IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.1593 OF 2021

DHIRU KUMAR YADAV
VERSUS
THE STATE OF MAHARASHTRA

…
Mr. H. P. Randhir, Advocate for applicant.
Mrs. Vaishali Patil Jadhav, APP for the respondent – State.
…

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 20.01.2022

ORDER :-

. The applicant is apprehending his arrest in connection with Crime No.11 of 2021 registered with Cyber Police Station, Dist. Jalgaon for the offences punishable under Section 420 read with Section 34 of Indian Penal Code and under Section 66(D) of Information Technology Act.

2. Heard learned Advocate Mr. H. P. Randhir for the applicant and learned APP Mrs. Vaishali Patil Jadhav for the respondent – State.

3. It has been vehemently submitted on behalf of the applicant that the applicant has been falsely implicated. There are no criminal antecedents against the applicant. The offence came to be lodged after spending of 7 years, that means with huge delay of 7 years without

there being any explanation afforded by the informant. The custodial interrogation of the applicant is not necessary. Now, everything is recovered from the custody of the applicant and even the investigation officer issued notice under Section 41(A)(1) of the Code of Criminal procedure and directed him to remain present before the Police Station, however, under the misunderstanding and apprehension of arrest, the applicant had approached the learned Sessions Judge. When no such incident as alleged in the FIR has taken place, the applicant deserves to be released on anticipatory bail. He is ready to abide by the terms of the bail.

4. Per contra, the learned APP strongly opposes the application and submitted that the hard earned money of the informant and his family members to the extent of Rs.33,20,752/- have been extracted by giving false promises. No doubt, the applicant had come before the Investigating Officer, however, when actually the investigating team had gone to arrest him at Badalpur, Gautam Buddha Nagar, he complained of ill health and he was then admitted to the Government Hospital there. The investigation is still pending and since it is the economic offence, the applicant does not deserve to be released on bail.

5. Before the other things are considered, we are required to consider the contents/allegations in the FIR. Informant was residing

with his father, mother, wife and two children. Informant's father Ramesh retired as Agriculture Assistant in the year 2013. He was using mobile. Unfortunately, he expired due to Corona on 08.03.2021. His father had received a phone call in 2014 stating that one Gaurav Sharma was talking, who claimed to be the employee of Life Plus Insurance. He offered that if amount is invested in his company in the scheme which is for the pensioners, then that would give double benefits in four years. After gaining confidence, the father of the informant prepared in all 18 cheques and sent it on the addresses told by the said person. The amount was withdrawn through those cheques by the said person. Thereafter, either Gaurav Sharma or his superior officer used to talk with the father of the informant. They used to explain various schemes to the father. He has given all those details and it is also stated that even the informant had deposited certain amount. In all amount of Rs.33,20,752/- were deposited online. When the father of the informant asked for the return of amount in 2019, he received two cheques for Rs.30,00,000/- and 28,54,000/- respectively. After they were deposited in the bank by the father of the informant, they were bounced. When again the demand was made, three cheques were given. Those were also bounced. In March 2021, the father of the informant told the informant that Gaurav Sharma and Agrawal were talking from some different mobile numbers with him and then informant had tried to contact them. Those persons assured that they would return the amount, however, no such amount has been returned. After death of the father; the informant states that they realized that his father was cheated.

6. Whether there was delay in lodging the FIR or not will have to be considered on the basis of the evidence, because as regards the cheating is concerned, unless it comes to the knowledge of the person that he has been cheated, the period of limitation will not start. Alleged delay in lodging the FIR cannot be the criteria to grant the bail application. Here, the identity of the person itself has been intentionally hidden. No doubt, after the interim protection was granted by this Court, it appears that the applicant had tried to appear before the Investigating Officer and he had also even made complaint with Superintendent of Police, Jalgaon that the Investigating Officer is not responding properly, however, it is to be noted that at the same time the Investigating Officer has also supplied Medico Legal Injury Register, which shows that when he had gone to Badalpur on 18.10.2021, the applicant made complaint about his health and, therefore, he was taken to hospital. The police have come to the conclusion that the said person by name Gaurav Sharma is, in fact, the present applicant and it has been traced out on the basis of the mobile phones. Definitely, such kind of offences require thorough

investigation for which physical custody is required. Further, it is also to be noted that the offence that has been committed is 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....."

6.1 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***.

7. 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.]

scm