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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1977 OF 2016
WITH
CRI.APPLICATION (APPP) NO. 620 OF 2018
WITH
CRI.APPLICATION (APPP) NO. 621 OF 2018
WITH
CRI.APPLICATION (APPP) NO. 622 OF 2018

Rohan Dukle & Ors. **..Applicants**
Vs
The State of Maharashtra **..Respondent**

Mr. Atul Damle, Senior Counsel a/w Abdulla Qureshi I/b Indialaw LLP for the Applicants.
Ms. J.S. Lohokare, APP for State.
Mr. Umesh Mankapure for Intervener.
Mr. Pravin Bhagat, API, EOW Unit No.09 present.

CORAM : A.S.GADKARI, J.
DATE : 25th March 2019.

P.C.:-

1] This is an application under 438 of Cr. P.C. for pre-arrest bail in CR No.320 of 2016 dated 8.8.2016 originally registered with the Dadar Police Station, Mumbai and now being investigated by the Economic Offence Wing, Unit No.IX having renumbered CR No.71 of 2016 under sections 406, 420 and 120B of the Indian Penal Code

2] Heard Mr. Damle, senior counsel appearing for the applicants, Mr.Mankapure, the learned counsel for the Intervener and the learned APP for the State. Perused the record of investigation.

3] The first information report is lodged by Mr. Chintan Valia. The first informant is Director/Promotor of M/s Fortune Financial Services (India) Ltd. and M/s Fortune Credit Capital Ltd having its Office at Elphinstone Road, Mumbai-13. The said Company namely M/s Fortune Credit Capital Ltd. is a Non-Banking Financing Company (N.B.F.C.) engaged in the business of extending loans against security and the second Company namely M/s Fortune Financial Services (India) Ltd is in the financial advisory business and it is a holding company of M/s Fortune Credit Capital Ltd.

The prosecution case in brief is that, in or around July 2013 the applicant Nos.1 Rohan Dukle and applicant No.2 Sudhir Gudal, the Directors/Promoters and founders of Xperitus Insurance Brokers Pvt. Ltd. and M/s Magus Corporate Advisors Pvt. Ltd. approached the first informant and represented him that, they are in the business of distribution of Insurance products and advisory services in relation to settlement of insurance claims. They promised excellent return on investment and profitability of the company and induced the first informant to invest amounts. That the applicants had painted rosy pictures of their companies. Due to the said inducement by the applicant Nos.1 and 2, the informant decided to purchase 51% of shares of Xperitus Insurance Brokers Pvt. Ltd and accordingly they invested an amount of Rs.3,00,50,000/- (Rupees Three Crores and Fifty Lakhs) towards advance for share purchase and Rs.1,40,00,000/ (Rupees One Crore and Forty Lakhs) towards Inter Corporate Deposit. Various agreements had been executed including a Memorandum of Understanding dated 22.7.2013 and Agreement dated 23.7.2013. Apart from the said amounts, the first informant also made payment of Rs.55,00,000/- (Rupees Fifty Five Lakhs) to M/s Magus Corporate Advisors Pvt. Ltd and Rs.85,00,000/- (Rupees Eighty Five Lakhs) to Xperitus Insurance Brokers Pvt. Ltd. by way of Inter Corporate Deposit. The said amounts were deposited by the first informant as per inducement made by the applicants.

Despite making total sum of Rs.4,40,50,000/- (Rupees Four Crores Forty Lakhs and Fifty Thousand), the transfer of share holding of 51% was not effected in favour of the first informant's Company. Therefore, the first informant got suspicious about the conduct and intention of the applicants. In depth enquiry by the first informant of the Companies of the applicants revealed that the said Companied have started making substantial losses and in fact the income generated by their companies was lesser than what was informed to the first informant. The expenditure of the companies of the accused were more than it is in fact what was represented to the first informant. It is therefore alleged that, thus the applicants have caused wrongful loss to the first informant and defalcated the amount paid by the first informant towards transfer of share holding. In the premise the first information report is lodged.

4] Mr. Damle, the learned senior counsel appearing for the applicants submitted that, the applicant Nos.3 and 4 have no direct role to play in the present crime. He submitted that, the Agreement dated 23.7.2013 itself provide that, the informant and the applicants will work together for obtaining IRDA permission for transfer of 51% shares in favour of said companies namely Fortune Financial Services (India) Ltd. and Fortune Credit Capital Ltd.. He submitted that, M/s Magus Corporate Advisors Pvt. Ltd also to subscribe to 12,00,000 equity shares of Fortne by preferential allotment with due compliance of SEBI and other applicable regulations. He submitted that, as a matter of fact, the applicants complied with their part of obligation, however due to non-co-operation from the first informant and some technicalities involved in the transfer from IRDA, the said share transfer could not be effected. He submitted that, the applicants have attended the Investigating Officer on several occasions in furtherance of Orders passed by this Court and tendered necessary documents to him. He submitted that, the documents have already been seized by the Investigating Agency and therefore the custodial interrogation of the applicants is not necessary. He therefore prayed that the present application may be allowed and the applicants may be protected by pre-arrest bail.

The learned counsel for the Intervener and the learned APP for the State vehemently opposed the present application.

5] A useful reference at this stage 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.

In view thereof the contention of the applicants that, the applicants have attended the Investigating Officer on several occasions is of assistance to them.

6] The first information report is self-eloquent. It is the specific allegation against the applicants that, they deceitfully induced the first informant to part with huge amount of Rs.4,40,50,000/- under the pretext of selling 51% shares of their Companies and ultimately failed to transfer it. Even as per the first information report dated 8.8.2016 the transaction in question is pertaining to the year 2013 and for about last six years the applicants have failed either to transfer the shares in favour of the complainant or refund the amount accepted by them. This itself shows the intention of the applicants to cause wrongful loss to the informant and wrongful gain to themselves. Prima facie it appears that, since inception the applicants were having intention to defraud the first informant for the amount involved herein. The record of investigation further indicates that, it was the applicants who were having their lawful obligation to comply with the procedure of transfer. The applicants by taking benefit of Clauses in the agreement and/or by raising a spacious plea that, it was the first informant who was obliged to get the shares transferred, cannot be accepted. There is sufficient correspondence in that behalf on record to support this observations.

The Supreme Court in the case of Rajesh Bajaj Vs. State NCT of Delhi & Ors reported in (1999) 3 SCC 259, has held that, in fact, many a cheatings were committed in the course of commercial and also money transactions. According to me the present case in hand is an example of the same. The amount involved in the present crime is yet to be recovered and the same is not possible without there being through investigation by the police However, it is to be noted here that, the applicant Nos.3 and 4 herein have no direct role to play in the present crime and therefore they can be protected by pre-arrest bail.

7] In view of the above, I pass following Order:

(A) The application of pre-arrest bail of the applicant No.1

Mr.Rohan Dukle and applicant No.2 Mr.Sudhir Gudal is hereby rejected.

(B) Applicant No.3 Mr. Jayesh Marfatia and applicant No.4 Mrs. Richa Dukle are granted pre-arrest bail on the following conditions.

(i) In the event of their arrest in CR No.320 of 2016 originally registered with Dadar Police Station, Mumbai and now being investigated by the Economic Offence Wing, Unit No.IX having renumbered CR No.71 of 2016, they shall be released on bail on their furnishing PR bond of Rs.25,000/- each with one or two separate solvent local sureties in the like amount.

(iii) Applicants shall not tamper with the evidence and/or influence the prosecution witnesses.

8] Application is partly allowed in the aforesaid terms.

9] In view of Order passed in A.B.A. No.1977 of 2016, Criminal Application Nos.620, 621 and 622 of 2018 do not survive and the same are accordingly disposed off.

10] At this stage, Shri Damle, the learned senior counsel for the applicants submitted that, the applicant Nos.1 and 2 intend to challenge the present Order before the Hononourable Supreme Court and therefore, interim protection granted by Order dated 17.11.2016 may be extended for a period of two weeks from today.

In view thereof, the operation of the above Order is stayed for a period of two weeks from today by continuing interim relief granted by Order dated 17.11.2016.

(A.S.GADKARI, J.)