IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.273 OF 2022

VIJAYRAJ ATMARAM JAGTAP

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. S.G. Magre and Mr. H.D. More, Advocates for the applicant

Mr. B.V. Virdhe, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 30th MARCH, 2022

PRONOUNCED ON : 19th APRIL, 2022

<u>ORDER</u> :

1 The applicant is apprehending his arrest in connection with Crime No.48/2022 dated 19.01.2022 registered with CIDCO Police Station, Aurangabad, for the offence punishable under Section 420, 406 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. H.D. More for the applicant and learned APP Mr. B.V. Virdhe for the respondent. In order to cut short, it can be said that they have argued in support of their respective contentions.

3 First Information Report has been lodged by Vaishali Vinayakrao Dakale Patil, who appeared to be a Medical Practitioner. She has stated that she got acquaintance with one Umesh More through one Afsar Khan in 2020. Umesh More then introduced his wife Kiran More and father-in-law Vijay Jagtap i.e. present applicant. It was then stated by Umesh More that all of them are knowing a business, in which if amount is deposited, then they would get double the amount within two months. Informant says that at that time when this kind of representation was made to her, she had not invested any amount with Umesh More, but then she says that thereafter Umesh More went to her house and also talked on phone and forced her to invest in his business. She also states that by keeping faith on what Umesh More is saying, she agreed to make investment in the business of Umesh More. She as well as her Chartered Accountant Mr. Krishna Chandak then visited a company to see what is the business that is carried out at Karodi. They saw that manufacturing and packaging spices, oil, dry fruit was going on. Thereafter, on 31.08.2020 she transferred amount of Rs.5,00,000/- through R.T.G.S. in the account of Umesh More. Thereafter, again she had given cheque for Rs.10,00,000/- in the name of Jayesh Enterprises and amount of Rs.5,00,000/- in the name of Kiran More. When she asked Umesh More to give the returns of her investment, then, he gave her cheque for Rs.10,00,000/- and another cheque for Rs.7,00,000/-. The cheque for

Rs.10,00,000/- was dishonoured and, therefore, she insisted all the accused that they should give her amount. It was told to her that they are going to give her amount, but due to the pandemic situation they are unable. Based upon their representation she has not deposited cheque of Rs.7,00,000/-. Thereafter again cheque for Rs.10,00,000/- was given, which was drawn on the account of Kiran More, but that was also dishonoured. And due to the insistence they were only avoiding to give her the amount. According to her, she was cheated for Rs.20,00,000/-.

4 At the outset, it is to be noted that in the First Information Report it is absolutely not stated in clear terms that there was direct investment in the name of the present applicant. Documents, those have been collected, show that there is account maintained in the name of Mrityunjay Enterprises and it has account with Shyamrao Vitthal Co-operative Bank, CIDCO Branch and the proprietor is shown to be the present applicant. Amount of Rs.5,00,000/- appeared to have been received in that account on 31.08.2020 through RTGS. Except this entry there is nothing. There are so many questions in fact arising, as to whether the ingredients of Section 420 and 406 of the Indian Penal Code are attracted or not. First of all, whether Section 420 of the Indian Penal Code would go along with Section 406 of the Indian Penal Code itself is a question. Because one section

requires faith or entrustment and in another offence there should be absence of faith. Only on the basis of misrepresentation the act would have been got done. Another fact is that according to the informant, even her Chartered Accountant was with her when they had inspected the figures. Which documents the Chartered Accountant had seen before advising his client i.e. the informant to make investment with these persons and how she should transfer the amount is important. It appears that uptill now statement of said Chartered Accountant has not been recorded. Whether her transfer of amounts were reflected in her Income Tax returns is also a question. Merely because there is one entry about receipt of amount we cannot jump to the conclusion that there is prima facie case that applicant had cheated informant or has misappropriated the said amount. If that amount was given by the informant as hand loan for the business, then, it was for her to get it recovered by instituting suit. She cannot give colour of criminal nature to a civil transaction. Further, when the two cheques were dishonoured, why she had not filed any complaint under Section 138 of Negotiable Instruments Act is also a question. Therefore, taking into consideration all these facts the applicant deserves protection under Section 438 of the Code of Criminal Procedure. Hence, the following order.

ORDER

1 Application stands allowed.

2 In the event of arrest of the applicant viz. **Vijayraj Atmaram Jagtap**, in connection with Crime No.48/2022 dated 19.01.2022 registered with CIDCO Police Station, Aurangabad, for the offence punishable under Section 420, 406 read with Section 34 of the Indian Penal Code, 1860, he be released on P.R. Bond of Rs.30,000/- (Rupees Thirty Thousand only) with two solvent sureties of Rs.15,000/- (Rupees Fifteen Thousand only) each.

3 The applicant shall not indulge in any criminal activity nor he should tamper with the prosecution evidence, in any manner.

4 He should cooperate with the investigation and shall remain present before the Investigating Officer, on every Sunday and Thursday, between 10.00 a.m. to 02.00 p.m., till filing of charge sheet.

(Smt. Vibha Kankanwadi, J.)

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