail records and take house search of both the applicants/accused. In other words, the case of recovery of the important documents is made out by the investigation.

15. Ld. Advocate for the intervener has also produced on record whatsapp conversations between complainant and applicants/accused to *prima-facie* show that there were business transactions between them and specific demand was made by applicant No.1 showing some urgency to deceive the complainant to make payment. The conversations between complainant and applicant No.1 *prima-facie* show that applicant No.1 deceived complainant for making payment of Rs. 25 Lakhs from time to time. Hence, custodial interrogation of the applicants is justified and I proceed to pass the following order:

<u>ORDER</u>

1. Anticipatory Bail Application No.1790 of 2021 is rejected.

2. Anticipatory Bail Application No.1790 of 2021 is disposed of accordingly.

Date: 16.2.2022

(Krupesh Vijay More)
Addl. Sessions Judge
City Civil & Sessions Court,
Borivali Division, Dindoshi

Dictated on	: 16.2.2022
Transcribed on	: 17.2.2022
Checked & Corrected on	: 21.2.2022
Signed on	: 21.2.2022
Sent to Dept on	:

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED ORDER" Date : 21/2/2022 Time : 11.38 A.M. UPLOAD DATE AND TIME	Mrs. M. S. Pendkhalkar (Stenographer Grade-I) NAME OF STENOGRAPHER
Name of the Judge (with Court room no.)	HHJ Shri Krupesh Vijay More (C.R.No.4)
Date of Pronouncement of ORDER	16/2/2022
ORDER signed by P.O. on	21/2/2022
ORDER uploaded on	21/2/2022