IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 696 OF 2015

1. Mandar Master,
Having address at Building No. 50,
Flat No. 1769, Tilak Nagar, Chembur,
Mumbai 400 089

2. Rohit Uchil,
Having address at Building No. 50,
Flat No. 1796, Tilak Nagar, Chembur,
Mumbai 400 089 ...Applicants

Versus

1. The State of Maharashtra,
(Through Chembur Police Station,
Chembur, Mumbai),

2. Sanjay Rameshchandra Dayama,
Age: Adult, Non-Resident Indian,
Having his Indian Residential address
at Flat No.-1702, 17th floor, Kingston,
Chincholi Road, Malad (West),
Mumbai – 400 064.
Through : Lalit Sankalchand Chauhan,
Constituted Attorney of the Complainant,
Available at 107, Ashirvad Estate No. 2,
Ram Mandir Road, Goregaon (West),
Mumbai – 400 104 ...Respondents

Mr. A. P. Mundargi, Sr. Counsel with Mr. Hemang Amar Jariwala i/b Auroma Law for the the Applicants

Ms. S. S. Kaushik, A.P.P for the Respondent-State

Mr. Shirish Gupte, Sr. Counsel i/b Mr. Prem Keshwani for the Respondent No. 2/Complainant

API Mr. Prakash N. Kalange from Chembur Police Station is present

CORAM : REVATI MOHITE DERE, J.
FRIDAY, 30TH OCTOBER, 2015

ORDER :

1. Heard learned Senior Counsel for the applicants, the learned A.P.P for the State and the learned Senior Counsel for the respondent No.2/complainant.

2. By this application, the applicants seek pre-arrest bail in connection with MECR No. 3 of 2015 registered with the Chembur Police Station, for the alleged offences punishable under Sections 409, 406, 420 r/w 120B of the Indian Penal Code.

3. It appears that vide order dated 20th May, 2015, no interim relief was granted by the Vacation Court (Coram : A. S. Gadkari, J.). On 4th June, 2015, the Vacation Court (Croam : V. L. Achliya, J.) was pleased to pass the following order :

> *"Investigating officer is present along with learned APP. Learned APP seeks time.*

> *2) Stand over to 11/06/2015. In the meanwhile, interim order operating to continue till next date."*

Pursuant to the said order dated 4th June, 2015, the interim order came to be continued till the next date and was thereafter continued from time to time. On 22nd September, 2015, leave to amend was granted and the original complainant was impleaded as party respondent No.2. In view of the dispute between both the learned Counsel for the applicants and the learned Counsel for the respondent No.2/complainant with regard to the interpretation of the order granted by this Court (Coram : V. L. Achliya, J.) on 4th June, 2015, learned Counsel for the respondent No. 2 sought time to obtain a clarification of the order dated 4th June, 2015. On 5th October, 2015, a clarification was obtained from this Court (Coram : V. L. Achliya, J.) and it was clarified that it was a typographical error and that the words "if any" were omitted while transcribing the said order, which had led to the confusion. Accordingly, it was clarified that the order which was passed on 4th June, 2015 should be read as "In the meanwhile, interim order, if any, operating to continue till the next date". As on 20th May, 2015, no interim relief was granted to the applicants, there was no continuation of the same.

4. The complainant is one Sanjay Rameshchandra Dayama, who has lodged a private complaint with the learned Additional Chief Metropolitan Magistrate, 11th Court, at Kurla, Mumbai as against the present applicants and others. It is prayed in the said complaint that the complaint be sent for investigation under Section 156(3) of the Code of Criminal Procedure (`Cr.P.C'). According to the complainant, he is a Non-Resident Indian (NRI) since 2003 staying and working at Dubai. According to him, the applicant No. 1 was introduced to him by Roshan Uchil (accused No. 3) as the broker of National Stock Exchange and a businessman dealing in financial investments having his office at Mumbai. The applicant No. 2 is stated to be the partner of applicant No. 1 in the said business. The other accused are the relatives of applicant No. 1. According to the complainant, Roshan Uchil (accused No. 3) represented and informed him that all the accused including the applicants have a group dealing in Indian Stock markets and were in the business of receiving investments from the public and giving heavy returns on the invested amounts. He has stated that in January, 2012, Roshan Uchil (accused No. 3), a friend of the complainant, whom he knew for the last 15 years,

approached him and persuaded him to invest money through him in the Indian Stock Market, which would fetch him heavy returns of 60% per month. Initially, the complainant refused to invest the money, however, Roshan Uchil (accused No. 3) would call him very often and would ask him to invest in the Indian Stock Market. He has stated that Roshan Uchil (accused No. 3) by his representations, attempted to create confidence in his mind by disclosing to him that he himself had got very good returns from the applicant No. 1 – Mandar Master on his investments and many people in India had become rich only due to their investments in the Stock Market and that the applicant No. 1 due to his vast experience, knowledge and support of rich persons of the country has been minting moneys and their group has been distributing profits as and by way of heavy returns. Roshan Uchil (accused No. 3) is stated to have represented to the complainant that the applicant No. 1 was the brother-in-law of Tribhuvan Das Bhimji Zaveri and had contacts with the high profile brokers in the Bombay Stock Exchange. The applicant No. 1 is stated to have assured the complainant that he ought not to worry about the fluctuations in the market as their group had vast knowledge about when, how and what amount to invest and that too in which stocks. Roshan Uchil (accused No. 3) infact guaranteed the complainant that the amount invested by him has nothing to do with the conditions of the market prevailing at any time and that he would get fixed returns on the investment made by him. Roshan Uchil (accused No. 3) also gave personal guarantee to safeguard and protect the complainant's invested amount by assuring him to transfer/sell or give as a guarantee/security or lien on his flat, situated at Lodha Group at Thane, if the complainant's invested amount would not be returned as agreed. According to the complainant, trusting Roshan Uchil (accused No. 3) who was like a member of his family, who assured him of applicant No. 1's strong financial background, induced him to invest with the said group. Accordingly, the complainant parted with money for investment through Roshan Uchil (accused No. 3) in the Indian Stock Market. On 24th April, 2012, Roshan Uchil (accused No. 3) emailed the complainant and gave his and his wife Shweta Khopkar's bank account details and requested him to put Rs. 15 lakhs in each account and assured him that his life would change from 1st May onwards. In April, 2012, the complainant deposited with Roshan Uchil (accused No. 3) by telex transfer, an amount of Rs. 14.26 lakhs, which was credited in accused No. 3-Roshan Uchil's account on 30th April, 2012. After the first transaction, Roshan Uchil (accused No. 3), on

28th May, 2012, e-mailed the complainant the business proposal. Roshan Uchil (accused No. 3) introduced the applicant No. 1, and disclosed that applicant No. 2 was his cousin brother and was a business partner with applicant No.1. According to the complainant, Roshan Uchil (accused No. 3) represented to him with pride, that applicant No. 1 was one of the biggest investors, member of Bombay Stock Exchange, son-in-law of Tribhuvan Das Bhimji Zaveri and is a part of the group which belongs to well-known Mr. Singhania. Roshan Uchil (accused No. 3) assured the complainant that applicant No. 1 was financially strong, having holdings and portfolios of approximately 200-300 crores in addition to investment in multiple properties in prestigious areas of Mumbai which includes Lodha Group and has big investors investing from Germany and also that he trades in US Stock Markets in NASDAQ on his own and through Mr. Singhania. Roshan Uchil (accused No. 3) added that Mr. Singhania was moving to USA and he would hand over to the applicant No.1 and his groups, all his business operation in India having turnover of Rs. 550 crores. Roshan Uchil (accused No. 3) further assured the complainant that with all these support and finance, the applicant No. 1 and his group runs the investment business and provides good and guaranteed returns on investments made by the people like the complainant. Thereafter, Roshan Uchil (accused No. 3) requested the complainant to speak with the applicant No. 1 on phone to know about him. Roshan Uchil (accused No. 3) then contacted the applicant No. 1 on phone and asked the complainant to speak with the applicant No. 1. In the said conversation, the applicant No. 1, when asked by the complainant about his business and financial status, confirmed with him the same and asked him to invest huge amounts, and guaranteed returns on the same, through Roshan Uchil (accused No. 3) and assured 60% returns per annum on invested amount and further assured to make the complainant a part of his prestigious group in future. Relying on the said representations, assurances and guarantees given by the applicant Nos. 1 and 3 and others, the complainant decided to invest with the applicant No.1's group a huge amount, which the complainant did from May, 2012 by transferring funds in applicant No.1 and accused No. 3 - Roshan Uchil's respective bank accounts, either through Account Payee Cross Cheques or by RTGS transfer, only on the assurance and guarantee of the applicant No. 1 and Roshan Uchil, to give the complainant good returns as and by way of 60% per annum on the investments. According to the complainant, they informed him that he had earned about 60% returns on the invested amount, but requested him to reinvest the said amount, with a representation and excuse that they needed the funds to be invested in the market, by assuring bigger returns in the coming months. Relying on the said representations and reassurances, the complainant gave his consent for reinvestment of the returns, which were due to him. Since April, 2012 till November, 2012, the complainant invested with the applicant No. 1 and others a total amount of Rs. 3,01,31,044/-. According to the complainant, the accused used to inform him on phone and via emails about the bank accounts and the account numbers in which the invested amount was to be transferred or deposited.

5. It is alleged by the complainant that the accused group of company even requested him to float a company at Dubai, as many investors were interested in investing their money and hence, with a view to make the complainant, part of their group, they requested him to join them by opening general trading company at Dubai called Fortunatus Sappahire DMCC. The applicant No. 1 is stated to have committed to fund the entire capital requirement for the formation of the said company. Relying on the assurances of the accused, the complainant quit his

permanent join with Maersk Group of USA in Dubai to take up the responsibility of the said Company. The applicant No. 1, when contacted, informed the complainant that he has already parted with a sum of Rs. 2 Crores for the said company through one of his friend Mr. Rishab, which, to his knowledge, was false. According to the complainant, when he started demanding his funds, both principal as well as returns from the accused persons, they started giving evasive replies and dodging him. The accused persons are stated to have started giving lame and baseless excuses for not returning the principal amount as well as the interest thereon, stating that there was a tight liquidity in the market, due to the Gujarat Election and thereafter, due to the death of Shiv Sena Leader, the funds were diverted. He has alleged that applicants and Roshan Uchil (accused No. 3) would keep giving some dishonest excuses to the complainant and thereby wrongfully detained the funds belonging to the complainant. In mid December, 2012, towards the discharge of the part payment of the said existing legal liability/debt, the applicant No. 1 is stated to have handed over three cheques to Roshan Uchil (accused No. 3), towards the discharge of the part liability of the complainant. All the cheques were dishonoured. Again in January, 2013, the accused dishonestly and falsely framed a story of he being robbed of Rs. 3 Crores, while driving from Ahmedabad to Mumbai in a Car. When the complainant demanded a copy of the FIR lodged with the concerned Police Station of theft of the aforesaid amount, the accused refused to furnish the same. When the complainant confronted the applicants and Roshan Uchil (accused No. 3), the accused turned a deaf ear. In December, 2012, the complainant came to Mumbai to find out the fraud played by the accused. Pursuant thereto, he made several attempts to call the accused as well as to have personal meetings with them. In January, 2013, the applicant No. 1 along with applicant No. 2 and others met the complainant and his Constituted Attorney Lalit. In the meeting, applicant No. 1 introduced accused No. 4 – Chayya Kiran Master as his mother and stated that she was not well and tried to convince them that due to financial difficulties, they could not release the funds. The accused are stated to have handed over documents of three different properties out of which two belonged to accused No. 4-Chayya Kiran Master and the third was owned by a third party- Mr. Suresh Gala, however, the beneficial ownership rest with the applicant No.1. On 22^{nd} January, 2013, applicant No. 1 along with a covering letter under his signature, towards the discharge of the aforesaid part of existing legal liability, issued a cheque of

Rs. 30 lakhs in favour of the complainant, which, when deposited, was dishonoured for the reason "funds insufficient". The accused No. 1 again issued a cheque for a sum of Rs. 20 lakhs drawn on ICICI Bank, on 6th April, 2013. Again, the said cheque got dishonoured for the reason "insufficient fund". According to the complainant, despite assurances by the accused to return back the funds along with the returns and compensation thereof, he did not receive any amount from the accused persons. According to him, the amounts transferred in the account of the applicant No. 1 was a sum of Rs. 88,00,056/- and the returns assured were calculated to be Rs. 82,18,165/- till 31st March, 2014. An amount of Rs. 2,13,30,988/- was transferred in the account of Roshan Uchil (accused No. 3) and the returns that were agreed to be given to the complainant up to 31st March, 2014 is calculated to Rs. 1,94,35,453/-. According to the complainant, as he failed to receive the said amounts, he made inquiries about the accused persons and learnt that about four companies were floated by them, which were – (a) Fortunatus Financial Services Private Limited; (b) Simple Success Online Services Private Limited; (c) Mahavidya Exports Private Limited; (d) Mahavidya Infrastructure Lifespace Private Limited. According to the complainant, a racket was functioning in Mumbai, in which, all the accused/applicant by entering into criminal conspiracy had floated the aforesaid financial companies by inducing people to invest in their companies and had assured returns upto 60% per annum and the accused had accumulated huge amount from the same.

6. Learned Senior Counsel for the applicants states that the allegations are essentially as against Roshan Uchil (accused No. 3) and not the present applicants. He submits that a perusal of the FIR will show that it is Roshan Uchil (accused No. 3) who was known to the complainant and a friend of the complainant who had induced the complainant to invest various amounts with the applicant No. 1. He admits that the said amount of Rs. 88 Crores odd came into the account of the applicant No.1, however, submits that the stock exchange market crashed and hence, the applicants cannot be held liable for any of the alleged offences. He submitted that the transaction is stated to have taken place some time between April, 2012 to December, 2012 and the dispute started in December, 2012, however, the FIR was lodged only on 31st October, 2014. He submitted that despite the cheques being dishonoured, no 138

proceedings were initiated by the complainant as against the applicant No. 1. He submitted that the applicant No. 2 is the cousin brother of Roshan Uchil (accused No. 3) and only by virtue of their relations, in the absence of any averment to show his complicity, the applicant No. 2 cannot be held responsible. He submitted that there is no amount which has been transferred into the account of the applicant No. 2 nor is there any averment in the complaint to show that the applicant No. 2 induced the complainant to invest any amounts.

7. Learned A.P.P opposed the bail application. She submitted that the perusal of the complaint clearly shows that representations/inducements were even made by the applicant No. 1, independent of the inducement made by Roshan Uchil (accused No. 3). She submitted that the bank statement clearly shows that a sum of Rs. 88 crores odd was received by the applicant No. 1 from the complainant in his personal bank account. She submitted that the said sum was taken by the applicant No. 1 from the complainant, on the assurance of investing the same in the Stock Market, which was not done. She submits that no shares/stocks were purchased by the applicant No. 1, as promised. She submits that instead, from the said

amounts that were received from the complainant, the applicant No. 1 purchased gold/jewellery. She relied on two statements of jewellers who have stated that the applicant No. 1 during the said period, had purchased gold/jewellery from them. She submitted that it is a huge scam in which the applicants along with Roshan Uchil (accused No. 3) were involved and that the said persons had clearly cheated and misappropriated the money, that was meant to be invested in the stock exchange. She submitted that there are bank transactions which also show flow of money from the account of Roshan Uchil (accused No. 3) into the account of the applicant No.1.

8. Mr. Shirish Gupte, learned Senior Counsel for the respondent No.2/complainant supported the submissions advanced by the learned A.P.P. He submitted that the amounts that were paid by the complainant were made to be invested in National Stock Exchange, however, the same were not invested in the National Stock Exchange. He submitted that there is nothing on record to show that the said amount was invested by the applicant No. 1 in National Stock Exchange or that any shares were purchased. He submitted that infact a false statement was made that the

applicant No. 1 was a broker, when infact, the applicant No. 1 was not a broker. He submitted that the cheques given by the applicant No. 2 have been dishonoured and the notices have been returned back as the address was incorrect. According to him, the complainant was defrauded/cheated of a huge amount by the accused in a systematic way, by making false representation and by inducing him to part with the money for investing the same with the National Stock Exchange.

9. Perused the papers including the statements of the two jewellers Abhishek Sancheti and Mukesh Jain. It appears *prima facie* that the applicant No. 1 had induced the complainant to part with huge amount for investing the same in National Stock Exchange and had assured him with heavy returns. Admittedly, the amounts were not invested with the Stock Exchange nor any shares were purchased from the said amounts transferred by the complainant into the account of the applicant No. 1. Today, the learned Senior Counsel for the applicants states that the applicant No. 1 is only an investor and not a stock broker. It appears that the applicant No. 1 had, from the said amounts, purchased jewellery of Rs. 17,90,000/- from Abhishek Sancheti some time in July, 2012 and the

statement of Mukesh Jain shows that the applicant had purchased jewellery worth Rs. 48,80,000/- from him in the year 2012. The amounts that complainant parted with were to be invested in the shares, which was not done. The applicant No. 1 had introduced himself as a broker in the Stock Exchange. No shares were purchased nor any investment was done in the Stock Exchange as promised. It appears that instead, the applicant No. 1 had purchased the jewellery as stated aforesaid from the said money given by the complainant. Therefore, considering the material, *prima facie,* it appears that the applicant No.1 has cheated and misappropriated the money given by the complainant. Hence, no case is made out to exercise the discretion under Section 438 Cr.P.C. The custody of the applicant No. 1 is essential to find out how many more persons the applicant No. 1 has cheated and funds misappropriated and where the amounts were diverted. Hence, the prayer for anticipatory bail is rejected qua the applicant No.1.

10. As far as applicant No. 2 is concerned, it appears that there is, *prima facie,* no averment that the applicant No. 2 induced the complainant or that applicant No. 2 made any representation to the complainant. Only because he was the partner of the group company of applicant No.1, he

cannot be held responsible for the acts of the applicant No. 1 and co-accused Roshan Uchil (accused No. 3). It also appears that there are no documents to show that any amounts have been received by the applicant No. 2 in his account from the complainant.

11. Considering the aforesaid, the applicant No. 2 deserves protection. Accordingly, following order is passed :

ORDER

(i) The prayer of applicant No. 1 – Mandar Master, for anticipatory bail is rejected;

(ii) In the event of the arrest, the applicant No.2 – Rohit Uchil be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 50,000/- with one or two sureties in the like amount ;

(ii) The applicant No. 2 – Rohil Uchil shall attend the concerned Police Station as and when called for by the Investigating Officer;

(iii) The applicant No. 2 – Rohit Uchil shall not leave the country without prior permission of this Court;

(iv) The applicant No. 2 – Rohil Uchil shall not tamper, attempt to influence or contact the complainant, witnesses or any person concerned with the case.

12. The Application is partly allowed in the aforesaid terms and is accordingly disposed of.

13. It is made clear that if an application for regular bail filed, the same shall be considered on its own merits, uninfluenced by the observations made herein.

14. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.