IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1453 OF 2015

Mukesh (Sukhdev Sharma) Sharma ... **Applicant**
V/s.
The State of Maharashtra ... **Respondent**

Mr. Pankaj Purway for the Applicant.
Smt. J.S. Lohokare, APP for the Respondent State.
Mr. Charanjeet Chandarpal for the First Informant.

CORAM : A.S.GADKARI, J.

DATE : 23rd 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.495/2014 dated 21.10.2014 registered with Andheri Police Station under Sections 406, 419, 420, 465, 467, 468, 471, 120B of the Indian Penal Code.

2. Heard the learned counsel for the applicant, learned counsel for the first informant and the learned APP. Perused the record of investigation. The Investigating Officer Shri. Babasaheb N. Salunkhe has also filed detailed affidavit dated 29.10.2015 placing on record the progress of investigation.

3. The FIR is lodged by Shri. Bhalchandra V. Alwe. The

prosecution case in brief is that, the informant is owner of Update Online India Pvt. Ltd. and the said company is in the business of money transferring and utility bill payment. The said company is having 22 offices in Mumbai. That at the instance of co-accused Shri. Anil Khandekar (Accused No.3), the applicant was introduced to the informant (Accused No.3). The applicant represented himself to be the Sales Head of Western and Central Zones of company "Oxigen Service (India) Pvt. Ltd.' and the said company is having tie up with SBI for providing the facilities such as Kiosk Banking, Mini Banking and it was also represented that, the applicant is having agreement with the SBI. It was also represented that the company of the applicant is having permission from the RBI for the same. The applicant thereafter induced the first informant to accept franchises of the said Oxigen Services (India) Pvt. Ltd. and explained the scheme of business. The applicant also represented that, the informant will be able to open 21 branches of the said company. Accordingly, an Agreement dated 15.03.2014 between Oxigen Services (India) Pvt. Ltd. and the informant company was executed. The applicant brought signature of President of the said company on the said agreement. It was further represented to the informant that the monetary transactions of the said company namely Oxigen Services (India) Pvt. Ltd. would be conducted through a subsidiary company namely Oxi M.T. Services. A very rosy picture was presented by the applicant before the informant as to its profits and by giving false promises, it is alleged that the applicant inducted the first informant to deposit a total sum of Rs.1,59,19,648/- in the account of "Oxigen Services (India) Pvt. Ltd.' The applicant subsequently realized that the informant has siphoned of all the money without complying with his part of obligations and the informant did not receive assured payment from the applicant's company. In due course of time, the informant realized that the applicant by making false representations has induced him to deposit the said huge amount in the account of "Oxigen Services (India) Pv.Ltd." and has subsequently defalcated the said amount.

4. The learned counsel for the applicant submitted that, as a matter of fact, the applicant in prior point of time had lodged a crime against the informant bearing FIR No.84/2014 registered with Solan Sadar Police Station, Dist. Solan, State of Himachal Pradesh and as a counter-blast to this lodgment of crime, the present crime is registered by the applicant. He further submitted that the applicant

has nothing to do with the said company namely Oxi M.T. Ltd. as it is owned by Accused No.3 Shri. Anil Khandekar. He further submitted that, for last more than two years, the applicant has attended the investigating officer on several occasions and nothing is to be recovered at his instances. He further submitted that the applicant is ready and willing to cooperate with the investigating agency, and therefore, the applicant may be protected by pre-arrest bail.

5. Per contra, Mr. Charanjeet Chandarpal, learned counsel appearing for the first informant vehemently opposed the application. He took me through the record annexed to the application. He submitted that as a matter of fact, in the crime registered by the applicant against the informant at Solan Sadar Police Station, the concerned investigating agency has submitted a 'B Summary' report before the Court of competent jurisdiction and the same is pending for final adjudication, and therefore, there is no substance in the crime registered against the applicant by the informant. He further justified and supported the impugned order passed by the learned Additional Sessions Judge, Grater Mumbai.

Learned APP supported the arguments of Mr. Charanjeet

Chandarpal and further pointed out the material of investigation collected by the investigating agency till today.

6. It is to be noted here that there is no dispute about the admitted fact on record that the informant has deposited the amount of Rs.1,59,19,648/- in the account of Oxigen Services (India) Pvt. Ltd. at the instance of the applicant. The said company i.e. Oxi M.T. Services is incorporated at the behest of Accused No.3 Shri. Anil Khandekar as its Director. The record of investigation clearly indicates that it is the applicant who was at the helm of all the affairs of the said company and was conducting its day to day affairs. The investigating officer in his affidavit has also stated that the applicant had booked two Domain ID's namely www.oximt.com and www.sbikiosk.net and as a matter of fact, the applicant has created many e-mail id's of Oxygen Services and SBI employees and e-mailed it to the informant to mislead him.

It is also revealed during the course of investigation that the SBI never gave any permission to applicant to enter into an agreement with the informant, thereby permitting him to open Kiosk Banking franchises. The record of investigation further indicates that it is the applicant under whose instructions his employee prepared a software similar to that of SBI and has used it to dupe the informant for the afore-stated huge sum. The investigation carried out till date clearly indicates that the applicant is the perpetrator of the present crime. The applicant in a well-designed and systematic manner hatched the conspiracy, made false representations to the informant and induced him to part with the afore-stated huge amount. The record of investigation also indicates that certain documents pertaining to SBI are bogus fabricated by the applicant.

7. After perusing the entire record of investigation, the complicity of the applicant in the present crime appears to be apparent and thorough interrogation of the applicant by the police is imperative to unearth the entire truth behind the crime.

8. In view of the above and after taking into consideration 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-arrest bail.

9. Application is accordingly rejected.

(A.S.GADKARI, J.)