Dond

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 741 OF 2017

Mushataq Abdul Kadar Abbajumma **..Applicant**
Vs
The State of Maharashtra & Anr **..Respondents**

Mr. A.H. Ponda I/b Shilesh Kharat for the Applicant.
Mr. Amit Palkar, APP for State.
Mr. Yusuf Iqbal Yusuf Neville Majra a/w Ms. Shaista Pathan I/b Y & A Legal for respondent No.2.

CORAM : A.S.GADKARI, J.
DATE : 28th March 2019.

P.C.:

1] Heard the learned counsel for the applicant, the learned counsel for the respondent No.2 and the learned APP. Perused the record of investigation.

2] The applicant was granted interim relief by an Order dated 26th April 2017, as the Investigating Officer was not present to give instructions to the learned APP and not on merits.

3] The first information report is lodged by Shri Haji Rehmtullah Patel.

It is the prosecution case that, the informant and the applicant were having acquaintance for long period. At the instance of applicant and on the representations made by him about certain business transactions, the informant invested various amounts with him. The applicant used to share profit thereof with the informant. There are about six to seven transactions enumerated in the first information report. It is the further prosecution case that, subsequently the informant paid total sum of Rs.3,65,00,000/- (Rupees Three Crores Sixty Five Lakhs Only) by RTGS transfer and also in cash in the year 2015 to the applicant. That on 19.9.2015 when the informant demanded back his money for some or other reasons the applicant dodged to pay it. It is stated that, despite repeated requests, the applicant did not return the said amount of Rs.3,65,00,000/- which was paid to the applicant and the applicant has defalcated the said amount for his personal wrongful gains. In the premise the first information report is lodged.

4] Mt. Ponda, the learned counsel for the applicant submitted that, from a plane reading of the first information report, no criminal case can be made out against the applicant. That the applicant's custody and/or refusal of anticipatory bail application will not serve the purpose of recovery of money. He submitted that, even assuming the case of forgery is made out and offences are proved, it is the case based on the documents and there is no need of custodial interrogation of the applicant. He submitted that, as per the version of the first informant the transaction involved in the present crime is relating to black money and a recovery proceeding of it is not enforcible in the Civil Court and therefore, the informant has lodged the present crime. That the applicant has two wives and two houses in Mumbai and therefore there is no chance of his absconding. He submitted that, the applicant has obeyed the direction of this Court and has attended the Investigating Officer and extended his co-operative in the investigation. However, Mr. Ponda fairly conceded to the fact that, his client has received the said sum of Rs.3,65,00,000/-. He therefore prayed that, the applicant may be protected by pre-arrest bail.

5] At the outset, it is to be noted here that, as far as the the presence and/or attendance of the applicant before the Investigating Officer on several occasions under the Orders of Court is concerned, a useful reference can be made to the decision of the Supreme Court in the case of *State Rep. by The 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 of 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.

Therefore, the contention that, the applicant complied with the condition of attendance before the Investigating Officer is of no avail to him.

The learned APP on instructions submitted that, though the applicant attended the Investigating Officer, he did not co-operate in the process of investigation. The learned APP on instructions submitted that, there are other victims also in the present crime.

6] The record indicates that, initially with a view to gain confidence of the informant, the applicant returned amounts accepted by him along with interest and when he succeeded in gaining confidence of the first informant, he further induced him to part with huge amount of Rs.3,65,00,000/- and subsequently did not return it. It prima facie appears that the applicant in pre-planned manner committed the present crime. The fact of acceptance of the said amount has been conceded by the applicant. The Supreme Court in the case of Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466 in para-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 is an economic offence and requires to be dealt with differently.

7] The present crime alleged against the applicant undoubtedly is an economical offence. There is sufficient material available on record to show the clear complicity of the applicant in the present crime. The amount involved in the present crime is yet to be recovered. The document of Memorandum of Understanding which according to the prosecution is a forged document is yet to be traced out. Apart from this, according to prosecution there are other victims whose money is also defalcated by the applicant by using similar modus-operandi.

8] In view of the above and after taking into consideration the gravity of offence and since the amount involved in the present crime is yet to be recovered, this Court is of the opinion that, the applicant does not deserve to be protected by interim relief.

9] Application is accordingly rejected.

10] At this stage, the learned counsel for the applicant submitted that, the interim relief granted by Order dated 26th April 2017 may be continued for a period of four weeks from today, as the applicant intends to challenge the present Order before the Hon'ble Supreme Court.

Interim relief granted by this Court by Order dated 26th April 2017 shall remain in force for a period of four weeks from today.

(A.S.GADKARI, J.)