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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

909 ANTICIPATORY BAIL APPLICATION NO.795 OF 2022

**PRASAD NIMBA SONAR
VERSUS
THE STATE OF MAHARASHTRA**

Mr S.B. Bhapkar, Advocate for applicant;
Mr V.M. Kagne, A.P.P. for respondent;
Ms. S.N. Devmane (Munde), Advocate holding for Mr. G.V. Wani,
Advocate to assist A.P.P.

CORAM : S. G. MEHARE, J.

DATE : 2nd August, 2022

PC.

1. Heard the learned counsel for the applicant and learned A.P.P. along with Ms. Devmane (Munde) assisting the learned A.P.P.
2. The applicant has a case that he has no role to play in the alleged investments made through the co-accused. The applicant is a Bank employee. He was never involved in the alleged crime. The investors have opened their DMAT accounts. They have directly invested the amount in the share market. They have received the good returns of their investments. The applicant did not know about the transactions between the complainant and his so called friend Vipul Choudhari. The complainant filed an application under Section 156 (3) of the Code of Criminal Procedure (for short "Cr.P.C.").

(2)

However, the learned Magistrate was pleased to direct an inquiry under Section 200 of the Cr.P.C. The orders passed by the learned Magistrate were challenged before the learned Sessions Court. The complainant was insisting the police not to make an inquiry as directed by the learned Magistrate under Section 200 of the Code of Cr.P.C.

3. When the present application was filed, the interim protection was granted. The complainant withdrew both revision applications challenging the orders of the learned Magistrate refusing to issue direction under Sections 156 (3) and during inquiry under Section 200 of the Cr.P.C.

4. The learned counsel for the applicant has argued that the applicant has been falsely implicated in the crime only with a view to recover the amount which was invested by the complainant and others at their own risk. Therefore, the interim protection granted to the applicant may kindly be confirmed.

5. The learned A.P P. along with learned counsel assisting him have vehemently argued that the applicant was the person who introduced one Vipul Choudhari. He promised the complainant and others that they would get the more returns on the investment. Since

(3)

the applicant convinced the complainant and others, they have invested the amount. However, they have suffered the huge loss. It has been alleged against the applicant that he in conspiracy with said Vipul Choudhari, has cheated the investors. So far as registering the crime, when the orders were passed by the learned Magistrate under Section 200 of the Cr.P.C., it is submitted that it happened due to the communication gap. There was no deliberate intention to register a separate crime when the learned Magistrate had already ordered to make an inquiry under Section 200 of the Cr.P.C.

6. Perused the investigation papers placed on record and the documents submitted by the applicant. The investigation papers reveal that the applicant is an employee of the Bank. It has been alleged that the applicant told the complainant that he and the co-accused Vipul Choudhari have on-line software, if he would invest the money in the share market systematically, he would get good returns. Therefore, the complainant invested the money. The complainant was told that the amount of Rs.5 Lakh was kept in fixed deposit in the name of Prafit Mart.

7. It has also been transpired in the investigation that the money has not been paid directly to the applicant. The said co-accused Vipul

(4)

Choudhari had issued cheques to some of the investors and those cheques were dishonoured and proceedings under Section 138 of the Negotiable Instruments Act, 1881, are pending against him.

8. Considering the overall facts of the case, it reveals that the complainant and others had dealings with Vipul Choudhari. There is no *prima facie* evidence against the applicant that he has misappropriated money of the depositors/investors. Considering his role, this Court is of the view that his custodial interrogation may not be required. Hence, the following order -

- i) The application is allowed.
- ii) The interim protection granted to the applicant by order dated 27.06.2022 is confirmed on the same terms and conditions with an additional condition to attend the police station as and when called by the Investigating Officer on written notice.

(S. G. MEHARE, J.)

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