

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO. 2084 OF 2016

Swapnil Sunil Gandhi	.. Applicant
Vs.	
The State of Maharashtra	.. Respondent

.....
Mr.Ganesh Gole, Advocate for the Applicant.
Mrs.A.A. Takolkar, APP for the Respondent – State.
.....

CORAM : PRAKASH D. NAIK, J.

DATED : JULY 17, 2017.

P.C. :

This is an application for anticipatory bail. The applicant is apprehending arrest in connection with C.R.No.I-286 of 2016, registered with Wagle Estate Police Station, Thane for the offences punishable under Sections 420 and 120 B read with Section 34 of the IPC and Section 23(1) of the Security Contract (Regulations) Act, 1956.

2 The prosecution case is that the complainant is the police officer attached to the concerned police station received an information that some persons are indulging in gambling act at Natwar Hotel, Wagle Estate, Thane. It is alleged that PI Dhavle

after making diary entry along with the complainant visited the said place. When the raiding party reached the spot of incident, they noticed that accused were occupying the said premises. It was found that the television was on and at the bottom of the screen, current status of the share market was flashed. There was also a laptop in running mode wherein one folder entries of some companies were there. On inquiry with one of the person namely Prakash Dahiya, it was informed that by watching the television, he is doing transaction in shares and making entry to that effect in the laptop. It was further alleged that the accused Prakash Dahiya told him that in the aforesaid transaction no share is transferred to D-MAT account of the buyer and the vendor is also not paid the amount instantly. It is alleged that all the sale and purchase are done orally and profit and loss forwarded to the respective persons according to the market value and the entry of the aforesaid transaction does not come on record of the SEBI and the said transaction is known as "Dabba Trading". The First Information Report was registered with Wagle Estate Police Station, Thane and the investigation has commenced.

3 Two persons who were found during the raid were arrested and they have been released on bail. The applicant

preferred an application for anticipatory bail which was rejected by the Sessions Court. The present application was initially heard on 5th December, 2016 and interim order was passed relying upon the judgment of this Court passed in ABA Nos.445 to 447 of 2016.

4 It is submitted by the learned advocate for the applicant that there is no element of cheating involved in the present case. The other allegations in the FIR is in relation to the violation of the Security Contract (Regulation) Act, 1956. It is submitted that the articles which were lying at the place of incident during the raid were already recovered by the police. He also placed reliance upon the decision of this Court delivered by Nagpur Bench in Criminal Application Nos.445 to 447 of 2016, wherein it has been observed that the police has no authority to take cognizance of the offence punishable under Section 23 of the Security Contract (Regulation) Act, 1956. The learned advocate for the applicant submitted that custodial interrogation of the applicant is not necessary.

5 Learned APP opposed the application for bail. It is submitted that the custody of the applicant is necessary to collect the diary entries which were written in code language by the

applicant. Learned APP also placed reliance upon the decision of the Apex Court in the case of ***State (NCT of Delhi) Vs. Sanjay & connected Appeals***¹. It is submitted that the decision cited by the learned counsel for the applicant is contrary to the decision of the Apex Court.

6 I have perused the documents annexed to the applicant. The case of the prosecution is that the applicant was trading in shares which is known in common parlance as “Dabba Trading”. Admittedly, the articles which were lying at the place of incident were recovered. The co-accused were arrested and they were released on bail. *Prima facie*, it appears that the ingredients to constitute the offence of cheating are laptop. Without entering into the debate about the applicability of the decisions cited by both the parties, I am of the opinion that the custodial interrogation of the applicant is not necessary. The applicant was granted interim protection and was also directed to report the concerned police station as and when called for. The applicant has co-operated with the investigation and the custodial interrogation of the applicant is, therefore, not necessary.

1 (2014) 9 SCC 772

7 Hence, I pass the following order:

:: ORDER ::

- (i) Anticipatory Bail Application No.2084 of 2016 is allowed;
- (ii) The interim order dated 5th December, 2016 is confirmed;
- (iii) The applicant is directed to report the Wagle Estate Police Station as and when called for;
- (iv) It is clarified that the observations made in this application are only for considering the present application for anticipatory bail;
- (v) Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)