IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2454 OF 2019
WITH
INTERIM APPLICATION NO.1 OF 2019

Anis Vali Mohammad Memon .. Applicant
Vs.
State of Maharashtra .. Respondent

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Mr.V.M. Thorat a/w. M.V. Thorat, Advocate for the Applicant.

Mrs.Geeta P. Mulekar, APP for the Respondent – State.

Mr.Mahesh Zanwar, Advocate for Intervenor.

H.C. 5786 Gavani, Kondhwa Police Station, Pune City, present.
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CORAM : PRAKASH D. NAIK, J.

DATED : JANUARY 24, 2020.

P.C. :

The applicant is apprehending arrest in connection with C.R.No.814 of 2019, registered with Kondhwa Police Station, Pune City, for the alleged offences punishable under Sections 406, 420 and 120-B read with 34 of Indian Penal Code ("IPC', for short). First Information Report ("FIR", for short) was registered on 5th October, 2019 by Mohddis Mohammad Farukh Bakla.

2 The applicant preferred an application for anticipatory bail before the Sessions Court, Pune. The said application was rejected by order dated 5th November, 2019.

3 The prosecution case is as follows:

(a) The complainant is the owner of Standard Tours Company. His father owns company named Bakhla International Travels Company. The complainant and his partner Dastagir Patel has a partnership firm, namely, Dream Home Developers in Pune. The friend of the complainant Danish Kudia introduced Anis Vali Mohammad Memon (applicant) to the complainant. He was carrying out construction work. Anis Memon (applicant) introduced his friend Ravindra Singh to the complainant. He was the owner of Vibhave Infra Private Limited ("VIPL", for short). The complainant was informed that the said company is accepting Military tenders. Ravindra Singh and his wife Sonia Singh provided information to the complainant about their project, namely, Girna Infra ("GIPL", for short), which was worth 128 crores. The complainant was informed that presently the project is closed. The work worth Rs.60 crores was completed. If the investment is made to complete the project, the work relating to Jammu and Nagakota, which is 125 crores Millitary Project and the project at Mumbai worth Rs.100 crores totally amounting to Rs.350 crores would be allotted. The said information was provided to the complainant, as an inducement.

(b) Complainant was also informed that there is Memorandum of Understanding ("MOU", for short) between VIPL and GIPL. Anis Vali Mohammad Memon (applicant) took the complainant in confidence and told him that even he has invested in the project and he would get good returns from investment. It was also informed that there are agreements between VIPL and Ratnakar Pawar and that the complainant would be made Director of company owned by Ravindra Singh. The complainant gave Rs.2,50,000/- to Ravindra Singh by cheque dated 29th April, 2017.

(c) Complainant was informed by Anis Memon and Ravindra Singh that to commence project at Pune, Bank Guarantee of Rs.1 crore 50 lakhs is required to be executed and handed over to D.G. at Delhi and that each of them are required to execute Bank Guarantee of Rs.50 lakhs. The complainant was supposed to be travel out of town, and, therefore, he told them that he would not be able to furnish Bank Guarantee. At that time Anis Memon told him to hand over Rs.50 lakhs and that he would prepare Bank Guarantee in his name. On 3rd May, 2017, the complainant issued six cheques from the account of Bakhla International Travels Company worth Rs.50 lakhs in the name of Anis Memon. The said cheques were deposited by him in his bank, which were cleared. Anis Memon told the complainant that Bank Guarantee has been issued in his name and the same is handed over to Project Manager at Pune. He also informed that similar Bank Guarantee is also issued in the name of Ravindra Singh and himself.

(d) Subsequently, Anis Memon and Ravindra Singh told the complainant that D.G. from Delhi is insisting for

Bank Guarantee of Rs.3 crores. Complainant told him that he is not in a position to arrange such huge amount and demanded his money back. Anis Memon told him that a person known to them would prepare a Bank Guarantee and at his instance, he transferred Rs.3,50,000/- to the account of one Ravi Malhotra. However, Ravi Malhotra has again redeposited the said amount in the account of the complainant. On inquiry, he told the complainant that the Bank Guarantee could not be prepared and hence he has returned the money. Complainant demanded back Bank Guarantee of Rs.50 prepared in his name. He refused to return Bank Guarantee. Complainant learnt that Bank Guarantee in his name was not prepared and Anis Memon has misappropriated the said amount. Ravindra Singh did not prepare any Bank Guarantee in his name. The complainant demanded the amount. However, Anis Memon was not returning the said amount. Ultimately, on 22nd May, 2017, Anis Memon transferred an amount of Rs.20,25,000/-, to the complainant. The balance amount was not paid.

(e) Complainant again transferred amount of Rs.20,00,000/- to Anis Memon and cash of Rs.9,75,000/-. Anis Memon deposited the amount in the account of complainant's father. The complainant demanded the amount parted to him Anis Memon. He avoided to make payment.

(f) Ravindra Singh and his wife Sonia Singh met the complainant and they told him that in the event he invested the amount in their Millitry Project, he would earn good returns. On believing the representations, the complainant paid amount to them from time to time. Complainant demanded Rs.88,20,000/-, from them. He avoided to return the amount. Ravindra Singh told him that he has purchased the car by using his money and he should approach Ratnakar Pawar, if he needs money, as amount has been invested with Ratnakar Pawar. The complainant realized that he has been cheated by the applicant–accused. Complainant then visited the office of GIPL. Ratnakar Pawar contacted Ravindra Singh and assured that the amount will be returned.

He was also told that amount will have to be invested in Mumbai and Pune branch.

(g) Ratnakar Pawar told the complainant that in the event of investment, the complainant would earn good dividends. Agreement was executed between both of them. Thereafter Ratnakar Pawar introduced him to Director of Godavari Military Project with the assurance of returns for investment. On their representation, the complainant transferred Rs.24,44,900/-, by RTGS to Godavrai Military Project. On request from Ratnakar Pawar, the complainant parted Rs.1,30,000/-, in cash to one Parvesh Shaikh. Ratnakar Pawar demanded amount on several occasion and he had transferred Rs.1,25,000/-, to him. For the project at Pune, from 5th February, 2018 to 6th February, 2018, he had transferred Rs.51,33,323/- by RTGS and bank transfer for GIPL project staff, labour, material payment and also gave Rs.1,61,500/- to Mr.Pawar in cash for payment of labour. Complainant did not receive any returns. He demanded money. The complainant suspected foul play. He made inquiries in the Bank at Nashik to check whether his signature is there in document as a partner and it was found that Ratnakar Pawar had deliberately furnished incomplete documents as a partner in the Bank. Thus, from 29th April, 2017 to 6th July, 2018, the accused had deceived him. He paid an amount of Rs.29,75,000/-, to Anis Vali Mohammed, Rs.44,10,000/- to Ravindra Singh and Sonia Singh, Rs.63,89,723/- to Ratnakar Pawar, Rs.26,86,664/- to Prakash Laddha, Rs.25,000/- to Manisha Pawar and Rs.30,000/- to Ashok Ahire. Complainant, thus is duped for Rs.1,64,16,387/-.

4 Learned advocate for the applicant Mr.Thorat submitted that the dispute is of civil nature. Various agreements/ MOU were executed between the parties. The complainant was part of the agreement/MOU. He had invested the amount. There is no element of cheating or breach of trust, custodial interrogation is not necessary. The alleged amount, which was parted to the applicant, as stated by the complainant is Rs.29,75,000/-. According to the complainant, Rs.9,75,000/-, was paid in cash. There is no proof of the said amount. The applicant is willing to deposit an amount of Rs.20,00,000/-, before the trial

Court to show his bonafide within a period of six weeks. It is submitted that the amount given by the complainant towards Bank Guarantee was adjusted in subsequent transactions.

5 Learned APP submitted that the applicant–accused had acted in connivance with each other. Complainant was induced to invest money with assurance of good returns. However, inspite of parting with huge amount, he was not paid a single rupee towards the said investment.

6 Learned counsel for the intervenor submits that the applicant has played a vital role. Right from inception, the applicant had participated in the transaction. There is no explanation for the amount which was parted towards the Bank Guarantee. There is nothing to show that the said amount was adjusted towards further investment. Complainant was cheated. There is no bar for initiating criminal prosecution. In the Power of Attorney, relied upon by the applicant, the complainant is not signatory. He is not party to the MOU dated 18th April, 2017, between M/s.GIPL and M/s.VIPL. All the accused had acted in connivance with each other. MOU relied upon by the applicant is of May 2018, and the money towards Bank Guarantee was given in 2017.

7 I have perused the documents on record. It is the case of the complainant that the accused had deceived him by assuring that he would get good returns, from the investments made in GIPL and VIPL. It is alleged that applicant had cheated the complainant by accepting amount of Rs.50,00,000/-, from the complainant for Bank Guarantee in the name of informant stating that the Bank Guarantee is necessary to revive the project at Pune. Applicant did not prepare any Bank Guarantee in the name of the complainant. Complainant demanded Rs.50,00,000/-, which was given from the account of Bakhla International Company. Applicant transferred Rs.20,25,000/-, to the account of father of informant. The applicant again took Rs.29,75,000/-, from informant assuring that he would return the same to him. Applicant has not returned the said amount.

8 According to the complainant, the applicant had deceived him for an amount of Rs.29,75,000/-. Complainant had parted Rs.50,00,000/-, Applicant deposited amount of Rs.20,25,000/-, in account of complainant's father on 22nd May, 2017. The applicant again borrowed money from complainant. According to complainant, Rs.20,00,000/-, were given to

applicant by RTGS on 28th March, 2018 and 31st March, 2018. According to complainant, Rs.9,75,000/-, was given in cash. The applicant deposited in account of complainant's father but Rs.29,75,000/- were not returned. Thus, Rs.20,00,000/-, were transferred by RTGS and Rs.9,75,000/-, by cash. According to applicant, there is no proof of payment of Rs.9,75,000/-. There is nothing to show that Rs.29,75,000/-, was returned to the complainant. The applicant volunteered to deposit Rs.20,00,000/-, to show his bonafides. Other projects were owned by GIPL and VIPL were owned by the co-accused. Applicant has volunteered to deposit Rs.20,00,000/-, before the J.M.F.C. and considering his role, protection under Section 438 of Cr.P.C. can be granted to the applicant.

9 Hence, I pass the following order:

:: O R D E R ::

(i) Anticipatory Bail Application No.2454 of 2019, is allowed;

(ii) In the event of arrest of Applicant in connection with C.R.No.814 of 2019, registered with

Kondhwa Police Station, Pune City, he be released on bail on his executing P.R. Bond in the sum of Rs.25,000/-, with one or more sureties in the like amount;

(iii) Applicant shall deposit Rs.20,00,000/-, before the Court of J.M.F.C., Pune, within a period of six weeks from the date of uploading this order;

(iv) Trial Court shall deal with the amount of Rs.20,00,000/-, deposited by the applicant at the time of trial;

(v) Applicant shall report the investigating officer on 3rd to 5th February, 2020, between 11:00 a.m. to 01:00 p.m;

(vi) Anticipatory Bail Application stands disposed of;

(vii) Interim Application No.1 of 2019, stands disposed of accordingly.

(**PRAKASH D. NAIK, J.)**