IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

BAIL APPLICATION NO.413 OF 2021

Sanjay Balashaeb Thombre,
Age 55 years, occupation Agriculture,
R/o Dindrud Tq. Majalgaon Dist.Beed. **...Applicant**

VERSUS

The State of Maharashtra,
Through Police Station Cantonment,
Aurangabad. **...Respondent**

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Advocate for Applicant : Mr. A. V. Lavte
APP for Respondent-State : Mr. N. T. Bhagat.

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CORAM : SMT.VIBHA KANKANWADI, J.

Date of Reserving The Order : 04-05-2021

Date of Pronouncing The Order : 08-06-2021

ORDER :

1. Present applicant has been posed as accused No.1 in connection with Crime No.388 of 2020, registered on 15-12-2020, registered with Cantonment Police Station, Aurangabad Dist. Aurangabad, for the offence punishable under Section 420, 417 read with 34 of the Indian Penal Code. He has filed present application under Section 439 of the Code of Criminal Procedure.

2. Heard learned Advocate Mr. A. V. Lavte for applicant and learned Additional Public Prosecutor Mr. N. T. Bhagat for respondent-State. In order to cut short it is stated that, both of them have made submissions in support of their respective contentions.

3. Perusal of the First Information Report lodged by informant Rekha Bhagwan Gaikwad would show that her husband Bhagwan Gaikwad is employee in the Central Reserve Police Force (CRPF). Present applicant was known to her since three to four years prior to the First Information Report as the accused No.1 was conducting a grocery shop in his house. She used to purchase grocery items from the said shop. Applicant had represented informant on 10-02-2018 that his son who is also an accused i.e. Sachin is a 'Pigmy Agent' and if the amount is deposited with him, he would give double the amount within two years. Applicant's wife Indubai also gave that confidence and representation to the informant. Believing in their words, the informant agreed to deposit amount with them. She gave amount of Rs.2,16,000/- to applicant in presence of one Sumanbai Ghodke and Indubai Thombre i.e. wife of the present applicant. After giving the amount when she demanded something in writing, present applicant avoided and told that she should believe

in him. Thereafter, in March 2020 the period come to an end and, therefore, she demanded the amount to the present applicant. He tried to avoid it by saying that time has to be consumed for the procedure. Thereafter, he shifted his family to Dindrud Taluka Majalgaon Dist. Beed. When informant used to make phone calls demanding the amount oftenly, he used to put various reasons to avoid. Ultimately, the informant along with Suman Ghodke, Nanda Gajle, Mathura Ghuge, Hamida Amir Khan Pathan, Haridas Namdeo Pawar, Lata Vasant Gavande went in July 2020 to Dindrud. Present applicant was not at home, however his another son Nitin was there. Nitin told that even if they quarreled with father, they will not get their amount and, therefore, they should leave. At that time it was realized that the applicant has cheated them. The other persons who were accompanying her had also given amounts to applicant and total amount they had given was to the tune of Rs.14,94,000/- and, therefore, the informant lodged the report.

4. It was tried to be contended and documents have been produced that earlier the informant had lodged a non-cognizable report on 05-09-2020 which was registered only under Section 417 read with 34 of the Indian Penal Code. In the inquiry the

applicant/accused and the co-accused were called several times. Written say was also given by the present applicant. He appears to have come with a defence that there was no such transaction between them, on the contrary the informant and some other persons had taken articles on credit and they have not paid the amount for it. When he was asking them to give the amount, they decided to implicate him. Even if we take the fact into consideration that inquiry was conducted, but we cannot get answer from the police as to why they had registered only non-cognizable report earlier. It appears that they had avoided to take down the complaint/ information in detail though she appears to be contending in that non-cognizable report also that she along with others have been cheated. Applicant cannot be given advantage of such mistake or wrong step taken by the police. Statements of witnesses would show as to how they had given the amount to present applicant. Some persons have in fact transmitted the amount electronically to the account of the son of present applicant. The investigation is still incomplete. Even though the co-accused persons have been released on anticipatory bail by this Court on 04-02-2021, but what has been observed by this Court in the said order in Anticipatory Bail Application No.47 of 2021 by which only Indubai

Sanjay Thombre was released on anticipatory bail and the said anticipatory bail application even filed by this Court was rejected, is required to be considered. It was observed that, this Court was convinced Ex-facie, there is a clear conspiracy to deceive persons/ the informant and the witnesses. Important point to be noted is that in spite of getting huge amount from different persons, the present applicant has to manage not to issue any receipt or chit to those persons. Under such circumstances, the way in which the applicant has allegedly committed the offence, so also the fact that abruptly he has shifted to his native place, and it appears from the allegation that, it was to avoid making payments to the informant and the witnesses ; possibility of applicant getting absconding cannot be ruled out. Case is not made out to use discretion of this Court to release the applicant, so also this is the economic offence, hard earned money of the lower middle class appears to have been collected with definite intention to cheat. Hence, application stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

vjg/-