IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2079 OF 2017

Altmash Mazhar Shaikh ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Ansari S.A. Inayat Ali for the applicant
Ms.J.S. Lohokare, APP for the State.
Mr.R.N. Gaonkar a/w R.S.Rane for the Complainant.
Mr.K.K.Pawar, P.I.Juhu Police Station.

CORAM: A.M. BADAR, J.
DATED: 30th NOVEMBER, 2017

PC:-

1. The applicant/accused in Crime No.440 of 2017 registered with police station Juhu, Mumbai for the offences punishable under Sections 406,419,420,465,466,467,468 r/w 34 of the India Penal Code,at the instance of Tushar Joshi , by this application is seeking pre arrest bail.

2. Heard the learned advocate appearing for the applicant at length of time. He argued that the applicant is merely a nominal director and he is not a signatory to any agreement executed in between the parties. The learned advocate further argued that the business of the first informant could not proceed in a satisfactory manner and therefore he insisted for refund of amount invested in two companies of which the applicant is merely a nominal director. Accordingly an amount of Rs.29 lakh was refunded to the first informant by mother of the present applicant. It is further argued that thereafter, a demand draft for Rs.5 lakh was handed over by mother of the present applicant to the first informant. Now only Rs.45 lakh are required to be refunded and they will be refunded. The learned advocate further argued that a cheque for Rs.30 lakh was issued in favour of the first informant by mother of the present applicant. That cheque was dishonoured and subsequently a statutory notice was issued. By relying on that notice, as well as reply given to that notice, the learned advocate submitted that the transaction was in respect of performance of agreement between the parties and therefore, it cannot be said that the first informant was cheated. The learned advocate further canvassed his argument in respect of averments regarding mortgaged agreement and submitted that unless and until the person is owner, there cannot be mortgage of the property. The learned advocate further argued that there is no iota of evidence to attract the Penal provisions of forgery in the case in hand. With this, he prayed the applicant be released on anticipatory bail.

3. The learned APP opposed the application by pointing out the statement of witnesses and submitted that apart from the first informant, the applicant and other accused persons have cheated several other persons. The learned APP further argued that there is cheating by impersonating Bhavarlal by the present applicant as well as the co- accused in the crime in question.

4. I have carefully considered the rival submissions so advanced and also perused the entire case diary. The crime in question is registered on the basis of FIR lodged by Tushar Joshi. Careful perusal of the FIR goes to show that the present applicant alongwith his mother had induced first informant to pay an amount of Rs.79,20,000/- to them by deposits in two companies owned by them namely, Marshal Women Security Services, Pvt Ltd. and Span Mahila Agro Tourism Pvt Ltd. Undisputedly, the present applicant is the Director of the said Company. Nothing is placed on record to demonstrate that the applicant is a non working director in the said company. Articles of association of those companies are not annexed to point out dormant role of the present applicant in the affairs of those two Companies. On the contrary, the FIR lodged by Tushar Joshi points out that the applicant and his mother were inducing him from time to time for depositing money in their Companies by using names of a senior most politician of the Country. It was made to understand that the co-accused, who is mother of the present applicant is secretary of the Indian National Congress Party and she has cordial relations with the President and Secretary of that Party. The present applicant and his mother who is co-accused in this crime as seen from the FIR disclosed the first informant that they are having good relations with the officers of the JNPT as well as Custom Department and articles seized by the Custom Department can be procured at a cheap rate through them. The FIR shows that believing on this representation of the present applicant as well as the mother, first informant Tushar Joshi paid an amount of Rs. 79,20,000/-lakh. He then ordered several containers of pulses, corn, etc in pursuant to the representation of the present applicant as well as his mother. He waited for a long time for arrival of those consignments. However, those consignments never arrived. The FIR then shows that Tushar Joshi visited the applicant and his mother and requested to refund the amount. Upon that mother of the applicant assured repayment and convinced the first informant to keep with him a copy of the plot of the land allotted to her by the CIDCO. The I.O has collected the copy of that agreement. It is in fact, a leave and license agreement executed by the CIDCO. This agreement was sought to be placed with the first informant by the co-accused in the year 2016. However, it is seen that the said agreement was already revoked by the CIDCO.

5. Apart from the first informant, there are at least two witnesses who have came officially up till now to point out to the investigators that they had deposited monies with the present applicant as well as his mother for getting commodities at cheaper rates from the Port Trust or the Custom Office. Moreover, statement of Bhavarlal shows that he is not the Director of the Companies formed by the present applicant as well as her mother i.e. co-accused in this case. However, it is seen that by setting up some persons as Bharvalal, the present applicant and his mother had cheated several persons by inducing them dishonestly to invest their money in their Companies on the pretext of supplying them several commodities at cheaper rates.

6. There is every possibility that with passage of time, the enormity of the crime will be surfaced. Statement of witnesses are making it clear that 40 to 50 persons are cheated by adopting same modus operandi. Considering the societal interest and nature of the crime, no case for pre-arrest bail is made out. Therefore, the application is rejected.

(A.M. BADAR, J)