IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.23 OF 2021

1. Saranya Manikandan, age 26 years,

2. Balakrishnan Manikandan, age 48 years,

both r/o.28, North End Road, Krishnasamy Nagar, Ramanathpuram, Coimbatore-641045.
Presently lodged at Coimbatore Central Prison ... Applicants
versus
The State of Maharashtra ... Respondent

Mr.Tanveer Nizam, Ms.Surbhi Soni and Ms.Rohini Menon i/by Mr.Manish Varma, Advocate for the Applicants.
Mrs.M.R.Tidke, APP, for Respondent-State.
API Sohan Kadam, Versova Police Station, Mumbai, present.

CORAM : PRAKASH D. NAIK, J.

DATE : 22nd March 2021

PC :

1. The applicants are apprehending arrest in connection with CR No.376 of 2019 registered with Versova Police Station, Mumbai for offences under Sections 406, 420 r/w 34 of Indian Penal Code. The FIR was registered on 18th November 2019.

2. The complainant has alleged that in 2015 he was introduced to applicant no.2. The complainant was informed that applicant no.2 is conducting business in the name of Shree Sasta Online Trading having its office at 201, Times Square Regus Office Centre, B-Wing, 2nd Floor, Andheri-Kurla Road, Andheri (East), Mumbai. If complainant invest amount he would be benefited. The applicant

no.2 had visited the house of complainant. He represented that in the event of investigation of amount, he would get good returns within stipulated period. Thereafter applicant no.2 had conversation with the complainant through phone and whats app. Applicant no.2 had informed the complainant that several other persons have invested amount in his company and they have received good returns. Applicant no.2 had given advertisement in Times of India on 9th May 2015. Applicant no.1 is daughter of applicant no.2 and both were conducting investment business. After the retirement of complainant, he was pursued by applicant no.2 to invest amount with his company. He was assured that guaranteed returns would be given to him in the event of investment in different schemes. The complainant was also assured that in the event of any delay or loss, the said amount would be compensated to him. An agreement was executed on 29th May 2015. On 27th May 2015 the complainant had invested amount of Rs.5 lakh. The complainant became member of Shree Sasta Online Trading. Thereafter on 28th May 2015 the complainant forwarded Rs.3 lakh by cheque to the account of applicant no.2 and Rs.4 lakh on 29th May 2015. Applicant no.1 then induced the complainant to invest amount in golden investment scheme with assurance that returns would be received within one year. On 22nd June 2015 the complainant invested Rs.2 lakh and on 26th June 2015 he invested Rs.2.90 lakh. Similarly on 29th June 2015, 3rd July 2015 and 11th July 2015 the complainant invested amount of Rs.2,58 lakh, Rs.8.40 lakh and Rs.5 lakh respectively. Thus, total amount of Rs.15 lakh was invested by the complainant. He was assured of the bonus by the accused. He was supposed to receive Rs.1.20 crore as profits. Applicant no.2 had assured the complainant that he would be entitled to the benefits in the end of the year 2016. He would be receiving about Rs.7,24,80,000/- by way of returns. Thereafter both the applicants took the complainant in confidence and induced him to invest amounts on 13th July 2015, 16th July 2015, 21st July 2015 and 30th July 2015 and the complainant transferred the amount towards schemes introduced by the accused. The amount was transferred by way of cheques. The complainant had invested amount to the tune of Rs.77.70 lakh and Rs.7.02 lakh. From 2015 to 2016 the complainant was taken into confidence by the applicants with an assurance of rich dividends and profits and he was induced to invest Rs.86,28,495/-. Similarly the friend of the complainant was also induced to invest Rs.4,75,000/-. Thus, they were cheated for Rs.91,03,495/-.

3. The applicants preferred application for bail before the Sessions Court. The said application was rejected by order dated 5th December 2020.

4. Learned advocate for applicant submitted that applicant no.1 is educated lady. Applicant no.2 is also well educated. It is submitted that transactions were completed in April-2016. The FIR was lodged on 18th November 2019. There is no reason for delay in lodging the FIR. The complainant had invested from May-2015 till April-2016. It is difficult to believe that if the complainant do not receive any benefits for such a long period, he would convince other family members to invest the amount in the schemes of the applicants. The complainant had enjoyed the benefits of his investment for a continued period but did not disclose this fact to Police and suppressed the vital facts. Clause-4 of the Memorandum Of Understanding executed between the complainant and applicant

no.2 makes it clear that applicant no.2 had promises returns @ 8% p.a and not 30% as alleged by the complainant. There was no dishonest intention to attract Section 420 of IPC. In the FIR it is stated that applicant no.2 was invited by the complainant at his residence at the instance of his friend Captain Shrikant Gondhne and was not approached by the applicants. Advertisement was released by applicant no.2 in the Times of India newspaper dated 9th May 2019. Thus, the applicants did not induce the complainant to invest amount. The firm of applicant no.2 viz Shree Sasta Online Trading is a proprietary firm and not a partnership firm. Applicant no.2 has no role in the said firm. The complainant has stated in the complaint that he had deposited money in the firm and applicant no.2 which is a sole proprietary concern and not partnership firm. No specific overt act has been assigned to the applicant no.1. She has been falsely implicated in this case. She is the daughter of applicant no.2. The complainant has admitted that applicant no.2 was invited through Captain Shrikant Gondhne who has also allegedly suffered loss. There is no element of criminal breach of trust or cheating. The dispute relates to commercial transaction and is of civil nature. The FIR has been registered for pressurizing the applicants to submit to the demands of complainant. There is distinction between mere breach of contract and offence of cheating. The civil remedy could have been at the most resorted to by the complainant. The demand notice was issued through Advocate by the complainant dated 15th July 2019 and Rs.8,39,15,000/- was claimed by the complainant. The alleged investment is of Rs.86,28,495/-. It is obvious that complainant had received huge amount from applicant no.2 towards his investment. Custodial interrogation of the applicants is not necessary. The applicants are willing to co-operate with the investigation. The applicants would produce the requisite documents before Investigating Officer in support of their defense. Learned Sessions Judge has committed error in rejecting the application for anticipatory bail.

5. Learned APP submitted that huge loss is caused to the complainant by accused. False promises were made about good returns on investment of amount by the complainant in the schemes of accused. Both the applicants have played role in making false representations to the complainant and inducing him to invest huge amount with promises of benefits of good returns. The complainant is a senior citizen aged about 71 years. On his retirement he had invested the amount saved by him in the schemes of applicants expecting good returns. The total investment of the complainant and his friend is to the tune of Rs.91,03,495/-. The memorandum of understanding executed by applicant no.2 indicating that loss, if any, caused to the investor, would be compensated to gain confidence of complainant. It is further submitted that applicants are habitual offenders. The offences are registered against them with other police stations for cheating and criminal breach of trust. Two cases are registered against applicant no.1 and four cases are registered against applicant no.2 in the past. Applicant no.1 is involved in CR No.12 of 2020 registered with CCS Police Station, Hyderabad for offence u/s.420 IPC; CR No.948 of 2020 is registered for offences u/s.406, 420 r/w 34 IPC against applicant no.2 at Palaghat Police Station, Kerala; CR No.79 of 2017 is registered against accused no.2 with Bengalore Electronic City Police Station for offences u/s.193, 195, 420, 120B of IPC. CR No.3 of 2020 is registered against applicant no.2 with EOW, Coimbatore for offences u/s.406, 420,

120B of IPC. CR No.146 of 2016 is registered with Khar Police Station, Mumbai for offences u/s.406, 420 IPC against applicant no.2.

6. Learned counsel for applicants in rejoinder submitted that applicant no.2 was arrested and granted bail by Madras High Court in CR No.3 of 2020 investigated by EOW, Coimbatore vide order dated 31st January 2021. Applicant no.2 has been granted bail in connection with Crime No.12 of 2020 registered with Central Crime Station, Hyderabad by High Court for State of Telangana, at Hyderbaad vide order dated 14th December 2020.

7. On perusal of FIR and the other documents it can be seen that the complainant and his friend Captain Shrikant Gondhne had invested amount with applicants. Specific overt act has been attributed to both the applicants. The complainant is a senior citizen. His life savings were invested on the promises made by the applicants. Huge amount was invested with the concerns of the applicants. The amount is huge. The grievance of the complainant is that false promise was made inducing him to invest amount. The returns as promises were not paid to the complainant. The applicants have not established that returns as promises by them were paid to the complainant and his friend. It is apparent that the complaints are registered against applicants at other police stations. The submissions of learned counsel for applicants that element of cheating or criminal breach of trust is not made out, cannot be accepted. Hence, no case for grant of anticipatory bail is made out. The application is required to be rejected.

8. Hence, I pass following order :

ORDER

(i) Anticipatory Bail Application No.23 of 2021 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)

MST