IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO. 1424 OF 2016

Kailash Shantaram Parab. ... Applicant.
Versus
The State of Maharashtra. ... Respondent.

Mr. Sanjiv A. Sawant a/w. Mr. Abhieshek P. Deshmukh, advocate for Applicant.

Mr. Vinod Chate, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : OCTOBER 3, 2016

P.C.:

1 Heard the learned Counsel for the applicant 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 applicant herein is apprehending his arrest in C.R. No. 60 of 2016 registered at Shahupuri Police Station, Kolhapur, for offence punishable under section 406, 420 read with Section 34 of the Indian Penal Code.

3 It is the case of the prosecution that on 9/2/2016 one Popatrao Kushire lodged a report at the police station alleging therein that in February, 2012 he had met a person namely, Ramesh Yadav, who had introduced himself as the branch manager of Omish Chit Fund Pvt. Ltd. branch at Kolhapur. He had introduced the scheme to the complainant and had contended that regular investment in the said scheme would entitle him to a good returns and also concession at the time of availing any loan facility. That on 10/6/2014 the complainant had also inducted his wife Rekha as a member of the said Omisha Chit Fund. His daughter has also become a member and regularly invested into the said scheme. He has further submitted that the invested amount was being collected by the members of the said chit fund company. They had not visited the complainant to collect 3 installments. He had been to the office and realised that the office was closed. The director as well as employees were evading to answer the phone calls. He had contacted several investors who had also disclosed the same experience. Subsequently, it was revealed

that some of the members had filed a complaint to the sales tax department about the irregularities of the said firm.

4 It appears from the papers of investigation that the sales tax department had issued notice to all the directors of the said firm. There are several investors in the said firm and the total amount of misappropriation is more than Rs. 88,55,600/-.

5 The learned Counsel for the applicant submits that the applicant was inducted as a director of the said firm on 3/2/2015. He had also invested in the said chit fund. He had resigned from the said firm on 31/7/2015. According to the learned Counsel for the applicant, the recitals of the first information report do not even remotely indicate that the present applicant had introduced anybody, much less the complainant to deposit the amount in the said scheme. According to the learned Counsel, he himself invested in the said scheme and upon realising that there are irregularities in the said firm, he had resigned

from the said firm within 6 months and therefore, he deserves to be granted pre-arrest bail.

6 As against this, the learned APP submits that period of investment of all the investors ranges from 2012 to August, 2015. That the applicant is beneficiary of the said scheme as he also happens to be the director of the firm. The learned APP further submits that as on today, all the accused are absconding and it would not be appropriate to grant pre-arrest bail to the present applicant.

7 Upon perusal of the papers of investigation, it appears that sales tax department had issued notice to the applicant and had called upon him to remain present before the sales tax authority in November, 2015. The learned Counsel for the applicant submits that he has no instruction about the same. However, the papers of investigation make it clear that the applicant had not appeared before the sales tax authority and had not tendered any explanation. In the meanwhile, there was an agreement executed between Manasing

Shankar Ghorpade and the present applicant on 27/6/2016. Non-judicial stamp was purchased by the present applicant. The agreement would indicate that the present applicant had also demanded the return of the money invested by him.

8 The learned Counsel for the applicant has placed implicit reliance upon the clause 4 and 5 of the said agreement, which show that the responsibility is to be shouldered by Manasing Shankar Ghorpade and that if any claim is raised against Mr. Takale or Parab, Mr. Manasing Ghorpade would be held responsible for the same. And that on the said ground, Mr. Takale and Mr. Parab are being relieved from each and every responsibility from Omisha Chitfund Pvt. Ltd.. It is a notarised document dated 2/7/2016.

9 It is pertinent to note that the first information report is lodged on 9/2/2016 and the said agreement is executed between the directors inter se only on 2/7/2016 exonerating each other of the said financial claims raised by the investors. It is further pertinent to

note that as on today, Manasing Ghorpade is also absconding and is not available. Ultimately, it is a small time investors and depositors who have been cheated by the company of which the applicant was also a director. In the eventuality that he has resigned in July, 2015, it was incumbent upon him to appear before the sales tax authority and explain the same in any case atleast for the period of 6 months. He had been the beneficiary of the investment made by the small time depositors.

10 The learned Counsel for the applicant submits that the applicant is an industrialist and is residing at Pune, whereas the office is in Kolhapur. The learned APP rightly submits that it would be surprising that any industrialist would invest in a chit fund company without having any verification of the genuineness of the claim or feasibility of his own investments. It is in this circumstance that the applicant does not deserve to be granted pre-arrest bail. The application being sans merits stands rejected.

11 However, the observations made herein above are prima facie in nature and shall not be considered for the purpose of deciding the application under Section 439 of the Code of Criminal Procedure, 1973 or for quashing of FIR or for discharge.

12 The application is disposed of accordingly.

(SMT. SADHANA S. JADHAV,J)