IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 3016 OF 2021

Bhargav Manharlal Oza … Applicant
Versus
The State of Maharashtra … Respondent

Mr. Hrishikesh Mundargi i/b Jayant J. Bardeskar, for the Applicant.
Smt. Anamika Malhotra, APP, for the State-Respondent.
Mr. Alekar, API, attached to Yerwarda Police Station, Pune, present.

CORAM : V. G. BISHT, J.

RESERVED ON : 20th December, 2021.
PRONOUNCED ON : 22nd December, 2021.

PC:

The applicant is seeking Anticipatory Bail under Section 438 of the Code of Criminal Procedure in connection with C.R. No. 483 of 2021 registered with Yerawada Police Station, District- Pune for the offences punishable under Sections 406, 420, 464, 465, 468, 471 r/w 34 of the Indian Penal Code and Sections 21 and 23 of the Banning of the Unregulated Deposits Act, 2019.

2 It is the case of prosecution that the informant deals in real estate.

Somewhere in the month of March 2020 accused Adwait Deshpande introduced himself to informant as an insurance consultant and further suggested that he should invest in an insurance policy. Initially, the informant was reluctant, however, because of persistence persuasion at the hands of said accused and other accused, the informant invested an amount of Rs.1,25,59,562/-. Against the said investment the accused paid only Rs.22,75,500/-. The informant when repeatedly demanded papers of investment and the amount invested by him, the accused named in the FIR avoided by saying that they have suffered losses and further induced him to make investment by selling his immovable properties and valuables and also assured to cover earlier losses. The informant fell prey to their inducement again. The accused allegedly got executed the sale-deed in respect of four shops in lieu of Rs.64 lakhs and one flat in lieu of Rs.40 lakhs on paper but did not pay any amount of consideration. According to prosecution, the informant was cheated to the tune of Rs.2.03,24,562/-. The informant accordingly filed the FIR.

3 Mr. Mundargi, learned Counsel for the applicant, submits that no role of applicant is attributed in respect of alleged financial transaction. There was no inducement or any offer from the side of applicant. Accused Adwait Deshpande is the main accused, who was engaged in the transaction. Even in so called execution of sale-deed, the applicant has no role to play.

4 Learned Counsel next submitted that earlier the complainant had filed a written complaint with identical allegations with Economic Offence Wing (EOW), Pune, who after thorough enquiry filed a closure report. The private complaint filed before the JMFC, Court No. 5, Pune also came to be withdrawn later on by the complainant. In both the complaints no role was attributed to the applicant. According to learned Counsel on the basis of account statement of Kotak Mahindra Bank, the applicant has been roped in. The statement shows that on 25/02/2020 and 02/03/2020 one Sagar Chandulal Pithadia had transferred an amount of Rs.8 lakhs in his account which later on the applicant had returned.

5 According to learned Counsel, having regard to the nature of accusation, there is no necessity of custodial interrogation of the applicant. The applicant is ready to render all possible cooperation.

6 Smt. Malhotra, learned APP, vehemently opposed the submissions by contending that the accused named in the FIR not only induced the

informant to part with a huge amount but at the same time he was made to execute sale-deed in respect of shops and flats. Thus, in all informant was cheated to the tune of Rs.2,03.24,562/-.

7 Learned APP invited my attention to the compilation of documents filed during the course of argument. Learned APP also pointed out from the compilation the Fund Flow Chart and pointed out that how the initial invested amount of informant of Rs.1,25,459,562/- was distributed by accused amongst themselves. Learned APP during the course of argument also invited my attention to the Deed of Assignment in respect of properties of the informant and pointed out column of amount was purposely kept blank. No consideration amount was ever paid and rather, it is vaguely mentioned that the entire consideration had been paid to the assignors and no amount of whatsoever nature is due and pending from the assignee on the date of execution of documents. According to learned APP, all the accused including applicant acted hand in glove and thus, committed the offence. Investigation is in progress and having regarding to the nature of seriousness of offence, application may not be granted.

8 Perused the FIR. I have also gone through the compilation of

documents of learned APP filed before me today. What emerges from the FIR is that this accused Adwait Deshpande and other accused specifically named in the FIR continuously persuaded the informant for investment which will fetch him 11% interest on the invested amount. While the informant was being persuaded by those accused, the informant was also informed that the present applicant looks after the Mumbai Branch Office. Pursuant to the persistent assurance and inducement, the informant invested Rs.1,25,59,562/- out of which he was returned ostensibly an amount of Rs.22,75,000/-. However, he was later on informed about the losses and was again induced to invest more moneys and assured that the entire principle amount with interest will be returned to him. Accordingly, the draft agreement in respect of shops came to be executed in favour of accused Dharmesh Desai and later on, the sale-deed in respect of flat in the name of accused Jignesh Sanghvi. Although, in both the documents the recitals show that the consideration amount was paid but according to informant nothing was paid in reality. It is pertinent to note that both the sale-deeds are in the name of accused Dharmesh Desai and Jignesh Sanghvi.

9 Learned APP, during the course of arguments, invited my attention to the supplementary statement of the informant wherein he was told by accused Adwait Deshpande that an amount of Rs.35,75,520/- had been given to the applicant. It may not be out of place to mention here that this information was given by accused Adwait Deshpande to the informant and how for it will be admissible will have to be ascertained at the time of trial. Then there are whatsapp messages sent by accused Adwait Deshpande to the informant.

10 There is statement of account of informant and his wife. These accounts do not in any manner mention the name of the applicant.

11 Fund Flow Chart shows that Rs.1,25,59,562/- invested by the informant were distributed amongst the accused, as per the learned APP. As far as present applicant is concerned, two amounts are shown against his name, one of Rs.35,75,520 and another is Rs.8,00,000/-. I presume the amount of Rs.35,75,520/- is the amount which has been referred by the informant in his supplementary statement dated 16/12/2021 but then again the said statement against co-accused is without any substantiation and necessarily will have to be seen at the time of trial. As far as the amount of Rs.8 lakhs is concerned, learned Counsel for the applicant during the course of argument invited my attention to the accounts statement issued by Kotak Mahindra Bank. The said statement shows that amount of Rs. 4 lakhs each was credited in the account of applicant on 25/02/2020 and 02/03/2020 by one Sagar Chandulal Pithadia. However, it is pertinent to note from the complaint itself that the said moneys were transferred much prior to the alleged transaction of informant with accused Adwait Deshpande. I say so because the FIR itself shows that the informant invested various amount from 01/04/2020 onwards. This being so, it is not clear from the Fund Flow Chart as to how Rs.8 lakhs went to the share of applicant. The only allegation against the applicant in the FIR is that in the month of June, 2021 the present applicant by way of whatsapp call threatened in the following manner,

"आपने हसु भाई को क्यों बोला की, पोलीस मे शिकायत करेंगे अभी वह बहोत चिडे हुऐ है, अभीभी टाइम है, आप उनको फोन करके माफी मांगो, और उन्हे ५० लाख दे दो वर्णा आपकी प्रॉपर्टी पोलीस और कोर्ट चक्कर मे १५ साल तक लटक जाएंगी".

12 Similarly, the informant made complaint on 25/05/2021 to Pune Police Commissioner wherein he alleged that the accused Hasmukh Kheni, Jignesh Sanghvi, Dharmesh Desai and Bhargav Oza pressurizing him and telling that his moneys invested will not be refunded as they had made losses. They sought more investment from informant or he should forget the moneys earlier invested with them. This was the complaint of the informant.

13 Incidentally, I may point out that the informant earlier had also made a complaint with EOW, Pune against other accused but his name was nowhere revealed. Further, a private complaint was also filed only to be withdrawn at a later stage. Again in that complaint also no role was attributed to the applicant.

14 Having regard to the material on record, in my view, the applicant has made out a case for ad-interim protection with certain conditions. Hence, the following order.

ORDER

(i) In the event of arrest of the applicant -Bhargav Manharlal Oza in C.R. No. 483 of 2021 registered with Yerawada Police Station, District-Pune for the offences punishable under Sections 406, 420, 464, 465, 468, 471 r/w 34 of the Indian Penal Code and Sections 21 and 23 of the Banning of the Unregulated Deposits Act, 2019, the applicant be enlarged on bail on his furnishing PR & SB in the sum of Rs.25,000/- with one or two sureties.

(ii) The applicant shall attend the concerned police station on every Monday and Friday in between 11-00 a.m. to 2-00 p.m. for a period of three months.

(iii) The applicant shall not tamper with the prosecution evidence.

(iv) The application is allowed in the aforesaid terms and stands disposed of accordingly.

(V. G. BISHT, J.)

REKHA
PRAKASH
PATIL

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REKHA PRAKASH
PATIL
Date: 2021.12.22
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