IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1551 OF 2021

OMKAR VIJAY KSHIRSAGAR

VERSUS

THE STATE OF MAHARASHTRA

...

Mr. Rajesh More and Mr. V.H. Dighe, Advocates for the applicant

Mr. V.M. Kagne, APP for the respondent

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CORAM : SMT. VIBHA KANKANWADI, J.

RESERVED ON : 26th FEBRUARY, 2022

PRONOUNCED ON : 13th APRIL, 2022

ORDER :

1 The applicant is apprehending his arrest in connection with Crime No.193/2021 dated 03.08.2021 registered with Murum Police Station, Dist. Osmanabad, for the offence punishable under Section 420 read with Section 34 of the Indian Penal Code, 1860.

2 Heard learned Advocate Mr. Rajesh More for the applicant and learned APP Mr. V.M. Kagne for the respondent.

3 It has been vehemently submitted on behalf of the applicant that

the applicant has not committed any offence. He had not made any misrepresentation to any customers of the company. In fact, due to Corona pandemic new members were not incorporated by the existing members and, therefore, there was no income to the company during that period. Therefore, the business of the company has got down and because of that the amount could not be repaid. The scheme which was introduced was on direct marketing basis. All the entries were through banks. The scheme of the company was divided into two parts; one is Active plan and another is Passive plan. The learned Advocate for the applicant has then explained as to how the scheme was introduced. As per the company record, the informant has deposited amount of Rs.4,50,790/-, against which the company has credited amount of Rs.3,27,367/-, then, he has received the cloths of the suit total 62 pieces amount to Rs.1,22,760/-, thereby making it to the total to Rs.4,50,127/-. Thus, informant has received all the payments as per the schedule. The payment made by the informant to Rukmini Enterprises, Ambejogai is not concerned with the company by name Smart India Private Ltd., to which the present applicant is concerned. The offence that has allegedly committed is not punishable with death or imprisonment with life and, therefore, when nothing is required to be recovered from the present applicant, he deserves to be released on anticipatory bail. The informant is wrongly contending that he had received only Rs.1,60,000/-, which is contrary to the bank record. The learned Advocate appearing for the applicant has then demonstrated that as per the First Information Report Sr. Nos.17 to 22 are not concerned with Smart India Private Limited Company and it is wrong on his part to state that he along with others had deposited amount of Rs.22,00,000/- and they have been cheated. The applicant is ready to abide by the terms of the bail. So also, the Director of Smart India Pvt. Ltd. Co. Mr. Amitkumar Bashu Dange has been released by this Court on anticipatory bail on 30.11.2921 and, therefore, on the ground of parity also the applicant deserves to be released on bail.

4 Per contra, the learned APP has strongly opposed the application and submitted that the Investigating Officer had made correspondence to the Commissioner of Co-operatives, Pune to get the details about Smart India Company, however, reply has been received that Smart India Pvt. Ltd. Co. has not been registered under the Co-operative Societies Act. The arrested accused Amitkumar Dange and Sunil are not cooperating in giving addresses of the applicant as well as one Vishwas Jadhav. The present applicant is absconding and many times attempts were made to search him at Latur, Pune, however, they are not available at the possible addresses. In fact, the accused persons are conspired with each other and formed companies in the name of Smart India Pvt. Ltd. Co. and Rukmini Enterprises. They had given

promises of high returns and, therefore, the hard earned money was invested by people and now they are not getting the amount. As per the informant, he had deposited amount of Rs.11,26,740/- in Smart India Pvt. Ltd. Company through R.T.G.S. It is in the name of himself, his wife and son, however, he has got in return only the amount of Rs.1,60,000/-, in fact, the company had promised them that they would give return Rs.2,000/- per day. Promises were made through the company, especially by the applicant whenever the informant had met the Directors. The informant has also stated that other three persons have also been cheated by the accused persons and those other three persons have also not received benefits of their amount which was invested by them. The Investigating Officer has also stated that it appears to be a racket and possibility is that they might have cheated other persons also. Those persons who have been arrested have not produced the company documents. There are documents to show that the present applicant is the Director of the company. Therefore, he does not deserve to be released on bail when it is an economic offence.

5 At the outset, it is to be noted that this Court had granted anticipatory bail on 30.11.2021 to Amitkumar Bashu Dange and the order has been produced for the perusal of this Court. It appears that the said accused joined Network Solutions, IBM Company and then joined

Buddacharya PSB Network Private Ltd on 23.11.2019. It is then Smart India Private Ltd. Company had taken over Buddacharya PSB Network Private ltd. It was then observed that there is nothing on record to show that the said applicant was the Director of Smart India Private Limited Company and, therefore, naturally the discretionary relief has been granted to co-accused Amitkumar Bashu Dange, that cannot be taken as a ground of parity for this applicant.

6 There is evidence on record to show that the present applicant is the Director of Smart India Private Limited Company. Intentionally the applicant has not specifically stated as to what connection he has with Smart India Private Limited; yet he has disclosed as to how the schemes were to be implemented. Unless he has connection it cannot be said that it cannot be imagined that he will give the schemes in detail. Even the pamphlets appears to have been issued to promote the schemes, and in that the present applicant has been shown as Director. Further, it can be seen from the police papers that the informant has produced on record as to how he has deposited an amount of Rs.11,26,740/- with Smart India Pvt. Ltd. Company. He also tries to demonstrate that how he and his family members have received only Rs.1,60,000/- from the said company. Though the applicant has stated that the company record shows that the informant has invested only

Rs.4,50,790/-, it appears to be totally incorrect, taking into consideration the police papers, wherein the receipts and the bank slips have been produced. Further, the applicant says that the amount of Rs.3,27,367/- has been credited to the informant, but he has not produced any authentic record of the company. Those documents which have been annexed with Exh.'D' are the only computer generated documents and the credited amount documents appears to be in respect of Gaurav Enterprises and Shyamrao Ganpati Pawar. It is nothing to do with informant Ramesh Ananda Rathod. The delay in lodging the report alleged cannot be considered here. Unless the feeling of cheating is there, the person will not rush to police and if the promises are kept on giving, then, the person will believe in the same and may not feel that he has been cheated immediately.

7 It appears that the present applicant is absconding and the efforts by the police to nab him are in vain because he is absconding. It is also not made clear by the applicant, under which provisions of law the company was registered and whether there was audit every year or not. Those audit reports have not been produced. Though at this stage the Investigating Officer appears to have not undertaken the procedure under Section 82 and 83 of the Code of Criminal Procedure; yet, the efforts can be seen to arrest him.

8 The offence is certainly an economic offence and, therefore, this Court as well as Hon'ble Supreme Court in catena of Judgments have held that the Courts should be just in granting discretionary relief under Section 438 of the Code of Criminal Procedure to such offenders.

9 This is a serious economic offence and, therefore, in **State of Gujrat vs. Mohanlal Jitamalji Porwal and another, (1987) 2 SCC 364**, following observations have been made :

> "5. ….The entire community is aggrieved if the economic offenders who ruin 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 cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the 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 white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

9.1 Further, in **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation, (2013) 7 SCC 439** following observations have been made :

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public

funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

Both these cases have been considered in P**. Chidambaram vs. Directorate of Enforcement, (2019) 9 SCC 24**.

10 Thus, taking into consideration this legal position, this is not a fit case, where the discretionary extraordinary relief should be granted to the applicant. Application stands rejected.

(Smt. Vibha Kankanwadi, J.)

agd

Date : 13.04.2022.

Later on :

11 After the pronouncement of the order, learned Advocate appearing for the applicant prays for continuation of the interim protection granted to the applicant, however, in view of the detailed order the oral prayer is rejected.

(Smt. Vibha Kankanwadi, J.)

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