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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1220 OF 2019

Navin Devji Rathod ...Applicant
Versus
State of Maharashtra ...Respondent

Mr.J.S.Kini, I/b Ms.S.S.Krishnappa, for the Applicant.

Mr.V.V.Gangurde, A.P.P for the Respondent - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 12th JUNE, 2019

P.C. :

1. Heard learned counsel for the parties.

2. By this application, the applicant seeks pre-arrest bail in connection with C.R.No.187 of 2019 registered with the Mulund Police Station, Mumbai, for the alleged offences punishable under Sections 406, 420 r/w 34 of the Indian Penal Code.

3. Learned Counsel for the applicant submits that there is no material to show the applicant's complicity in the aforesaid offences. He submitted that at the behest of the complainant, who is on inimical terms with the applicant, the aforesaid FIR was lodged. Learned Counsel for the applicant relied on the affidavits of several persons, annexed as Exhibits - B1 to B13 to the application, to show that the affiants have not named the applicant but have named C.A – Rakesh Doshi. He submitted that the accounts are alleged to have been operated during the period 2010 to 2011. He submitted that in the facts, custodial interrogation of the applicant is not necessary.

4. Learned APP vehemently opposed the application. He states that the applicant is the master mind and beneficiary of the fraud which is to the tune of Rs.100 crores. He submitted that the applicant had taken signatures of illiterate people on blank bank opening forms and was operating these accounts (130 such accounts holders). Learned APP submits that out of the 130 accounts, investigation has so far been done with respect to 51 accounts. He submitted that the statements of account holders clearly points to the complicity of the applicant in the said fraud. He submits that

the applicant had got these persons to sign affidavits, by misleading them. Learned APP has also filed an affidavit of Prakash Tukaram Warke, Police Inspector attached to Mulund Police Station, Mumbai. The same is taken on record.

5. Perused the papers. The complainant – Jitesh Makwana is the President of 'Shree Kshatriya Kutchi Rajput Samaj', Mumbai ((hereinafter referred to as 'Samaj'), of which the applicant was the Secretary. According to the complainant in 2010, the applicant conducted one meeting of the community and told them that due to paucity of funds, they were unable to do any work for the development of the community. He stated that he had one scheme in his mind for increasing the funds of the community. The applicant disclosed in the said meeting that he would open a bank account in the name of each member of the community for one year and that he will use that account for his tax consultancy business and that he would deposit Rs.5,000/- per person in the account of the community- 'Samaj'. After getting permission from the members of the Samaj, the applicant along with his brother – Deepak and other relatives of the applicant opened bank accounts of about 130 people of the community, by using their PAN cards

and other documents. According to the prosecution, the applicant had gone to the house of the members and got their signatures on blank bank account forms and after opening accounts in different banks, the applicant and co-accused collected, signed cheque books from each member of the Samaj. It is pertinent to note that while opening the accounts, the applicant had not given the mobile numbers of the members of the Samaj. It appears, that trusting the applicant, none of the members of the community enquired about any transaction done by the applicant and the other co-accused, as the applicant had told them that he was going to use the accounts for his business of Tax Consultancy. It appears that after one year, when the complainant and the other members of the Samaj made enquiries with the applicant, they were told by the applicant that he had closed all the accounts and accordingly took their signatures on bank papers to close the said accounts. As noted earlier, trusting the applicant, none of the members of the Samaj enquired about the accounts, whether or not the said accounts opened in their names were closed permanently or not. As is reflected from the statements, neither the complainant, nor any member of the Samaj were in possession of the pass book, ATM Card or any other documents pertaining to the account opened in the bank on their behalf, by the applicant. It appears that in September 2018, some of the members of the Samaj, received Income Tax notices on their residential addresses by post, pursuant to which, they enquired with the applicant about these notices. It is stated that the applicant gathered all the notices from the members and disclosed to them that he will take care of the said notices. Pursuant to the assurance given by the applicant, the members and the complainant ignored all the notices received from the Income Tax Department. It appears that again the Income Tax Department sent notices to the members of the society, which notices were again collected by co-accused Ketan Parmar and Bhavesh, at the behest of the applicant. Again in December, 2018, the Income Tax Officers visited the complainant and other members residence and informed that large transactions had been done from their accounts and that Income Tax has not been paid nor has any reply been filed to the notices issued by the Income Tax Department. It appears that when the complainant and the members of the Samaj asked the applicant of the same, the applicant assured that he would take care of the notices and that the members need not worry about the same. It appears that in 2018, the applicant called the complainant and other members of the Samaj and stated that Deepak Rathod and Bhavesh Makwana had taken the responsibility of all the transactions that had happened in their accounts and that they had taken the responsibility of the notices which the members had got from the Income Tax Department. The applicant is also alleged to have told the complainant and the other members of the Samaj that he was going to file an appeal before the Income Tax Department and that he had prepared some affidavits and that the same was required to be signed by every member of the Samaj. Trusting the applicant, the complainant and the members signed the affidavits, without reading the contents, which are annexed as Exhibits - B1 to B13 to the application. A perusal of the said affidavits, which are annexed as B1 to B13 shows that most of the affiants are illiterate and that the affidavits are in English. It appears that after the affidavits were taken by the applicant, again Income Tax notices were received by them. It is at this time, that the complainant and the members of the Samaj suspected that the applicant had cheated them, pursuant thereto, they made enquiries with the bank and the Income Tax Department, where they learnt that their bank accounts were closed within one year of opening i.e. in 2011 and also learnt that huge amounts of transactions were done during the period 2010 to 2011 from the bank accounts of all the members and that Income Tax had not been paid for those transactions. The members as well as the complainant learnt that the applicant had also opened Demat Accounts with their bank accounts and that different mobile numbers were given whilst opening those accounts (not of the members). It appears that due to huge transactions in the complainant's mother's account viz. Kasturi Makwana, she received an Income Tax notice to pay an amount of Rs.55 lakhs. The complainant's brother – Shankar Makwana also received an Income Tax notice to pay Rs.2.5 lakhs. It appears that total amount involved is about Rs.100 crores. A perusal of the statements of the members of the Samaj show that the applicant is the master mind, who had induced the complainant and members of the Samaj to open bank accounts in their names after taking their signatures. The said accounts were utilized by the applicant and his family members for doing various transactions. It also appears from the statements of witnesses that their signatures were taken by the applicant on affidavits and that they were not aware of the contents of the affidavits and had signed on them, at the behest of the applicant.

6. Considering the role of the applicant, custody of the applicant is necessary to unearth the scam.

7. Hence, the application for pre-arrest bail is rejected and disposed of as such.

8. It is made clear that the observations made herein are prima facie for deciding the aforesaid application.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.