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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 868 OF 2017

Sanjay Santkumar Jhunjhunwala .Applicant

Vs.

The State of Maharashtra .Respondent

Mr. Ghanshyam Upadhyay a/w Mr. K. Mishra & Ms M. Mohini, Advocate, for the Applicant
Ms J. S. Lohokare, APP, for the Respondent – State

CORAM : REVATI MOHITE DERE, J.

DATE : 06.03.2018

P.C.

. Heard learned counsel for the parties.

2. By this Application, the Applicant seeks pre-arrest bail in connection with C.R.No. 502 of 2016 registered with the Powai Police Station, Mumbai, for the alleged offence punishable under Section 420 of the Indian Penal Code (for short 'IPC').

3. Learned counsel for the Applicant submitted that the Applicant has been falsely implicated in the said case. He submitted that in fact, the Complainant had given the Applicant money (cash) to keep, when a trap was laid by the Anti Corruption Bureau (for short 'ACB')

on the Complainant, pursuant to which the Complainant was arrested. He submits that the Applicant had returned back the money (cash) to the Complainant. He submitted that no offence as alleged is disclosed and that the Complainant instead of filing a Civil Suit or a complaint under Section 138 of the Negotiable Instruments Act, had malafidely lodged a criminal complaint.

4. Learned APP opposed the Application. She submitted that the Applicant, a share broker was cheating people i. e. he was taking money from parties and investing them in the share market.

5. Perused the papers. The Complainant – Narayan Jaysing Patil, a retired Senior Police Inspector lodged a complaint which was registered vide C. C. No. 502 of 2016 as against the Applicant alleging an offence punishable under Section 420 of IPC. He has stated that as an Assistant Police Inspector in 1994 when he was at the Vile Parle Police Station, he met the Applicant and as such, they became good friends. He has further alleged that six years prior, the Applicant had shut down his garment business and had started investing in the share market and doing business in the same. According to the Complainant, in November, 2011, the ACB laid a trap, in which he was arrested and later

suspended. He has stated that during the said period, the Applicant approached him and stated that he should invest in the share market. He has further alleged that the Applicant suggested that he should bring an investor for a sum of Rs. 10,00,000/- and that the profits would be shared amongst the investor, the Applicant and the Complainant. Pursuant to the representation made by the Applicant, the Complainant started looking for an investor and met one Shraddha Sawant and took an amount of Rs. 6,50,000/- from her for investigating the same with the Applicant. According to the Complainant, he paid the said sum of Rs. 6,50,000/- given by Shraddha Sawant to the Applicant on 18.01.2012 at the residence of Mr. Bajrang Hubli. He has stated that the Applicant gave a cheque of Rs. 6,50,000/- as security and a letter acknowledging receipt of the said amount. The Complainant has further alleged that the Applicant demanded a sum of Rs. 10,00,000/- for investigating in the share market. Pursuant thereto, the Complainant convinced their neighbour Mr. Bajrang Hubli to invest in the share market. The Complainant has further stated that on his request and guarantee, Mr. Hubli persuaded his mother, Sou. Vimal Dixit to invest Rs. 6,00,000/-. The said amount of Rs. 6,00,000/- was handed over to the Applicant and by way of security, the Applicant issued a security cheque of Rs. 6,00,000/- in the name of Mrs. Vimal Dixit. He has further stated that he took a letter from the Applicant that if the Applicant was unable to pay the said amount, he would sell his machinery worth Rs. 90,00,000/- and return the amount within two months. He has further alleged that thereafter, the Applicant on the pretext of investing in different businesses like sugar industry, share market etc. , with assured guarantee of returns sought investment of Rs. 10,00,000/- to Rs. 20,00,000/-. He has further stated that the said amount of Rs. 6,00,000/- was given by Mrs. Vimal Dixit to the Applicant, as the Applicant required urgent money for a few days. He has stated that the said amount was paid to the Applicant through one Shailesh at Ghatkopar, as the Applicant had told him that he and Shailesh had done investments worth crores. According to the Complainant, the Applicant had assured to give a cheque of Rs. 6,00,000/- to him to be paid to the D. Y. Patil College for his son's fees. However, the said cheque was dishonoured. He has further stated that in 2012, the Applicant sold machinery of his Company for Rs. 30,00,000/- but did not return the money to him and the others. He has further alleged that the Applicant would regularly persuade his visitors to invest in shares. On 05.10.2012 at 10.50 a. m. when the Complainant was in the office of the Applicant, the Applicant told the Complainant to get investments and assured to double the said amounts. The Complainant expressed his inability to arrange for further investments. He has stated that the Applicant disclosed to him that he had received a tip from the share market, pursuant to which, the Complainant handed over a sum of Rs. 1,00,000/- which he had kept for his son's fees. When the Complainant returned after three days and enquired about the investments, the Applicant allegedly assured that the whole amount would be returned to him. According to the Complainant, the Applicant had taken loan worth crores of rupees from financial institution, housing loan of Rs. 45,00,000/- from Mr. Jaywant Parab's Samarth Credit Society in 2014, however, the Applicant had not returned the Complainant's amount. He has further stated that the Applicant had also taken a loan of Rs. 3 crores in March, 2015 but failed to pay the outstanding amounts even from the said loans. He has further stated that whenever he visited the Applicant, the Applicant would quarrel with him and would lodge false complaint as against him. According to the Complainant, he had paid a sum of Rs. 13,00,000/- to Shraddha Sawant and Vimal Dixit by withdrawing his Fixed Deposits and selling jewellery. According to the Complainant, since 2011 till date, the Applicant induced him to part with Rs. 20,50,000/- and promised good returns and despite the promise / assurance had not returned the same, pursuant to which, a written complaint dated 02.10.2016 was lodged with the Powai Police Station. The police after conducting an enquiry lodged the FIR dated 26.10.2016. According to the learned counsel for the Applicant, it is the Complainant who had taken huge amounts as bribe and as the Applicant was in financial difficulty, had given him some amount which the Applicant took reluctantly. According to the learned counsel, the intention of the Complainant was to channelize his black money, which he was receiving as bribe. Learned counsel also submitted that after the Complainant was trapped by the ACB and was suspended, the Complainant started visiting the Applicant's office on some pretext and took cash from him, which was unaccounted. It appears that the Applicant on his own saying had kept the Complainant's black money. It appears that the Applicant had also started the business of event management, as his garment business had incurred losses. It also appears that the Applicant had taken money from persons and had given cheques as security to them. An amount of Rs. 20,50,000/- odd is to be recovered from the Applicant. Prima facie, it appears that the Applicant had taken money from the Complainant as well as others. Hence, custodial interrogation of the Applicant is necessary to unearth the nature of the Applicant's actual businesses.

6. Learned counsel for the Applicant relied on the Judgments

of the Apex Court as well as Bombay High Court in the case of ***Sandeep Jain Vs. National Capital Territory of Delhi Rep. by Secretary, Home Deptt.***, reported in ***AIR 2000 SC 714***, ***Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Ors.***, reported in ***AIR 2011 SC 312***, ***Shantilal Ranmal Shah & ors. Vs. The State of Maharashtra*** dated ***18.11.2016*** in ***ABA No. 1959 of 2016*** and ***Devi Das Raghu Nath Naik Vs. State*** dated ***14.09.1987*** in Cri. Misc. Appln. No. 122 of 1987. Reliance placed on the Judgments by the learned counsel is misplaced & as such not applicable to the facts of the present case.

7. Considering the material on record, this is not a fit case to grant pre-arrest bail to the Applicant. The Application stands rejected.

8. The prayer for continuation of ad-interim relief also stands rejected.

9. It is made clear, that if an Application for regular bail is preferred by the Applicant, the learned Judge shall consider the same on its own merits uninfluenced by the observations made in this Application.

(REVATI MOHITE DERE, J.)