Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 757 OF 2015

Ashok Damodar Biyani ...Applicant.
vs.
State of Maharashtra ...Respondent.

Mrs. Sushama Mishra i/by Munir Ahmed for the Applicant.
Smt. J.S.Lohokare, APP for the Respondent-State.

CORAM : A.S.GADKARI, J.
DATE : 12th July, 2018

P.C.

1. This is an application under Section 438 of the Code of Criminal Procedure for pre-arrest bail in CR No.251/2015 dated 6.5.2015 registered with Bhandup Police Station, Mumbai under Section 420, 406 read with 34 of the Indian Penal Code.

2. Heard the learned counsel for the applicant and the learned APP. Perused the record.

3. The first information report is lodged by Shri. Surendra Patil on 6.5.2015.

It is the case of the prosecution that, the first informant is in the business of building construction and runs the said business in the name and style of 'Sankalpa Construction'. That, the co-accused Santosh Satam introduced the first informant with the applicant to be a finance broker and assured the informant that he will make available an amount of Rs.35.00 Crores as loan for the building construction project of the first informant. The applicant also own confidence of the first informant. The applicant subsequently represented the first informant that for processing the said loan amount, Rs.3.85 Crores will have to be deposited as processing fee and initial payment of Rs.1.50 Crores will have to be deposited with the applicant. It was further represented that a company by name Honesty Net Solution (India) Private Limited will remain as the third party security for the said loan process. It is alleged that the co-accused Jogesh Jerat accepted Rs.55.00 lakhs and the present applicant accepted Rs.95.00 lakhs towards their charges for processing the said loan. As the applicant failed to provide the said loan, the informant issued a notice on 11.3.2014 to the applicant. The applicant neither returned the said amount nor made available the said loan to the informant. The informant therefore realized that the applicant along with other accused persons committed criminal breach of trust and cheated him. In the premise, the present crime is lodged.

4. The learned counsel appearing for the applicant submitted that, as a matter of fact the applicant is also an accused in CR No. 344/2014 registered by the Director of Honesty Net Solution (India) Private Limited with the same Police Station and during the course of investigation of the said crime the applicant was arrested and during his interrogation it was revealed that the informant in the present crime had also been duped by adopting similar modus operandi. She further submitted that the Investigating Officer in CR No.344/2014 in his remand report has made a clear reference of the complicity of the applicant in that behalf. She submitted that the applicant has been thoroughly interrogated in the other crime and the information of the present crime has already been revealed to the Investigating Officer. She submitted that the applicant did not receive any amount from the

informant. She submitted that, it is the case of the informant that he paid Rs.55.00 lakhs to the co-accused Jogesh Jerat by way of RTGS and an amount of Rs.95.00 lakhs to the applicant by way of cash which statement is exaggeration of facts and cannot be relied upon. She therefore, prayed that the applicant may be protected by pre-arrest bail.

5. The record of investigation indicates that the applicant by adopting similar modus operandi has earlier defalcated money of Honesty Net Solution (India) Private Limited and therefore, CR No.344/2014 with Bhandup Police Station has been registered. The allegations as against the applicant is that, he duped the first informant for the aforestated sum of Rs.95.00 lakhs under the pretext of providing loan to the informant for his construction business/project of Rs.35.00 crores. As noted earlier the applicant is also an accused in CR No.344/2014 wherein similar modus operandi was adopted by him. The record of investigation clearly indicates the complicity of the applicant in the present crime as apparent and it is

necessary for the police to interrogate the applicant thoroughly to unearth entire truth behind the crime including recovery of the alleged defalcated amount by the applicant.

6. In view of the above and after taking into consideration the material of investigation, serious allegations against the applicant and the gravity of the offence, this Court is of the considered view that, the applicant does not deserve to be protected by pre-arresst bail.

7. Application is accordingly rejected.

8. At this stage the learned counsel appearing for the applicant submitted that the applicant is intending to prefer an appeal against the present Order before the Apex Court and therefore, the interim relief granted earlier be extended by three weeks from today. At her request the interim relief is extended by three weeks from today.

(A.S.GADKARI, J.)