IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.58 OF 2020

Mr. Bhumik Gada & Another .. Applicants.
v/s.
The State of Maharashtra & Another .. Respondents.

Mr. Premal Krishnan with Mr. Preston Dias and Prashant Bothre i/b. Pan India Limited Services LLP, for the Applicants.
Mr. S. H. Yadav, APP for the Respondent-State.
Mr. Swaraj Jadhav, for Respondent No.1.
PSI Mr. Dinkar Kadam, Bandra Police Station present.

CORAM : PRAKASH D. NAIK, J.
DATED : 25th JANUARY, 2022
(**THROUGH VIDEO CONFERENCING)**

PER COURT:

1. This is an application for anticipatory bail in CR No. 429 of 2019 registered with Bandra Police Station, Mumbai for the offences punishable under Sections 406, 420, 465 read with Section 34 of the Indian Penal Code. The FIR was lodged on 24th May, 2019.

2 The case of the prosecution is as under:-

(a) Applicant No.1 had approached the complainant in February, 2017 and gave information about investments in shares. He represented himself to be a sub-broker. Pursuant to that, complainant had opened the demat account of Motial Oswal Company. Accused No.1 had executed in writing that he would not sell the shares without the consent of the complainant.

(b) On 17th March, 2017 and 28th March, 2017 shares were transferred. The value of which was Rs.48 lakhs. The amount of Rs.15,27,878/- was deposited in the bank account of the complainant and his wife.

(c) On 17th January, 2019 shares were transferred to the demat account of Motilal Oswal valued at Rs.50 lakhs. The complainant received returns of Rs.9 lakhs. Thereafter, Applicant No.2 who is brother of Applicant No.1 submitted statements.

(d) In 2019, complainant was in need of money. Hence, he requested transfer of shares into his account. Accused did not transfer the shares. Subsequently, Applicant No.1 had stated that there is a loss of Rs.45 lakhs and he would recover the said amount.

(e) On 11th January, 2019, applicants approached the complainant and informed that there is a loss of Rs. 49 lakhs. The applicants admitted that false statements were provided by them regarding the transaction of shares.

(f) The Accused executed writing on the stamp paper and assured that the payment would be made to the complainant. Cheques were issued by the accused. The said cheques were deposited by the complainant applicants which were dis-honoured. The complainant had verified the statements and found that the statement provided by accused did not match with the original statement. Complaint under Section 138 of the N. I. Act had been filed by the complainant which is pending in the concerned Court.

3 Applicant had preferred an application for anticipatory bail before the Sessions Court. The said application was rejected by order dated 6th January, 2020. The applicant than moved the present application. Vide order dated 9th January, 2020, interim relief was granted to the applicants on certain conditions including condition of attending the Police Station as and when called.

4 Learned Counsel for the Applicants submitted that during the pendency of this application, applicants had attended the Police Station and co-operated with the investigation. During the pendency of the application for anticipatory bail before the Court Sessions, interim relief was granted to them. Looking at the nature of matter, custodial interrogation of applicants is not necessary. There was no intention of cheating the complainant and

his wife. Applicants were threatened by the complainant and his relatives and forced to execute writing on the stamp paper. They were also forced to hand over the cheques. The complaint under Section 138 of N. I. Act is pending before the Court of learned Magistrate. Immediately after the applicants were threatened and forced to execute in to writing, applicants had forwarded the complaints to the Police. These complaints are annexed to application. Non Cognizable complainant was registered against complainant and his relatives. Applicant No.2 is sub-broker of Motilal Oswal Company. The Applicants have not misappropriated the amount of complainant. The loss was caused to the complainant on account of the fluctuation in share market. The company, M/s. Motilal Oswal had forwarded statement of transaction to complainant.

5 Learned APP submitted that the custodial interrogation of the Applicants is necessary to find out as to where fabricated stock holding statements were prepared and on whose instructions they were prepared. The false statements were forwarded to C.A. and in that report, investigation is required to be conducted. There is likelyhood that the Applicants may destroy the evidence. Loss of Rs.49 lakhs was caused to the complainant and his wife.

6 Learned Advocate for the Complainant/ Respondent No.2 submitted that the complainant is a senior citizen aged 80 years. He is retired from his employment. He was induced to indulgence in share trading. Assurances were given to complainant and his wife that the transactions in shares of Motilal Oswal Company would give them good returns. The complainant was mislead by the Accused. Fabricated statements were forwarded to them. Similar statement were also forwarded to the C.A. of the complainant. Huge loss of Rs.49 lakhs was caused to them. The amount has to be recovered. The accused has assured payments and also executed writing accepting the liability for false statements issued by them. They also handed over cheques. The complainant deposited the said cheques which were dishonoured. Hence, this application may be rejected.

7 I have perused the documents annexed to this application and the police report. It appears that Applicant No.2 is a sub-broker and dealing in share transaction. The grievance of the complainant is that, applicant No.1 has approached the complainant and pursuant to that, demat account of Motilal Oswal was opened. It is further alleged that the Accused had misappropriated the amount of Rs.49 lakhs. False statements were

issued to them. Whereas the contention of the applicants is that, complainant was updated about the transactions. E-mail by Motilal Oswal Company where the complainant had invested the amount in share transaction, was forwarded to the complainant. The transactions were executed in 2017 and 2018. Although, it is alleged that the applicants have admitted their liability by accepting in writing on the stamp paper immediately thereafter, the applicants have filed complaint about threats by the complainants and his relatives. N. C. was registered. Proceedings under the 138 of N. A. Act are also initiated and the same are pending in the respective Court.

8 Apparently, while investing the amount in shares, there is always risk of causing loss. FIR has been lodged in 2017. It appears that complaint was lodged by the complainant on 19th February, 2019 and after a period of about three months, FIR was registered. Applicants were granted interim protection during pendency of the application by the Sessions Court. Interim relief has been granted by this Court by order dated 4th January, 2020, which is in operation for a period of about two years. Applicants were directed to attend the concerned Police Station as and when called for. It is not disputed that the applicants have attended the

concerned Police Station. In the light of the factual aspect, the custodial interrogation of the applicants is not necessary.

9 Hence, the following order:-

ORDER

i. Anticipatory Bail Application No. 58 of 2020 is allowed. The interim relief dated 9th January, 2020 is confirmed;

ii. In the event of arrest of the applicants in connection with C.R. No. 429 registered with Hill Road Police Station, Bandra, Mumbai, the applicants be released on bail on furnishing P. R. Bond in the sum of Rs.25,000/- each with one or more sureties in the like amount;

iii. The applicants shall attend the investigating officer as and when called for till filing of charge sheet.

iv. Anticipatory Bail Application stands disposed of accordingly.

(PRAKASH D. NAIK, J.)