

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (BA) 430 OF 2018

(Mike Kevin Philip & anr ..vs.. The State, thr PSO Rajapeth, PS Rajapeth, Amravati)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Shri C.A. Babrekar, counsel for the applicants.
Shri T. A. Mirza, Additional Public Prosecutor for respondent / State.

CORAM: ROHIT B. DEO, J.

DATE: 18th June, 2018.

Heard.

2 The applicants, who are Nigerian nationals are seeking bail under section 439 of the Code of Criminal Procedure, 1973 in Crime 386 of 2017 registered at Police Station, Rajapeth, Amravati for offences punishable under section 420, 465, 468, 469 and 471 of the Indian Penal Code and section 66(C) and 66(D) of the Information Technology Act.

3 The offence is registered on the basis of the report lodged by the complainant – Khushal Tiwari. The gist of the report is thus:

Khushal Tiwari received a friend request from Facebook account of one Usha Ferdinend which was accepted. Usha Ferdinend claimed that she is working as Marketing Assistant with a company based in London, which company manufactures medicines for cancer and AIDS and one of the ingredients is the seeds of Akigbara. She conveyed to the complainant that her company

purchases the seeds from a Japan based concern. She gave her Whatsapp number to the complainant. Business talks followed between the person claiming to be Usha Ferdinend and the complainant during the course of which Usha Ferdinend informed the complainant that he would make substantial profit if he purchases the Akigbara seeds and sells them to her company. She also suggested that the complainant should contact one Adity Sharma to procure the said seeds. Usha Ferdinend made available the Email ID of Adity Sharma to the complainant. In due course, the complainant contacted Adity telephonically and at her instance deposited an amount of Rs. 66,99,400/- (Rupees Sixty Six Lacs Ninety Nine Thousand Four Hundred) in several bank accounts as advance consideration for the Akigbara seeds. On delivery of the seeds, the complainant contacted Usha Ferdinend and asked her to purchase the seeds, but in vain. The informant went to Mumbai to return the seeds to Adity Sharma who was not found at the Mumbai address given by her. Realizing was he was duped, the complainant lodged the report at Rajapeth Police Station, Amravati.

4 The police arrested Sukeshini Santosh Dhote alias Sneha Pandurang Derkar who was posing as Adity Sharma and the present applicants. Investigation revealed that the applicants and the said Sukeshini Dhote posing as Adity Sharma cheated the complainant and induced him to part with a substantial amount on the pretext that the seeds would be purchased by the company which according to

Usha Ferdinend she was representing. Upon completion of the investigation, the final report is submitted in the Court of Judicial Magistrate First Class, Amravati.

5 The submission of Shri C.A. Babrekar, the learned counsel for the applicants is that they are falsely implicated and that there is no material worth the name to connect the applicants to the alleged crime.

6 Per contra, the learned APP Shri T.A. Mirza, submits that there is more than ample material on record to connect the applicants to the crime. The applicants are Nigerian nationals and do not have a permanent address in India. The learned APP Shri T.A. Mirza points out that there is prima facie material in the shape of photographs to show that applicant Mike Kevin Philip had visited the complainant at Amravati ostensibly to inspect the seeds. Identity cards inter alia Aadhar cards in the names of different persons and several sim cards and mobile sets were seized from the applicants, is the submission. The offence is grave and if the applicants are released on bail, there is a real possibility that the applicants – who are Nigerian nationals may flee from the course of justice and may not be available to face the trial, is the submission.

7 The case of he prosecution is that perusal of the material, as can be culled out from the chargesheet, reveals that the applicant was induced to deposit huge amount in nine different bank accounts. The applicants and Adity Sharma opened 110 or thereabout bank accounts, and the amounts were withdrawn from the said accounts before the

accounts were freezed. The photograph of applicant 1 Mike Kevin Philip with the family of the complainant would prima facie corroborate the prosecution version that he came to Amravati ostensibly to inspect the seeds.

8 The chargesheet reveals that the complainant received one email to the effect that the Purchase Manager - 1 Dr. Cosmos would arrive to India from London and would meet the complainant. The person who assumed the name Dr. Cosmos was applicant 1 – Mike Kevin Philip who met the complainant at the Nagpur Airport on 8.4.2018 and then visited the residence of the complainant ostensibly to inspect the herbal seeds. Applicant 1, assuming fake identity as Dr. Cosmos made a farcical inspection and approved the sample of seeds on 10.4.2017 and then placed an order with the complainant to supply 50 packets of 400 grams each. The complainant after receiving the said confirmation via email contacted accused Sukeshini Santosh Dhote alias Sneha alias Adity Sharma informing and asked her to supply 50 packets of the seeds. Co-accused Sukeshini Dhote asked the complainant to deposit the amount in various bank account and on 12.4.2017 and 13.4.2017 Rs. 25 lacs was deposited by the complainant pursuant to which 30 packets of the herbal seeds were delivered through courier. The complainant contacted applicant 1 who insisted that the seeds would be purchased only if the complainant is in a position to supply 50 packets. Again, the complainant contacted co-accused posing as Adity Sharma and placed an order for supply of 20 packets of the

herbal seeds and at the insistence of the co-accused deposited an amount of Rs.40,36,000/- in eight bank accounts. The complainant then contacted accused 1 who was posing as Dr. Cosmos informed that 50 packets of seeds were ready for delivery. However, accused 1 avoided to take the delivery on the pretext that his company needed 87 packets. The complainant then attempted to contact the co-accused Adity Sharma only to realize that the address given by the said co-accused was fictitious.

9 In so far as accused 2 is concerned, the allegation is he was residing with co-accused posing as Adity Sharma and operated the laptop, mobile phone and other electronic gadgets used in the commission of the offence. Prima facie, while there is more than ample material on record to connect the applicant 1 with the crime, there is no cogent material to implicate the applicant 2 – Emeka Fever Eforchinachi – lady.

10 In this view of the matter, the prayer of the applicant – 1 Mike Kevin Philip for bail is rejected and that of the applicant 2 – Emeka Fever Eforchinachi is allowed subject to the following conditions:

- a) Applicant – 2 Emeka Fever Eforchinachi shall be released on furnishing personal bond of Rs. 5 lacs with two solvent surety of like amount.
- b) He shall deposit his passport with the Investigating Officer.
- c) He shall furnish his address and Cell phone

number to the Investigating Officer.

d) He shall scrupulously attend every date of hearing.

e) He shall not tamper with the evidence nor shall directly or indirectly attempt to influence the witnesses in any manner.

JUDGE

RSB