IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1038 OF 2019

Kulwant Kishori Singh … Applicant

Versus

The State of Maharashtra & Anr. … Respondents

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Mr. Kafil A. Khan a/w Ms. Sana K. Khan, Advocate for the Applicant.

Ms. Veera Shinde, APP for the Respondent – State.

Mr. Manish Bohra i/b. Mr. A. S. Khan & Associate, Advocate for the Respondent No.2.

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CORAM : PRAKASH D. NAIK, J.

DATE : 3rd AUGUST, 2021.

PER COURT:

1. This is an application for pre-arrest bail in C.R. No. 247 of 2019 registered with Manpada Police Station, Dist. Thane for offence under Section 420 r/w Section 34 of Indian Penal Code (for short "IPC").

2. The First Information Report (for short 'FIR') was registered on 10th April, 2019. The case of the complainant is that he is retired brigadier. The complainant was induced to trade with B.M.A. Wealth Creators Co. On 9th March, 2014, the complainant

filled up the form. Mobile number was given. E-mail ID and Demat account was opened. The complainant invested amount around Rs.40 Lakhs. Initially he earned profit of Rs.3,50,000/-. Since the complainant was not getting good profit, he instructed the accused to close the account in 2017. The complainant then realized and in spite of instructions to close the account, the accused have executed transactions without his consent. Incorrect information was provided about trading. Hence, FIR was lodged on 10th April, 2019. The investigation was taken over by Crime Branch, Zone– III, Kalyan.

3. The applicant had preferred for anticipatory bail before the Sessions Court which has been rejected vide order dated 17th April, 2019.

4. Learned Advocate for the applicant submitted that there is no element of cheating in the transactions. All the information was provided to the complainant. The complainant had authorized the applicant to do transactions on his behalf by executing authority letter. Several transactions were carried out from 2014 to 2017 on behalf of first informant and his wife. The applicant was authorized to deal in the shares as sub-broker on behalf of B.M.A. Wealth Creators Co. since August, 2013. In – 2016,

he was working as sub-broker. His wife was also working as sub-broker in B.M.A. Wealth Creators Co. All the transactions conducted in the account of the first informant and his wife was informed to them by E-mail and the accounts' statements which was acknowledged by them by 2014 to 2017. Reliance is placed on the statements from 2014-2017. The statements of account shows that there is no transactions in the account after the intimation for closing account was given by the complainant. The allegations that the first informant was not aware as to what transactions have been executed is false. Whenever any transactions were executed in the Demat account, immediately the E-mail is sent to the respective account holder and also an SMS alert is sent on the registered mobile number by B.M.A. Wealth Creators Co. as well as National Stock Exchange. The applicant used to forward the statements to the first informant monthly or quarterly. The applicant has only acted as sub-broker on behalf of first informant. The complainant was aware as to what has happened in his account with regards to trading in shares. The loss suffered by the complainant was a transnational loss for which the applicant cannot be blamed. The applicant was granted interim protection by this Court on 30th April, 2019. The applicant is qualified person. The applicant has cooperated with the investigation. He need not be subjected to custodial interrogation.

5. Learned APP submitted that requisite information was not provided to the complainant. First informant was provided information to applicant. The complainant has been cheated for huge amount. Sections 465 and 468 were added during the course of investigation.

6. Learned Advocate for the intervenor/complainant filed affidavit in reply opposing the application. He submitted that the complainant is retired brigadier aged 70 years. He had spent big chunk of service in Army. In – 2014, the applicant and his wife approached him to continues calls and exchanges to open trading and Demat account with B.M.A. Wealth Creators Co. The applicant started visiting complainant's house and insisted on opening the trading account. Hence, the complainant opened the account along with his wife. They were advised to invest their life saving in blue chip companies as safe, secure and better earning option. Later on complainant found that their holding statements were forged and thus no such holdings in their account. The complainant and his wife gradually made an investment of about Rs.50 Lakhs approximately in equity and mutual fund. The complainant and his wife had no knowledge about shares trading and hence both used

to make investment in blue chip company. The accused executed many transactions in their accounts without their instructions and knowledge. They misused trading and Demat account and blue chip company and thus duped the amount around Rs. 47 Lakhs. Reliance is placed on the bank statements of the complainant and his wife for a period of 2014 to 2017. It is further submitted that the complainant was also holding certain physical shares and mutual funds in 2014, which were demated by the applicant in that Demat account. The said shares and mutual funds immediately amounting approximately Rs.14 to 15 Lakhs. The applicant and his wife had conducted unauthorized transactions in the account of complainant. Their signatures were obtained on blank papers. The applicant used to send false misleading statements through the account of personal E-mail ID which appears to be of B.M.A. Wealth Creators Co. which was not official E-mail ID of the said Company. The applicant used to send fake and misleading holding statements which were far away from the actual transactions done by the applicant in trading accounts. The holding statements were prepared by the applicant to mislead the complainant. In August and September – 2017 when the applicant refused to respond to the calls of the complainant, inquiry was made with the Company. No status of their holdings and balances and it was learnt that they have nil balance in that trading and Demat account. Later on the complainant learnt that the member broker is involved in scam and SEBI has passed ex-parte ad interim order against member boker B.M.A. Wealth Creators Co. and its directors. Since the complainant was cheated, he lodged the FIR. He suffered huge loss of about Rs.65 Lakhs.

7. The contention of the applicant is that all the requisite information was provided to the applicant. The investigation is taken over by the Crime Branch, Kalyan. The investigation papers discloses that the complainant had provided Email-ID in the B.M.A. Wealth Creators Co. account opening form as devendra.kapil@hotmail.com. It was incumbent to exchange correspondence on register E-mail ID. However, the applicant with a view to mislead forwarded information from his personal E-mail ID kulwant.bmawc@gmail.com on personal E-mail ID of complainant dkapil@systra.com with false trading account status report/holding statement. Inquiry was made about the existence of shares in consonance with the statements and it was found therein variation in the information. It was disclosed that accused had forwarded false statements and hence, Sections 465 and 468 of IPC was added. The scrutiny of the documents reveals that trading was

executed in the account of the complainant and shares were sold and due to loss no information was provided in regard to the complainant. No consent was obtained from them before executing the transactions. The accused had executed transactions to earn commission. Correspondence was exchanged with SEBI and it was revealed that the stock broker is required to exchange correspondence on registered E-mail and before trading, consent of the customer is required to be obtained which was not done in the present case. The applicant had forwarded fabricated holding statements. Custodial interrogation of the applicant is necessary. In the light of the investigation conducted by the Investigating agency as stated above, no case for grant of anticipatory bail is made out.

ORDER

Anticipatory Bail Application No.1038 of 2019 is rejected and stands disposed of accordingly.

(PRAKASH D. NAIK, J.)