IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (ABA) NO.697 OF 2020

(Sujit s/o Ashok Kumar Vs. State of Maharashtra thr. PSO PS Sitabuldi, Nagpur)

Office Notes, Office Memoramda of Coram, appearances, Court's orders of directions and Registrar’s Orders.	*Court's or Judge's orders.*

Mr. S.P. Bhandarkar, Advocate for Applicant.
Mr. N.R. Rode, APP for Non-Applicant/State.

CORAM: ROHIT B. DEO, J.
DATE: 5th JANUARY, 2021.

The applicant is apprehending arrest in Crime 297/2020 registered with the Sitabuldi Police Station, Nagpur for offence punishable under sections 420, 465, 467, 468, 471 read with section 34 of the IPC.

2. Mr. Sushil Ramesh Kolhe lodged the complaint on 05.07.2020 on the basis of which Crime 297/2020 was registered with the Sitabuldi Police Station, Nagpur on 07.07.2020. Considering the gravity of the offence alleged, the Commissioner of Police, Nagpur constituted a Special Investigation Team (S.I.T.) comprising three officers and four police constables, which is tasked with the investigation of the crime under the supervision and control of the Deputy Commissioner of Police.

3. The gist of the complaint/report is thus:-

The informant and his younger brother Pankaj claim to be engaged in advertisement business under the name and style “Digital Advertisement”. Approximately 3500 persons have invested in the said company. In 2018, Jaheed Mirza Baig met the informant and suggested that the money invested in the company will fetch high returns if invested in purchase of property. Jaheed Mirza Baig further suggested that his friend Gautam Singh may be of assistance in the venture. The informant met Jaheed Mirza Baig and Gautam Singh and a commission agreement was drafted. It was agreed that the amount shall be invested in three different properties (i) the Church owned land opposite Smruti talkies and land in front of the Checkers Hotel at the Old VCA Stadium (ii) land near the burial ground at Jaripatka and (iii) land belonging to the Wakekar family situated at mouza Babulkheda, Besa road. The informant invested Rs.3,40,00,000/- (Rupees Three Crore Forty Lakhs) in the Church property. Since Jaheed Mirza Baig and Gautam Singh conveyed that the transaction will have to be done with the N.D.T.A. Trust (C.I.P.B.C.), the informant deposited amount of Rs.1,00,00,000/- (Rupees One Crore) in the account of the N.D.T.A. Trust. Prashant Satlarkar was paid amount of Rs.60,00,000/- (Rupees Sixty Lakh) including some in cash and the applicant herein Sujit Kumar was paid Rs.40,00,000/- (Rupees Forty Lakh). One Naeem Khan was paid Rs.20,00,000/- (Rupees Twenty Lakh) and Gautam Singh, was paid Rs.1,06,00,000/- (Rupees One Crore Six

Lakh) and Jaheed Mirza Baig was paid Rs.60,00,000/- (Rupees Sixty Lakh). The informant paid substantial amount to several persons towards the transactions concerning the other two properties. However, since the present applicant is not involved, at least going by the report, in the other two transactions, reference to the payments and the beneficiaries is not necessary. In so far as the Church property is concerned, it is alleged that after two to three months the informant realized that he was cheated and the documents which were made available for his perusal, and to gain his confidence, were fabricated.

4. The learned counsel for the applicant Mr. Shreerang Bhandarkar submits that the applicant is falsely implicated and that a civil and contractual dispute is given the colour of a criminal misconduct. Mr. Shreerang Bhandarkar would submit that the informant approached the applicant expressing desire to enter into an agreement of development with the Nagpur Diocesan Trust Association (N.D.T.A.). It is further submitted that the applicant received only Rs.20,00,000/- (Rupees Twenty Lakhs) from the informant, out of which Rs.10,00,000/- (Rupees Ten Lakhs) was transferred in the account of the Chairman of N.D.T.A. John Augastin. It is submitted that N.D.T.A. is the owner of land admeasuring 5,00,000 sq.ft. situated at mouza Sitabuldi bearing City Survey 1607. N.D.T.A. was contemplating developing the land by constructing a commercial complex. A Memorandum of association was

executed between the informant and N.D.T.A. on 11.06.2018 and thereafter on 07.09.2018. Mr. Shreerang Bhandarkar would submit that Change Report 994/2014 is pending before the Assistant Charity Commissioner, Nagpur and it was agreed that the development shall be undertaken only after the decision in the change report. It is further submitted that in any event custodial interrogation is not necessary and the applicant undertakes to co-operate with the S.I.T. and to produce the documentary material required of him. In fairness to the learned counsel, it must be recorded, that he conveyed the willingness of the applicant to deposit the amount of Rs.20,00,000/- (Rupees Twenty Lakhs) in the court as to demonstrate *bona fide.*

5. It is trite law that the willingness to deposit the ill-gotten wealth/amount is not necessarily a consideration which will weigh with the court in deciding the entitlement or otherwise to pre-arrest protection. The court is not fettered in the exercise of discretion by a cut and dried formula. Concern for individual liberty of the citizen must be counterbalanced with societal interest. An extremely relevant consideration would be whether denying the investigating agency the right of arrest and interrogation would sub-serve the societal interest. Needless to add, if extending pre-arrest protection adversely affects the investigation, the court would be loath to exercise discretion.

6. I have given anxious consideration to the material in the case diary. It would not be necessary, and indeed appropriate, to undertake a minute scrutiny of the material in the case diary as if a mini – trial is conducted. However, since the thinking process underlying the ultimate order shall have to be indicated [see *Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and another (2004) 7 SCC 528*] some reference to the material in the case diary is inevitable.

7. The material in the case diary *prima facie* indicates that the applicant did not have the authority to represent the N.D.T.A. trust. The applicant is not an office bearer of the trust as is apparent from Schedule-I. Assuming that the change report submitted is pending there is no conceivable explanation, other than a fraudulent intention, for the applicant purporting to represent the trust and accepting huge amount in his personal account. Notably, while the applicant contends that the amount received is Rs.20,00,000/- (Rupees Twenty Lakhs), according to the informant substantial amount is paid in cash and the total amount ranges between Rs.42,00,000/- to Rs.45,00,000/- (Rupees Forty-Two Lakhs to Rupees Forty-Five Lakhs).

8. The material in the charge-sheet *prima facie* indicates that the applicant and the other accused hatched a well thought and calculated criminal conspiracy to cheat the

complainant. The applicant executed documents misusing/fabricating the stamp and seal of the Trust. The applicant is shown as the Secretary of N.D.T.A. in the agreement, which agreement the learned counsel Mr. Bhandarkar is not disputing, and rather on which he is placing reliance to assert that the dispute is civil in nature.

9. The transaction is not an isolated transaction. The applicant allegedly executed a similar document in favour of one Vishal Mangaldas Meshram, concerning the trust land, and received Rs.12,00,000/- (Rupees Twelve Lakhs). There is more than ample material in the case diary to suggest that there is a racket operating and the applicant is an active participant in the criminal conspiracy to cheat the gullible persons.

10. I am more than satisfied, that the custodial interrogation of the applicant is indispensable and the investigation shall suffer if the S.I.T. is denied the right to arrest and custodially interrogate the applicant. It would be difficult to unravel the various facets and complexities of the fraud in the absence of custodial interrogation.

11. The application is dismissed.

JUDGE

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