IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 380 OF 2016

Shri Pravin Vishnu Chavan … Applicant.

V/s.

The State of Maharashtra … Respondent.

WITH
ANTICIPATORY BAIL APPLICATION NO. 451 OF 2016

Shri Ganpat @ Ganesh Ramdas Gote … Applicant.

V/s.

The State of Maharashtra … Respondent.

Mr. Prashant M. Patil, Advocate for the Applicant in both ABAs.
Ms. Veera Shinde, A.P.P. for the Respondent – State.

CORAM : A. M. BADAR, J.
DATE : 08th JUNE, 2016

P.C. :

1 Both Applicants/accused in Crime No. I-102 of 2014 for the offence punishable under sections 420, 468, 471, 201 read with section 34 of the Indian Penal Code and under section 66(D) of the Information and Technology Act, 2000, by their respective applications, are praying for pre-arrest bail. Applicant-Pravin Chavan in Cri. Application No. 380 of 2016 is

accused no.5; whereas applicant-Ganpat Gote in Cri. Application No. 451 of 2016 is accused no. 8 in the said crime.

2 Heard the learned counsel appearing for the Applicants in both the applications. Learned counsel for the applicants/accused argued that the applicants are in no way concerned with the alleged company and its financial transactions. He further argued that the applicants/ accused are not agents of the company which had allegedly cheated the investors. Learned counsel further argued that even as per prosecution case that reflected from the remand report shows that accused no.12 -Nivrutti Madhukar Kushare was the agent of the company and even the FIR shows the name of another agent as-Nilesh Arvind Kshatriya, accused no.11. Learned counsel by taking me through entire text of the FIR as well as remand reports annexed to the applications argued that no role or an overt act, causing cheating either to the informant or other public is attributed to the present applicants.

3 Learned counsel for the applicants/accused further argued that remand report shows that arrested accused had destroyed the data from the electronic devices. Learned counsel further argued that neither the FIR nor the remand reports which are annexed by the applicants to the applications show that the applicants/accused had indulged in any forgery or used forged documents or electronic record as genuine. He,

therefore, submits that custodial interrogation of the present applicants who are named at the fag end of the FIR as associates of the owners of the company is not at all warranted.

4 Learned APP for the State argued in both these applications, relying upon FIR as well as remand reports annexed by the applicants/accused to the applications by contending that she is short of instructions and despite her efforts, the Investigating Officer has not given instructions to her.

5 Perusal of the record goes to show that since the beginning of March, 2016, these applications are adjourned from time to time in order to enable the APP to seek instructions. On 11th April, 2016 by way of last chance, at the request of the learned APP, these applications were adjourned to 25th April, 2016. On 25th April, 2016 also, despite last chance, at the request of the learned APP these applications were adjourned to 5th May, 2016. Ultimately by taking note of the fact that the Investigating Officer has failed to give instructions to the learned prosecutor, following order came to be passed by this court on 5th May, 2016 (Coram: Revati Mohite Dere,J), which is as reproduced below :

> "P.C.
>
> . Learned APP states that despite repeated intimations, the investigating officer is not present and as the investigating officer has not come to

> give instructions, she was unable to file an Affidavit.
>
> 2 The Superintendent of Police, Nasik (Rural) to ensure that the investigating officer, who is connected with C.R. No. I-102 of 2014 registered with the Pimpalgaon Police Station, Nasik is present on the next date to give instructions to the investigating officer and for filing an Affidavit. Learned APP to communicate the said order to the Superintendent of Police, Nasik (Rural).
>
> 3 Stand over to 08.06.2016. Till then, ad-interim relief granted earlier will continue to operate."

Bare perusal of this order goes to show that this court directed the Superintendent of Police, Nasik (Rural) to ensure that the Investigating Officer should give instructions to the learned APP for filing affidavit, opposing the prayer of applicants herein. It is seen that this court has attempted to seek intervention of the Superintendent of Police in order to discharge its function of administration of justice with the hope that the learned APP will get instructions from the Investigating Officer, at least at the instance of the Superintendent of Police, Nasik (Rural).

6 Today also, the learned APP has shown her helplessness and stated that despite communication of the order dated 5th May, 2016 to the Superintendent of Police, Nasik (Rural), she has not received any response either from

the Superintendent of Police or from the Investigating Officer concerned. As such the learned APP has chosen to argue the matter on the basis of the record produced by the applicants. This sorry state of affair needs to be put on record with the hope that in future the prosecution will be vigilant and will extend necessary co-operation to this court for dispensation of justice.

7 Be that as it may, the prosecution case as reflected from the FIR lodged by the informant -Dilip Popatrao Patole on 26th August, 2014 with Pimpalgaon Police Station, Nasik is thus :- In December, 2013, accused no. 11- Nilesh had been to the house of informant Dilip Patol and induced him to invest in "E-Recharge Cashcom", a scheme floated by the company named "Topdof Agency" owned by Vijay Ballal, Vijay Dwivedi, Ravishankar Jaiswal and Shikumar Hiremath (Accused Nos. 1 to 4). Handsome returns were promised on the investment by the said agent named-Nilesh. Accordingly, the informant had received some returns. Informant Dilip Patole further alleged that then at the instance of Nilesh-accused no.11, he again invested an amount of Rs. 2.50 lakhs in the new scheme but he did not receive any returns on his investment. Accused no.11-Nilesh Kshatriya then again convinced the informant to invest Rs. 5 lakhs in the new scheme, promising handsome returns. He, accordingly, invested and got some returns for the short period from 1st February, 2014 to 6th February, 2014.

Thereafter, the Company after closing the web-site, has started new web-site and floated a new scheme named as "E -Recharge Cashinfo". According to the informant he had invested total amount of Rs. 9 lakhs by handing over the amount to accused no. 11-Nilesh Kshatriya. However that amounts alongwith the returns thereon is not paid to him. According to the informant, accused no.11-Nilesh Kshatriya, agent of the company then handed over cheque of Rs.20 lakhs to him but the same was dishonored twice. The informant further averred that in this manner several investors are cheated by the company. In the FIR, the informant again reiterated the names of Vijay Ballal, Vijay Dwivedi, Ravishankar Jaiswal and Shivkumar Hiremath as owners of the company. However, passing reference is made in the F.I.R. to the present applicants as associates of the owners of the company.

8 Careful perusal of the FIR as well as remand reports annexed to the applications do not show any overact attributable to the present present applicants/accused. Recitals in the FIR consistently show that monies were invested in the scheme at the instance of the agent namely -Nilesh Kshatriya (Accused No.11). Owners of the company are named and they are accused nos. 1 to 4. Prima facie, it is not found that the applicants had in any manner dishonestly induced the investors to invest in a company named as "Topdof Agency". It is not, prima facie, reflected that the applicants had dishonest

intentions since inception of cheating the investors by alluring them to deposit moneys in the said company. It is not also reflected that the applicants had used any forged documents or electronic record as a genuine one. The learned APP could not point out any, prima facie, material, depicting the forgery at the instance of the present applicant / accused. In fact how present applicants are concerned with the Topdof Agency which had elicited deposits from several investors is a matter shrouded in mystery as the prosecution has failed to clarify this aspect.

9 Personal liberty of a citizen is required to be zealously protected and it cannot be taken away without following due process of law. Nature of the allegations against the accused as well as the material against them are relevant considerations for balancing the personal liberty of the accused and interest of the prosecution in investigation of the crime. Considering the recitals in the FIR as well as the remand reports which are discussed sufficiently in the forgoing paras of this order, this court is of the considered opinion that liberty of the present applicants needs to be protected and their custodial interrogation in the crime in question is not required. On instructions the learned counsel for the applicants states that the applicants are not having any criminal antecedents. Hence, the following order :

ORDER

i. Both anticipatory bail applications are allowed.

ii. In the event of their arrest in connection with Crime No. I-102 of 2014 for the offence punishable under sections 420, 468, 471, 201 read with section 34 of the Indian Penal Code and under section 66(D) of the Information and Technology Act, 2000, registered with Pimpalgaon Police Station, Dist. Nashik, both applicants be released on bail on executing PR bond in the sum of Rs.25,000/- each and on furnishing sureties in the like amount.

iii. As a condition of this order, the Applicants/ accused should attend Pimpalgaon Police Station, Dist.Nashik on 16^{th}, 23^{rd} and 30^{th} June, 2016 in between 11 a.m. to 1 p.m..

iv. The applicants/accused shall inform their latest place of residence and cell number and continue to inform the change in residence or cell number, if any, from time to time to the concerned investigating officer of the police station and on filing the charge-sheet to the concerned court.

v. The applicants/accused should not leave India without prior permission of the court that seized with the matter.

vi. In addition, the Applicants/accused are directed that they shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of accusation against them so as to dissuade such person from disclosing such facts either to the Court or to any police officer and that the applicants shall not tamper with the prosecution evidence in any manner.

vii. The Applicants should not commit offence of the similar nature in future.

viii. Copy of this order be forwarded to the Additional Chief Secretary, Home Department, State of Maharashtra as well as Director General of Police (M.S.), Mumbai.

(A. M. BADAR, J.)

.....