IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.586 OF 2022

1. Chhavi Prakash Srivastava
2. Preeti Prakash Srivastava .. Applicants

Versus

The State of Maharashtra .. Respondent

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Mr. Vinod Prakash Patil, Advocate for Applicants
Mr. V. S. Badakh, APP for Respondent

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WITH APPLN/1993/2022 IN ABA/586/2022

Rahul s/o. Arun Dayama .. Applicant

Versus

1. Chhavi Prakash Srivastava
2. Preeti Prakash Srivastava
3. The State of Maharashtra .. Respondents

...

Mr. R. S. Deshmukh, learned Senior Advocate along with
Mr. Vishal A. Chavan, Advocate, instructed by Mr. Govind A.
Kulkarni, Advocate for the applicant (in Application/1993/2022)
Mr. Vinod Prakash Patil, Advocate for Respondents No.1 and 2
Mr. V. S. Badakh, APP for Respondent

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CORAM : S. G. MEHARE, J.

DATE : 07-07-2022

PER COURT :-

1. Heard the learned counsel for the applicants, the learned APP for the respondent / State and Mr. R. S. Deshmukh, learned Senior Counsel, who is allowed to assist the learned A.P.P.

2. The first information report reveals that the complainant is well acquainted with the family of the applicants. It has been alleged that believing in the words of the applicants that he will get lucrative returns, the complainant has invested a huge amount in a firm run by co-accused Mrs. Suraiya Mohammad Yusuf Kotwala. The complainant had deposited the amount in the bank account of applicants from time to time. It is not in dispute that the amount deposited by the complainant was subsequently transferred to the bank account of the co-accused Suraiya.The complaint also discloses that against the deposit, Suraiya has issued various cheques, and one of the cheques worth Rs.9,00,000/- was dishonoured. The applicant has also come up with a case that the complainant has also alleged that Rs.5,50,000/- was returned to him from the account of applicant Preeti, and again Rs.9,50,000/- was returned to him. It has been alleged against the applicants that they gained the confidence of the complainant, therefore, the complainant has invested a huge amount. It has also been alleged that the amount invested by the complainant has not been returned; therefore, the applicants have cheated the complainant.

3. The learned counsel for the applicants would submit that the applicant Preeti is also the victim of illegalities committed by Suraiya. The crime under the provisions of the Maharashtra

Protection of Interest of Depositors (MPID) Act has been registered against her in the Thane district. In the said crime, the statement of Preeti was recorded, wherein she stated how Suraiya cheated her. It is also argued by the learned counsel for the applicants that Preeti was a Typist in the office of Suraiya. She has also invested money with Suraiya. The applicants are also the victims of the fraud played by Suraiya. The bank statements have already been recovered by the Investigating Officer. The complainant had invested the money with his full knowledge. The liability to return the amount was on Suraiya as the cheques were issued by her. The F.I.R is belated by around five years. Nothing is to be recovered and discovered from the applicants.

4. The learned A.P.P. would submit that the applicants did not support the prosecution in giving the office address of Suraiya and her whereabouts. A huge amount is lying in the account of the applicants. The applicants and Suraiya have hands in gloves. All the accused have committed the offence by plotting a systematic conspiracy. To know the whereabouts of Suraiya. The police custody of the applicants is essential.

5. The allegations in the F.I.R. are very specific that the applicants well knew Suraiya and the address of her firm. The complainant has invested a huge amount since the year 2017.

Some amount was returned to the complainant through the bank account of applicant Preeti. The bank record is clear that whatsoever the amount deposited by the complainant in the account of this applicant was transferred to the account of Suraiya. It appears that it is an investment with knowledge with an agreement of lucrative returns. In a case registered against Suraiya under the MPID Act, the applicant/Preeti is a witness. She reiterated before the police how Suraiya duped her. She was a Typist in the firm of Suraiya. The complainant knew well the name and the address of the main accused Suraiya. Admittedly, she is absconding. The applicants are also the sufferer of the illegalities committed by Suraiya. That apart, the cheques were issued by Suraiya. It is not a case that not a single penny was returned to the complainant. The amount of Rs.5,50,000/- and Rs.9,50,000/- were returned to the complainant out of the total investment. There appears no ill-intention on the part of the applicants to dupe the complainant. The main culprit, as appears from the facts of the case, is Suraiya. She has not only cheated the complainant but also duped many other persons. The applicants may have money in their accounts; that does not mean that police may recover that amount to pay it to the complainant. The case is very specific that the money was deposited with Suraiya.

6. Having regard to the facts of this case and the way of committing a crime, this Court is of the view that the custodial interrogation of the applicants would serve no purpose for the reason that the bank account and the other relevant material have been already made public and it is well within the knowledge of the police. The relevant documents for which the State is claiming to have police custody of the applicants for the recovery of documents are otherwise available. Therefore, the application deserves to be allowed.

7. Hence, the following order -

i) The application is allowed.

ii) The order dated 06.05.2022 granting interim protection to the applicants is confirmed on the same terms and conditions of bail. However, the condition of attendance every Sunday is modified, and the applicants shall attend the police station as and when called by the Investigating Officer on written notice.

8. Criminal Application No. 1993 of 2022 is allowed.

9. Needless to State that the observations of this Court are restricted to this bail application only, and it would not affect the trial.

(S. G. MEHARE)
JUDGE

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