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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1906 OF 2016
WITH
CRIMINAL APPLICATION NO. 940 OF 2016

MRS.UZMA ZAKIR SIDDIQUIE ..APPLICANT
Vs.
THE STATE OF MAHARASHTRA & ANR ..RESPOINDENTS

Mr. Jay Kumar Bhandary a/w Ms. Priya Darshani Arora for Applicant.
Mr. Pravin U. Gaikwad for Applicant/Intervener.
Mr. P.D. Gharat, Special P.P a/w Ms. Rutuja Ambekar, APP for State.

CORAM : A.S.GADKARI, J.
DATE : 14th August 2018.

P.C.:

1] This is an application under Section 438 of Cr. P.C for pre-arrest bail in CR No.93 of 2016 dated 13.6.2016 originally registered with Colaba Police Station, Mumbai under Section 420, 406 read with 34 of the Indian Penal Code and under sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 and now being investigated by the Economic Offences Wing, Unit-VII, Mumbai having re-numbered as CR No.57 of 2016.

2] Heard Mr. J.K. Bhandari, the learned Counsel appearing for the applicant, Mr. P.D. Gharat, the learned Special P.P and Mr. Pravin U. Gaikwad, the learned counsel appearing for the Intervener. Perused the chargesheet, record of investigation including the case diary and the affidavit-in-reply dated 3.5.2017 filed by the Investigating Officer, A.P.I. Shri Himmat M. Jadhav.

3] The applicant was granted interim relief by an Order dated 27th October 2016 for the reasons mentioned therein.

4] The first information report is lodged by Shri Raees Ahmmad Abdul Ansai. It is stated that, the informant is in the business of sell of ready made graments. That Smt. Jahara Shaikh is his neighbour and is having good relations with the family of the informant. In the month of July 2014 Smt. Jahara Shaikh introduced the applicant and her husband Mr. Zakir Siddiqui with the informant and informed him that the said couple accepts investments from people and gives good dividend on the same. The informant therefore made enquiry with the applicant and her husband. The applicant represented the first informant that, she is the Managing Director of a Company namely Pride India Corporation and the said Company is having various schemes for investments of funds. The applicant further represented that if the informant invests Rs.1,00,000/- (Rupees One Lakh) for a period of three months, the informant will get a total amount of Rs.1,50,000/- on the said investment. It is also represented that, after investing the said amount, the Company will give post dated cheques towards security to the informant. It was also represented that, the amount invested in the said Company will be further invested in the business of manufacturing chocolates and container industries. The applicant represented that, she is working with Issa Merchant and Hussaifa Khorakiwalla.

The informant thereafter deposited in all Rs.17.00 lakhs with the applicant and the applicant towards security of the said amount gave post-dated cheque for a total amount of Rs.25.00 lakhs. In the month of September 2016, the informant demanded back his invested amount from the applicant and her husband when they avoided to make payment to the informant. The applicant dodged the informant on various occassions from making payment and subsequently Mrs. Naheed Gesawat and Smt. Jahara Shaikh informed the informant that, the applicant and her husband are not traceable and have fled away. The informant thereafter collected information about the applicant and it was revealed to him that the applicant has also accepted hudge deposits from five other witnesses totalling to Rs.10,31,94,500/- and without returning the said amount to the investors have defalcated it. It was also revealed to the informant that, the applicant and her husband are the Directors in Companies namely (i) Pride India Confectionery Ltd., Mumbai (iii) Universal Soft Hub Pvt.Ltd., Delhi and (iii) Krishna Structural Steel (India) Ltd., Mumbai. In the premise the first information report is lodged.

5] Mr. Bhandary, the learned counsel appearing for the applicant submitted that, in pursuance of Order dated 27.10.2017 passed by this Court, the applicant has attended the Investigating Officer on several occasions and has cooperated in the process of investigation and therefore her custodial interrogation is not necessary. He submitted that, the husband of the applicant Shri Zakir Siddiquie has already been arrested and sufficiently interrogated by the police and no further information pertaining to the present crime is to be revealed by the applicant. He further submitted that, perusal of chargesheet would indicate that, there are contradictions made by the witnesses as to the defalcated amount in their notices, the first information report and their statements. He further submitted that, the case and the claims of the alleged investors is not substantiated by documentary evidence of alleged payment in cash. He submitted that, the police have already submitted chargesheet against the husband of the applicant and therefore the custodial interrogation of the applicant is not necessary. That the provisions of MPID Act have been erroneously applied to the present crime, as there are no receipts and/or agreements entered into between the applicant and the investors about giving higher rate of interest on the said deposits. He submitted that, the cheques issued by the applicant in favour of the informant and other investors would clearly indicate that the transaction between the parties herein are of civil nature. He submitted that, taking into considerationi his argument, the applicant may be protected by pre-arrest bail.

6] Per contra, Mr. Gharat, the learned Special P.P vehemently opposed the present application and submitted that, the staement made by the applicant which is recorded in Order dated 27.10.2017 is a false statement. He submitted that, the applicant was not available at her known address prior to 27.10.2016 and therefore notice under sections 41 and/or 160 of Cr. P.C. could not be served upon her. He produced before me Case Diary of the present crime and submitted that the Investigating Officer has made categorical entries to that effect in the case diary. He submitted that, after getting interim relief from this Court, with a view to divert the attention of the Investigating Officer and to demoralise the Investigating Agency, the applicant made various allegations against the Investigating Officer and the Investigating Agency. He submitted that, though this Court directed the applicant to attend the Investigating Officer and to join the process of investigation, the record of investigation clearly reveals that the applicant did not cooperate in the process of investigation, iner alia, she did not disclose, where she has spent the money which she withdrew in cash from her bank accounts. He submitted that, during interrogation the husband of the applicant Zakir Siddiquie did not disclose the trail of money and has informed the Investigating Agency that the applicant is the only person who knows about investment and/or expenditure of the money received from various investors. He submitted that, unless and until the applicant is custodially interrogated, the amount which she has defalcated cannot be traced out as investigation qua her is still incomplete. He therefore prayed that, the present application may be dismissed.

7] At the outset, it is to be noted here that, there is substance in the contention raised by the learned Special P.P. The statement made by the applicant on 27.10.2016 which is recorded in the Order of even date that, the Investigating Agency till filing of chargesheet never called the applicant for interrogation is little lesser to say false, but totally incorrect statement. Perusal of Case Diary indicates that, the Investigating Agency prior to 27.10.2016 tried to contact the applicant on various occasions, however, she was not available at her known addresses. It further appears from record of investigation that, though the applicant was not residing at the address i.e. Shivam Building, Dharavi Cross Road, Mumbai-400 017, the same address has been mentioned in the record of the Registrar of Companies. The case diary further indicates that, the Investigating Agency has taken sufficient efforts in tracing out the applicant prior to 27.10.2016, however, she was not available at the addresses mentioned therein.

8] At this stage, a useful reference can be made to the decision of the Supreme Court in the case of *State rep. by C.B.I. Vs. Anil Sharma reported in (1997) 7 SCC 187*, wherein the Honourable Supreme Court has held that, the custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 if the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual.

The case in hand is a classic example for the observations made by the Honourable Supreme Court.

9] The record of investigation indicates that, there are other five victims/investors in the present case who have been also cheated by the applicant by adopting similar modus operandi. The record of investigation further indicatest that, the role played by the present applicant is grave than the role played by her husband. That in pursuance of Order dated 27.10.2016, though the applicant attended the Investigating Officer on few occasions, it appears that she did not cooperate in the process of investigation and did not divulge the trail of money which was withdrawn by her in cash from her bank accounts and has been spent by her. The record further indicates that, while opening various accounts, the applicant has given different addresses and some of the addresses found to be not genuine. That the applicant till date has avoided to furnish relevant and necessary papers to the Investigating Agency and disclose the relevant information. That the applicant by representing the gullible investors that, she is in the business of trading, import and export has collected a sum of Rs.10,69,94,000/-. That the applicant by forming various firms and by flouting ponzy schemes, has cheated gullible investors by promising huge returns on their investments and has diverted the said amount.

10] The Investigating Officer in his affidavit has mentioned that, there are two other offences registered against the applicant namely (1) MECR No.03/2016 registered with Santacruz Police Station, Mumbai and (2) CR No.1/2005 registered with Kopar Khairane Police Station, Navi Mumbai. Thus it appears that the applicant is a habitual offender.

11] It is to be noted here that, on 19.1.2018 the applicant made a statement before this Court that, she is having immovable property situated at Mumbai Central standing in her own name and despite intimating the said fact to the Investigating Agency, the said property was not seized by it. The record indicates that, the intervener Mr. Iqbal Abdul Karim Shaikh has filed a Criminal Application No.936 of 2018 in the present proceedings stating that, though the applicant had agreed to purchase his property namely Shop No.4 in E and E-2 Wing, situated at Mount Kailash Co-Operative Housing Society Ltd, Belasis Road, Mumbai-400008 for consideration of Rs.6,02,00,000/- (Rupees Six Crores and Two Lakhs) and out of which she had paid paltry amount of Rs.42,05,000/- towards token money. That out of the said Rs.42,05,000/-, he has paid an amount of Rs.30,40,000/- to the Registering Authority for stamp duty and registration charges towards registration of the said agreement. However, the applicant thereafter did not pay further amount to him and therefore he has cancelleld the said agreement. That in view of the statement made by the applicant Mrs.Uzma Siddiquie on 19.1.2018, the police have seized his property in the present crime. The record of investigation indicates that, the contention of the said applicant Mr. Iqbal Shaikh is correct. On 19.1.2018, the applicant made a false statement that she owned property situated at Mumbai Central and the fact that the agreement for sale dated 13.7.2016 has been cancelled by a Registered Deed of Cancellation dated 7.4.2017 was not pointed out to this Court and has got the interim relief extended on that count. She inter alia not only made false statement before this Court, but also mislead the Investigating Agency by making such a statement. It appears from record that, the applicant made incorrect/false statement before this Court initially for getting an interim relief and subsequently for getting it extended from time to time. Thus it is clear that, the applicant has made palpably false statement and diverted the attention of the Investigating Agency which also dis-entitles her from getting discretionary relief of pre-arrest bail.

12] The Honourable Supreme Court in the case of *Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466* in Para No.25 has held as under:-

> "Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country".

Undoubtedly the present crime lodged against the applicant is an economic offence and requires to be dealt with it differently. There is sufficient material available on record to show the clear complicity of the applicant in the present crime.

13] The present case is not based only on the documentary evidence whereby the Investigating Officer can reach to the conclusion about the investments of the amount by the applicant. It is to be noted here that, the applicant has withdrawn huge amounts from her several bank accounts, either in cash or by "self" transaction and the trail of the said amount is yet to be traced out. It is the specific allegation against the applicant that, she has defalcated the amount involved in the present crime. It is not in dispute that, the applicant is the Managing Director of Pride India Corporation Ltd and is also Director of the aforestated allied companies. Prima facie it appears that, the applicant in a pre-planned manner and with cool mind has conspired the present crime and has brought it into effect ultimately leading to defalcation of the said huge amount involved in the present crime.

14] In view of the evidence gathered till today by the Investigating Officer, prima facie it appears the application of provisions of MPID Act to the present crime is proper and requires no second thought on it. As noted earlier, during the course of interrogation of the husband of the applicant, he has divulged that, the applicant is only aware of business transactions including withdrawal of huge amount in cash by her from bank accounts. The record indicates that, the applicant is instrumental in giving false promises to the investors and after money was deposited by them, the applicant siphoned it and defalcated the huge amount. For unearthing the entire truth behind the present crime and for tracing out the trail of money, spent by the applicant, thorough interrogation of the applicant by the Investigating Agency is imperative and the same is not possible under the protection of pre-arrest bail.

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

Application is accordingly rejected.

16] In view of Order passed in A.B.A. No.1906 of 2018, Criminal Application No.940 of 2018 for modification of Order dated 27^{th} October 2016 does not survive and the same is accordingly disposed off.

17] At this stage, Mr. Bhandary, the learned counsel appearing for the applicant submitted that, he is intending to prefer an appeal against the present Order before the Honourable Supreme Court and therefore interim relief granted earlier may be continued for a period of four weeks from today.

In view thereof, interim relief granted earlier to continue for a period of six weeks from today.

Anil Chandrakant Dond

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Date: 2018.09.06 12:23:36 +0530

(A.S.GADKARI, J.)