IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

917 ANTICIPATORY BAIL APPLICATION NO.498 OF 2022

ROHIT HARIKRISHAN ARORA
VERSUS
THE STATE OF MAHARASHTRA

...
Advocate for Applicant : Mr. Ghanekar Nilesh S.
APP for Respondent-State : Mr. V. M. Kagne.
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CORAM : S. G. MEHARE, J.
DATE : 27.09.2022

PER COURT :-

1. Heard the learned counsel for the applicant and the learned APP for the respondent-State.

2. The applicant did not dispute that he was instrumental in making the loan available to the complainant/company. However, he has denied that he signed the Delivery Instruction Slip (in short, "D.I.S.") for transferring the share.

3. Learned counsel for the applicant would submit that the FIR itself shows that the OTP was received. The D.I.S. allegedly forged by the applicant is not placed on record. The prosecution has no evidence that the applicant has signed the D.I.S. Therefore, the bare statement of the witness that the present applicant sent him D.I.S. may not be strong evidence

against the applicant. Learned counsel for the applicant has further argued that the D.I.S. is required if the transaction is offline. The complainant also admitted that he had executed the Power of Attorney in favour of the applicant. That empowers to transfer of the share. The applicant is neither employee nor the Director of Argent Finvest Private Ltd. The complainant had raised the loan against shares. When the loan is taken on the shares, its face value is considered, not the market value. The face value of the share was Rs.10/- per share. Considering the company's pledge of Four Lakh shares, the value is worth Rupees Four Crores, which was transferred to the complainant/company as a loan. Therefore, the allegation that on 04.12.2020, the share value of the complainant's company was Rs.287.90/- per share is not correct for the purpose of the value of shares. The entire investigation is based on the documents. The relevant documents are lying with Argent Finvest Private Ltd. and Astitva Capital Market Private Ltd. The offence was registered in the year 2020. The police had ample opportunity to recover alleged forged documents and make an inquiry. The offence under Sections 420 and 468 are non-bailable offences and punishable with seven (7) years imprisonment. Therefore, the police should have served a notice under Section 41-A of the

Cr.P.C. upon the applicant. But the police did not serve the said notice. The applicant has an unblemished past. He has a good reputation in the market. He committed no offence. Everything has been done under the instructions and to the knowledge of the complainant/company. The complainant has no case that he did not receive anything as per the contract. Therefore, the offence under Section 420 of the IPC would not attract. Therefore, he deserves anticipatory bail.

4. Per contra, the learned APP has vehemently argued that on 22.05.2021, a notice under Section 41-A of the Cr.P.C. was served upon the applicant, but he did not respond. Hence, it would not lie in his mouth that no notice was served upon him. He did not co-operate. Once the shares are pledged and the loan is obtained against the shares, such shares are not transferable. However, the prosecution has strong evidence against the applicant that he was the Director of Astitva Capital Market Private Ltd., to which the pledged shares of the company were sold/transferred. The prosecution also has strong evidence that the applicant was instrumental in transferring the Four Lakhs shares of the company. If the face value of the share was Rs.10/- and Four Lakh shares were transferred, its value comes to Rupees Forty Lakh and not Four

Crore. He has also vehemently argued that the applicant did not require the D.I.S when the OTP was issued. Considering his conduct his intention can be gathered; he wanted to cheat the complainant. It is a technical offence. The applicant was the instrumental and the main accused. Every truth will come out if he has been interrogated in police custody. The offence is serious. There is ample material against the applicant. Hence, his application deserves to be dismissed.

5. In reply, learned counsel Mr. Ghanekar argued that once the OTP is issued, D.I.S. is not required. The prosecution has no direct evidence against the applicant that he has forged or signed the D.I.S.

6. Everything was well until issuing the Power of Attorney, obtaining the loan against the shares, and sending OTP and P.O.A. The dispute arose when the applicant transferred the pledged shares of the company of the applicant unauthorizedly. There was a specific agreement that the pledged shares shall not be transferred. He did not respond to the notice under Section 41-A of the Cr.P.C. The prosecution has direct evidence against the applicant that he was a Director of the company to which the shares were transferred. He has supplied the D.I.S. to the said company. It was signed by the applicant.

7. Considering the allegations levelled against the applicant, it is apparently an economic offence. The Hon'ble Supreme Court, in the case of ***Nimmgadda Prasad Vs. Central Bureau of Investigation*** reported in ***2013 DGLS (SC) 404*** has issued several guidelines while considering the bail application in economic offences. The Hon'ble Supreme Court observed thus ;

> *"The entire community is aggrieved if the economic offender who ruins the economy of the state are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with full calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest."*

8. It has been observed by the Hon'ble Supreme Court that economic offences damage the national economy and interest. The prosecution has a plain case that the complainant has transferred four lakh shares on the instructions of the applicant against the loan with a specific condition that those shares are not transferable. When the OTP was issued, the applicant had

no reason to call upon the D.I.S. from the complainant/company. From the FIR, it appears that the complainant/company was following each and every instruction of the applicant. That goes to show that the applicant had conquered their confidence.

9. Considering the allegations levelled against the applicant, the material collected by the Investigating Officer, the past connection of the applicant with Astitva Capital Market Private Ltd. and the conduct of the applicant, this Court is of the view that this is not a fit case for anticipatory bail. Hence, the following order:

O R D E R

The application stands dismissed.

(S. G. MEHARE, J.)

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vmk/-