IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1727 OF 2021

Shantanu Sanjay Salunkhe .... Applicant

Versus

The State of Maharashtra .... Respondent

Mr. Nitin Sejpal for Applicant.
Mrs. J. S. Lohokare, APP for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 28th JULY, 2021
(Through Video Conferencing)

P.C. :

1. The Applicant is seeking anticipatory bail in connection with C.R.No. I 23 of 2021 registered at Vartaknagar Police Station, on 24/01/2021, under sections 420 and 406 r/w.34 of the Indian Penal Code (for short 'IPC').

2. Heard Shri. Nitin Sejpal, learned counsel for the applicant and Smt. Lohokare, learned APP for the State.

3. The First Information Report (for short 'F.I.R.) is lodged by one Sushant Padwal. He has stated that, in 2013 he came in contact with the present applicant. The applicant was having a travel service by the name Netwest Traveller Service and also the business of selling electric massage bed. The applicant and his father made representations to the informant that, they had good potential in their business and for enhancing their business they need some amount. They requested the informant to invest Rs.10 lakhs. They assured that the informant would be made a partner in their business. The informant had some extra money with him. Based on the representations made by the applicant that the informant would be made 50% partner, he gave Rs.10 lakhs in cash to the applicant and his father on 24/08/2014. The informant was told that the accused had already given requisite documents to their C.A. for further processing and after the firm was registered the informant would be made a partner. By way of security the informant was given a cheque of Rs.10 lakhs.

4. The informant kept on making inquiry with the

applicant and his father about their business. In October 2014, the applicant gave Rs.50,000/- in cash to the informant purportedly as the profit earned in their business. The informant believed him. In November 2015, the applicant told the informant that, he had got an order for taking 50 people to Malaysia and Singapore. He was to get Rs.40 lakhs, out of which, Rs.15 lakhs were received by way of advance. Subsequently, in December 2014, the applicant's parents requested the informant to give Rs.8 lakhs as they needed it immediately to complete the tour. Therefore, on 10/12/2014, the informant paid Rs.8 lakhs in cash. Again one more cheque was given by the accused as a security for Rs.8 lakhs. The informant was also induced into investing in the accused's other business of selling electric massage bed. On 24/02/2015, based on the applicant's inducement, he paid Rs.5 lakhs through a cheque and Rs.20 lakhs through cash. Thus, in all, the informant had paid Rs.43 lakhs till then. In March 2015, again the applicant's parents took Rs.2,50,000/- from the informant on the pretext that the applicant was in dire need of that money to complete the tour. Subsequently, nothing was returned to the informant. He had lost

Rs.45,50,000/- between 24/08/2014 to March 2015. On this basis the F.I.R. was lodged.

5. Learned counsel for the applicant submitted that the F.I.R. is lodged much belatedly on 24/01/2021. The last transaction was in March 2015. He, therefore, submitted that, since the informant's civil remedy was extinguished the informant had taken recourse to filing of this F.I.R. He submitted that the criminal proceeding cannot be used by the informant for recovering his money which, otherwise, could not be recovered through civil proceeding because of bar of limitation. He submitted that, the charge-sheet in this case is already filed against the applicant's parents and, therefore, custodial interrogation of the applicant is not necessary. Shri. Sejpal submitted that the blank cheques given to the informant were not even deposited in the bank. He invited my attention to an MOU dated 24/02/2015 entered into between the applicant and the informant. Learned counsel submitted that, now that MOU cannot be enforced. The informant had, therefore, resorted to filing of this F.I.R.

6. Learned APP opposed this application. She submitted that the applicant's father was a Government Servant and yet he was arrested and subsequently was granted bail. The applicant did not present himself before the police. He allowed the charge-sheet to be filed and now he is pressing for the relief of anticipatory bail. She submitted that the charge-sheet filed against the applicant's father contains statements of various witnesses from whom the informant had borrowed money to pay to the applicant. She submitted that, it was not a question of money lending, but the money was given by the informant on the false representation made by the applicant. She submitted that the parties were having cordial relations. The informant was hoping to get back his money and, therefore, he had shown some leniency in not approaching the police before. The applicant was taking undue wrong advantage of the informant's leniency and, therefore, the applicant cannot claim that the F.I.R. is lodged belatedly.

7. I have considered these submissions. The F.I.R. has elaborately mentioned as to how the informant was induced into

parting with his money. Right from the beginning the informant was assured that, he would be made a partner in the business of the applicant. No such steps were taken. Once, the informant had given some money to the applicant, he had to give more money every time to keep the business going on because ultimately the informant would have suffered. Thus, false inducement and false representations attract the penal provision of section 420 of IPC.

8. Apart from that, the offence of criminal breach of trust and misappropriation of amount is also made out. The fact remains that the informant has not received back his money. Shri. Sejpal has no submission to make about the fact that the informant had not received his money back. Even the MOU entered into between the informant and the applicant makes a specific reference to the amount of Rs.25 lakhs which was taken by the applicant and it was admitted by him in February 2015.

9. As far as, blank cheques are concerned, there is a reference to those cheques in the F.I.R. itself. Those cheques were

given as a security and the informant was hoping to get back his amount. The charge-sheet also shows that the informant had borrowed money from his relatives to make payment to the applicant to help him financially. Thus, there is sufficient evidence to show that the informant was made to part with his money on fraudulent representation.

10. Learned counsel for the applicant relied on the order dated 07/05/2021 granting anticipatory bail to the applicant's mother. However, from the F.I.R. itself it is clear that the roles of the applicant's mother and the applicant are entirely different. The main representation was made by the applicant himself. Therefore, though the charge-sheet is already filed, the police have had no opportunity to interrogate the applicant. The core question will remain as to what happened to the money which was taken by the applicant from the informant. Therefore, it is not a mere question of recovery of the amount, but the money trail will have to be traced, which can only be done after custodial interrogation of the applicant. The gravity of the offence is also quite serious. While it

is true that there is some delay in lodging of F.I.R., but from the facts of this case, it was not unusual if the informant waited in the hope of receiving back his money before approaching the police. This is not a case which has only civil colour but the fact shows that the offence, as mentioned earlier, has taken place because it is based on false inducement and also involved misappropriation of the amount. In this view of the matter, no case for anticipatory bail is made out.

11. The application is rejected.

(SARANG V. KOTWAL, J.)