IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.252 OF 2020

Amit s/o Ram Zende,
Age : 32 years, Occu. Business,
R/o Sant Gorobakaka Nagar,
Sanja Road, Osmanabad,
District Osmanabad **APPLICANT**

VERSUS

The State of Maharashtra
through Police Inspector,
Police Station, Anandnagar,
District Osmanabad **RESPONDENT**

Mr. MA. Tandale, Advocate for the applicant
Mr. S.W. Mundhe, A.P.P. for the respondent/State

CORAM : MANGESH S. PATIL, J.

DATE : 22.01.2021

PER COURT :

The applicant is apprehending his arrest in connection with Crime No. 9 of 2020, registered with Anandnagar Police Station, District Osmanabad for the offence punishable under Section 420 of the Indian Penal Code and is seeking bail in the event of his arrest.

2. The FIR has been lodged by an octogenarian stated to be a retired accountant. He alleges that he has been staying with his

grandchildren of predeceased son and predeceased daughter-in-law. On 18.12.2019, he received a phone call from a specific number. The person speaking on the other side identified himself to be one S.R. Kulkarni, Agricultural Extension Officer, who told him that his proposal for sprinkler and drip irrigation has been approved and he will have to pay Rs.8000/-. He also promised to help him in getting the insurance money in respect of deceased son and daughter-in-law. That person called him to meet at a specific place. Accordingly, he went to the spot alongwith his brother. He then made a phone call to said S.R. Kulkarni. A person arrived there in a car. The informant paid him Rs.8000/-. On the next day, again he received a phone call from S.R. Kulkarni, asking for an amount of Rs.80,000/- for getting the grants in respect of the sprinklers and drip irrigation system and promised to help him in getting Rs.1,50,000/-. The informed alleges that again with his brother, he went to the spot, paid Rs.80,000/- to said S.R. Kulkarni.

3. It is then alleged that S.R. Kulkarni then again lured him by again saying that he would help him in getting Rs. 36 lakh as insurance of his deceased son and daughter-in-law and would also help him in getting grant of Rs.20 lakhs from the Government for the marriage of grandchildren. It is then alleged that from time to time, the informant paid various amounts to S.R. Kulkarni as mentioned in the FIR. Since he was repeatedly demanding money, he and his brother became suspicious. He was under mental stress.

His grandchildren could sense that he was under such a stress. The relatives were called and it was realized that he was duped for an amount of Rs.29,77,500/- in aggregate and the FIR was lodged.

4. It is now being alleged that the applicant is the same person who was posing himself to be S.R. Kulkarni. The Sim card from which he was making the calls stood in the name of one Deepali. A photograph of the applicant was also shown to the informant to identify him to be the same person to whom he was identifying as S.R. Kulkarni and had paid moneys from time to time.

5. The learned Advocate for the applicant submits that the applicant is being falsely implicated as has been done on several earlier occasions but he has been acquitted. He would submit that ex facie the contents of the FIR are unbelievable. It is most unlikely that such a huge amount would be parted within such a short time. Without there being any role played by him, he is being falsely implicated. He has been granted ad-interim bail. He is ready to cooperate the Investigating Officer and the ad-interim bail may be confirmed.

6. The learned A.P.P. opposes the application. He submits that the offence is serious. At this juncture, one need not examine the record to verify correctness or otherwise of the contents of the FIR. There is no animosity between the informant and the applicant so that the former has some axe to

grind by falsely prosecuting the latter. He is a retired accountant, aged around 80 years, who was lured to part with huge money. Taking into account the nature of the allegations, custodial interrogation of the applicant is necessary. The learned A.P.P. further points out that there are statements of various witnesses who have stated that the applicant used to deal with them and speak to them on cell phone from the same Sim card from which the informant had received the phone calls. Even the statement of Deepali has been recorded in which she states that she was working with the applicant as a maid. She had obtained that Sim card which she had subsequently handed over to the applicant, who never returned it to her.

7. I have carefully gone through the papers. Ex facie, it does appear that the informant has been duped of a huge amount by giving variety of promises. It is equally true that the Sim number referred to in the FIR from which the informant used to receive the phone calls from the applicant, is the same Sim number which Deepali has stated to have obtained and handed over to him. Similarly, even there are statements of various persons who were dealing with the applicant vouching to the same effect. There is also supplementary statement of the informant, who was shown a photograph of the applicant and whom he identified to be the same person, who was posing himself to be S.R. Kulkarni, who had met him and whom he had paid the monies on several occasions.

8. In the normal case, the aforementioned facts and circumstances

would have been sufficient to refuse to grant an anticipatory bail.

9. However, a careful perusal of the record would clearly indicate that everything is not as transparent as is tried to be made out. Going by the FIR, the informant is a retired accountant aged around 80 years. His son and daughter-in-law have died and he has been staying with his two grandchildren. A person of this age and of this stature is stated to have parted with a huge amount of Rs. 29 lakhs and odd barely within a span of fifteen days from 18.12.2019 to 09.01.2020. Going by the investigation papers, it does appear that the Investigating Officer has not taken any efforts to crosscheck as to how the informant was able to generate such a huge amount of more than Rs.29 lakhs within such a short span.

10. It is also being alleged that even the brother of the informant used to accompany him whenever he used to meet said S.R. Kulkarni and pay moneys to him. Going by these allegations, it certainly creates a reasonable doubt as to the veracity or otherwise of the allegations being levelled in the FIR. Even without intending to indulge in any such scrutiny, all these facts and circumstances are such that I cannot avoid the temptation to examine the probability aspect as well.

11. True it is that the applicant has a criminal history inasmuch as he has been involved in more than thirty offences of a similar kind i.e. cheating right from the year 2003. However, though such a circumstance in the

normal event would be decisive, as has been observed hereinabove, when the allegations in the FIR ex facie create a serious doubt about their veracity, one need not get swayed away by the criminal background of the applicant.

12. The applicant was already granted ad-interim bail by the order dated 04.03.2020. There are no allegations about he having breached the terms and conditions or misused the liberty. Considering all these aspects, in my view, the ad-interim relief granted to the applicant deserves to be confirmed with the same terms and conditions.

13. The application is allowed. The ad-interim relief granted by the order dated 04.03.2020 stands confirmed with the same terms and conditions with a modification that he shall continue to attend the concerned Police Station only till filing of the chargesheet.

[MANGESH S. PATIL]
JUDGE

npj/ABA252-2020