IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1265 OF 2016

1 Suman Roy.
2 Dhiraj Sharma. ... Applicants.
Versus
The State of Maharashtra. ... Respondent.

Mr. A.P. Mundargi, Sr. Counsel i/b. Mr. Rahul Karnik, advocate for Applicants.

Mr. S.S. Pednekar, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : DECEMBER 6, 2016

P.C.:

1 Heard the learned Counsel for the applicants and the learned APP for State. Perused the papers.

2 This is an application under Section 438 of the Code of Criminal Procedure, 1973. The applicants herein are apprehending their arrest in Crime No. 146 of 2016 registered at Deccan Police Station, Pune for offence punishable under section 406, 418, 420, 120B, 409 of the Indian Penal Code.

3 The applicant herein happens to be the officers of M/s. Motilal Oswal Securities Ltd.. M/s. Motilal Oswal Securities Ltd. also gives Portfolio Management Service to several investors. They are also into the trading of shares and securities.

4 It is the case of the prosecution that the complainant Sandeep Anil Banerjee lodged a report at the police station on 14/6/2016 alleging therein that he had opened Portfolio Management Service. According to the complainant, Motilal Oswal Securities Ltd. had contacted him in August, 2014 and had explained to him the benefits of investing in share market. It is alleged that the applicant No. 1 had met the complainant and had assured him that by investing into the firm as suggested by him, he would earn good return. That he was advised to invest a minimum of Rs. 25 Lakhs to open an account in Portfolio Management Service. The complainant had invested Rs. 10 Lakhs. Mr. Roy had suggested that he could invest the remainder of Rs. 15 Lakhs. Subsequently, the account was opened. The complainant had paid Mr. Roy Rs. 10 Lakhs by cheque on

23/9/2014. According to the complainant, during the period from September, 2014 to July, 2015 he had invested an amount of Rs. 1,13,90,000/- by cheque payment. He had faith in the said firm and signed the forms as per the advise of the applicants. It is further alleged that on 5/1/2015 and 17/3/2015 he had received an email from the firm informing him that there is a shortfall in margin money which he should deposit immediately. In nutshell, the complainant has alleged that the firm rather, the applicants had sold his shares at lower price without his consent and he has no knowledge of the same and therefore, he had to suffer a loss of about Rs. 1.14 Crore. The investigation was set in motion.

5 During the pendency of the investigation, as per the agreement between the parties, the matter was referred for arbitration. The award is passed on 7th November, 2016. The Arbitrator has arrived at a conclusion that the contention of the respondent i.e. the complainant in the present case are factually incorrect. The Arbitrator has assigned valid reasons for arriving at the said conclusion. The award is passed. The respondent i.e. the complainant Mr. Banerjee

was directed to pay MOSL a sum of Rs. 29,34,135/- due as on June 16, 2016 together with interest at the rate of 18% per annum calculated from 16/6/2016 till the date of actual credit in the bank account of MOSL. The complainant has written a letter to MOSL on 10/11/2016 and has submitted that he is under financial duress and has therefore, requested MOSL to sell out equity shares held by him in the demat account at the current market price as on 10/11/2016. It is also submitted across the bar that the complainant Mr. Banerjee has challenged the said award.

6 The learned Senior Counsel for the applicants has drawn attention of this Court to the forms signed by the complainant at the time of trading with shares. Brokerage for the trading account was fixed. The said forms are signed by the complainant and therefore, according to the learned Senior Counsel, it would not be appropriate for the complainant to allege that the shares were sold without his consent.

7 Be that as it may, the very fact that the arbitration award is passed and is under challenge, it appears to be a dispute between the trading firm and the investor. The custodial interrogation of the applicants would not be imperative in these circumstances. Hence, the applicants deserve to be granted pre-arrest bail and the order dated 28/7/2016 passed by this Court (Coram : A.M. Badar, J) needs to be confirmed.

8 However, it is made clear that the observations made herein above are prima facie in nature and are restricted to the application under section 438 of the Code of Criminal Procedure, 1973. The learned Sessions Judge shall not be influenced by the above observations at the time of deciding the application for quashing of FIR or discharge application or at the time of trial.

9 Hence, following order is passed.

ORDER

(i) The application is allowed.

(ii) In the event of arrest in Crime No. 146 of 2016, the applicants be enlarged on bail on furnishing P.R. bond in the sum of Rs. 1,00,000/- (Rs. One Lakh) each and one or more solvent sureties in the like amount.

(iii) The applicants shall report to concerned police station as and when called only after issuing notice under section 160 of the Code of Criminal Procedure, 1973 in the name of the present applicants and cooperate with the investigating agency to the best of their capacity.

(iv) The applicants shall not tamper with the evidence.

10 The copy of the award and other documents are taken on record and marked as article "X" for the purpose of identification.

11 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)