IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL ANTICIPATORY BAIL APPLICATION NO.284 OF 2020

Kapil Arvind Parekh Applicant
versus
The State of Maharashtra Respondent

Mr.Subhash Jha with Harekrishna Mishra with Sanjana Pardeshi with Siddharth Jha, Shailendra Dubey and Ajinkya J. Jaibhave for applicant.
Smt.Veera Shinde, APP, for State.

CORAM : PRAKASH D. NAIK, J.

DATE : 13th February 2020

PC :

1. This is an application for anticipatory bail in CR No.91 of 2019 registered with Pant Nagar Police Station, investigated by Economic Offences Wing. The FIR was lodged on 2nd November 2019 with Pantnagar Police Station for offences u/s 406, 420 r/w 34 of Indian Penal Code. Subsequently Section 409 of IPC and Sections 3 and 4 of MPID Act were added.

2. The complainant Nikunj Patel has alleged that he had placed order for ornaments for his marriage with Rasiklal Sankalchand Jewellers. He handed over old ornamens of his mother worth Rs.6,22,860/-. Order was also placed for ornaments of his wife of R.1,50,000/-. The ornaments were to be delivered on 15th September 2019. On inquiry the accused bought time for delivery. On 30th September 2019 the complainant made coll to the jeweller. There was no response. Hence, he visited the shop. It was found closed. On inquiry with people present near the shop, he learnt that

the owner of shop had cheated several investors, customers and closed their shop.

3. During investigation accused Rasiklal Shah and Nilesh Shah were arrested on 11th November 2019. During interrogation the accused had disclosed that loan of Rs.1.5 crore was obtained by them. On 30th October 2019 the applicant demanded his money and stated that if the accused cannot part with cash, the gold be handed over to him. Hence ornaments worth Rs.1.75 crore was given to applicant. On 17th December 2019 letter was sent by applicant to EOW stating that in May-2017 Jayeshbhai requested father of applicant that he is in need of 5 kgs gold for further expansion and stock for shop. He promised to give good returns. His father gave gold of his mother. Jayesh gave covering letter and cheque against 5 kgs gold as security. On 30th November 2019 applicant requested for return of gold. The gold ornaments and diamond items were given in lieu of 5 kgs gold and extra 10%. He melted the gold and converted it into pure gold and sold diamonds.

4. Summons dated 30th December 2019 u/s 91/160 of Code of Criminal Procedure was issued to applicant. Then summons dated 20th January 2020 u/s 91 of Code of Criminal Procedure was also issued.

5. Apprehending arrest applicant had preferred anticipatory bail application before Sessions Court, which has been rejected by order dated 30th January 2020.

6. Learned counsel for applicant submitted that the applicant was not impleaded as accused. He was called for inquiry. He had co-

operated with the investigation. However, although he is not an accused, his application is rejected by the Sessions Court. The applicant is not concerned with the crime. The gold was returned to the applicant in lieu of ornaments deposited with the accused. He is not concerned with the gold deposited by investors. The gold ornaments were melted which is apparent from National India Bullion Refinery challan dated 4th November 2019. It is submitted that the applicant has provided the said details to the investigating agency and is willing to co-operate with investigation. It is further submitted that vide letter dated 17th December 2019 the applicant had submitted detailed explanation about transactions with the arrested accused. The custodial interrogation of the applicant is not necessary. He relied upon documents annexed to this application in support of the submission that applicant's transactions with the accused were genuine. He further submitted that the main accused were arrested and granted bail. He relied upon order dated 20th January 2020 passed by Special Court under MPID Court granting bail to the arrested accused. He also relied upon observations made by the Court while granting bail to the said accused. It is submitted that the Sessions Court in the said order has observed that on account of rumours the investors got panic. There was no intention of the accused to deceive the investors. He further submitted that the property worth Rs.150 crores was seized and the investment of the investors was secured. The principal accused were arrested. They had deposited the amount before Court. The Court has also observed that provisions of MPID Act would not be attracted in this case. It is submitted that in any case the applicant is not concerned with the investors and he is not privy to the transactions of the principal accused and the investors. Hence, the applicant need not be subjected to custodial interrogation.

7. Learned APP submitted that there is strong evidence against applicant. Prima facie case is made out showing involvement of applicant. Huge quantity of good was handed over to the applicant. There are no genuine documents to substantiate the claim of applicant. The gold belongs to the investors. The applicant and the co-accused have concocted the story of having handed over ornaments in the past by applicant and parted the gold to the applicant. He has not provided satisfactory explanation about his claim. There are no requisite entries with regards to the gold being deposited by the applicant with the principal accused. The explanation tendered by the applicant vide letter dated 17th December 2019 is not supported by any entries. The applicant has suppressed vital facts. The custody of applicant is necessary. He is involved in crime. The Sessions Court has rejected the application for anticipatory bail on the ground that prima facie case is made out against applicant.

8. I have perused the FIR, the documents annexed to the application and the order passed by Sessions Court. The investigation is in progress. The contention of prosecution is that the applicant's custody is necessary. The main accused in CR No.91 of 2019 Jayesh Shah and Nilesh Shah were arrested. They were subjected to custody and granted bail. During the course of investigation and interrogation of the arrested accused, involvement of applicant was disclosed as the person to whom the gold was handed over. On 30th October 2019 the applicant had visited the shop and demanded money or gold. The applicant took gold and

diamond jewellery worth Rs.1.75 crores. The prosecution case is that the accused handed over gold/diamond ornaments worth Rs.1.75 crores to the applicant on 30th October 2019, when many customers had gathered in shop for demanding return of their ornaments. The accused in collusion with applicant siphoned off gold/diamond ornaments weighing 2.5 kgs belonging to investors. Learned Sessions Judge while rejecting the application for anticipatory bail has considered all the aspects and had observed that prima facie case is made out against applicant. The case put forth by the applicant is unbelievable. The applicant's father had allegedly handed over gold jewellery of his parents to the accused in May-2017, he was promised that accused would return the gold within one and half year along with extra 10%. The date on which gold was handed over is not mentioned. Although the applicant relies upon letter dated 4th November 2019 issued by National India Bullion Refinery, it cannot be inferred that it is the same gold which is subject matter of the case. In letter dated 17th December 2019 the applicant has referred to the transactions with the main accused. However, there are no entries supporting the said claim. Prima facie it appears that to avoid the return of jewellery to the investors, the gold was handed over to the applicant. It cannot be coincidence that after May-2017 the applicant visited the shop of co-accused on 30th October 2019 to demand jewellery in the presence of investors, creditors etc and the good weighing 2500 grams was handed over to him. There are more than 500 investors and the total deceived amount is about Rs.10,90,47,900/-. The claim of the applicant is that he has melted the entire jewellelry. The claim appears to be devoid of merits.

9. Considering the circumstances, no case for grant of relief u/s 438 of Cr.P.C is made out. Criminal Anticipatory Bail Application No.284 of 2020 is rejected.

(PRAKASH D. NAIK, J.)

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