Diksha Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.146 OF 2020

AHMED BASHA SHAIKH .. APPLICANT

vs.

THE STATE OF MAHARASHTRA AND ANR. .. RESPONDENTS

WITH

INTERIM APPLICATION NO. 2993 OF 2021
IN
ANTICIPATORY BAIL APPLICATION NO.146 OF 2020

SUNI AUGUSTINE .. APPLICANT

VS.

STATE OF MAHARASHTRA & ANR. .. RESPONDENTS

Mr. Sujay Gawde a/w Mudita Pawar i/b. Shree and Co. for the Applicant in ABA/146/2020.

Smt. Veera Shinde, APP for the State.

Ms. Genevieve Lobo i/b. Mr. A. A. Patil for interveners in IA/ 2993/21.

PSI Nitin Mudgun, EOW-1, Navi Mumbai.

CORAM : M. S. KARNIK, J.

DATE : FEBRUARY 16, 2022.

P.C. :

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel appearing on behalf of the interveners.

2. On January 27, 2020, the following order was passed by this Court in this application while granting interim protection.

> "1. Leave to amend. Applicant to implead the complainant as respondent no.2.
>
> 2. Issue notice to respondent no.2 returnable on 7th February, 2020. Learned APP to inform to the complainant that the application shall be heard on 7th February, 2020 at 3.00 p.m.
>
> 3. Counsel for the applicant, on instructions, undertakes to pay Rs.1,25,000/- to the complainant by Demand Draft on/or before 7thFebruary, 2020. The Undertaking is accepted.
>
> 4. Applicant is a Director of Priority International Holiday Club Private Limited. The membership was offered to the complainant with an assurance to provide certain services like; to make available holiday homes to members. Additionally, the applicant was told that Priority International Holiday Club Private Limited has a tie-up with five and three stars hotels like, (I) Sun and Sand Hotel, Pune, (ii) Raami Grand Hotel, Pune, (iii) Sea Princess Hotel, Mumbai, and also with (iv) Talwalkar's Gym and (v) Y.F.C. Gym, Vashi and he can avail this facility. However, when the applicant made enquiries, he was informed by the abovenamed Hotel Establishments that, Priority International Holiday Club Private Limited has no tie-up with them. In short, the complainant was deceived and persuaded to part with Rs.1,35,000/-, on false promise which caused unlawful gains to the applicant.
>
> 5. Besides, it appears there are other members, who were allegedly duped by the Company by projecting and promising attractive holiday home packages against the

> membership.
>
> 6. Be that as it may, since the applicant has undertaken and agreed to repay Rs.1,25,000/-to the complainant within two weeks, stand over to7th February, 2020 for further consideration.
>
> 7. In the meantime, in the event of arrest of the applicant is directed to be released on bail in Crime No. 45/2018 registered with APMC Police Station, Navi Mumbai, District-Thane with one or two sureties in the like amount.
>
> 8. The applicant shall report to the Investigating Officer on 2nd and 5th February, 2020 between 11:00 to 1:00 p.m.
>
> 9. The applicant shall furnish the particulars of his place of residence and contact details to the Investigating Officer of the Police Station concerned within seven days from today.
>
> 10. The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.
>
> 11. Stand over to 7th February, 2020."

3. Pursuant to the order passed, it is not in dispute that the applicant complied with clause (6) of the order. Thereafter, the matter appeared from time to time. On October 30, 2021, the following order came to be passed.

> "Learned APP has submitted that a report of the Investigating Officer indicating the amounts which have been obtained from the gullible members but not yet returned.
>
> 2. Learned counsel for the Applicant seeks time to take instructions, as he has just received a copy of the chart submitted by the Investigating Officer. List the Application on 18.11.2021 at 5.00 p.m.
>
> 3. The ad-interim order already in operation to continue till then."

4. This Court next considered the matter on November 18, 2021 and upon hearing learned counsel for the applicant passed the following order:-

> "Learned counsel for the applicant submits that the applicant had floated a scheme for availing paid holidays. Accordingly, deposits were accepted. In his submission, the amounts are lying with the bank. He, further submits that in respect of the holidays already utilised, to that extent the amounts have been debited. Pursuant to the initiation of these proceedings the bank accounts have been freezed.
> 2. Learned APP urged that the applicant must co-operate with the investigation and furnish all details so as to enable him to make appropriate submissions.
> 3. The applicant to attend the concerned investigating officer of the EOW-I, Navi Mumbai, on 23rd, 25th and 27th November, 2021 between 11.00 a.m. and 1.00 p.m. and thereafter as and when called.
> 4. Stand over to 1/12/2021, at 5.00 p.m.
> 5. Interim order granted earlier to continue till then."

5. The applicant failed to attend the investigating officer on the dates he was supposed to report, hence, the following order came to be passed on December 2, 2021.

> "1. Learned counsel for the applicant submits that the applicant could not attend the Investigating Officer in terms of the order dated 18.11.2021, as the applicant was suffering from viral fever. Reliance is placed on medical certificate indicating that the applicant has been advised rest for one week from 23.11.2021.
>
> 2. Learned APP on instructions opposed the application.
>
> 3. Only by way of indulgence and as a last chance, the applicant is directed to attend the Investigating Officer of the EOW-I, Navi Mumbai on 6th, 7th and 8th December 2021 between 11.00 a.m. and 1.00 p.m.
>
> 4. List the application on 09.12.2021.

> 5. The ad-interim order already in operation to continue till then.”

6. It is not in dispute that the applicant co-operated with the investigation but learned APP submits that some documents are yet to be submitted by the applicant. There was some debate about the exact amount of deposits which the complainant and other victims seek refund. Accordingly, on December 10, 2021, it has been recorded thus:-

> “1. It is pointed out by learned counsel for the applicant that the money deposited by the complainant has been refunded to him by the applicant. So far as the other claimants, who have come forward, it is pointed out that the claim is to the extent of Rs.72,68,551/-. To secure this claim, it is pointed out by learned APP that in the bank accounts which are freezed there is sum of Rs.11,52,637/-. Learned counsel for the applicant submits that services to the extent of Rs.29,68,079/- have been provided. Learned APP to verify.
>
> 2. Learned counsel for the applicant requests for time to file an affidavit and appropriate undertaking as to the manner in which the balance claim can be secured.
>
> 3. Affidavit and the undertakings to be filed within two weeks from today with an advance copy to the learned APP and learned counsel for the complainant.
>
> 4. List the matter on 06.01.2022 at 5.00 p.m.
>
> 5. Interim protection granted earlier to continue till 20.01.2022.”

7. Learned counsel for the applicant submitted that there was no intention on the part of the applicant to cheat the members who had made advance deposits towards paid holidays. According to him, as many as 300 members have fully availed of the holidays to the extent of the value of the

deposits made. It is on account of some difficulties beyond the control of the applicant that the members could not and in some cases partly, avail the benefits of the membership scheme floated.

8. In these circumstances and over the interveners expressing concern about the security of the deposits, I called upon the applicant, if he is willing to secure the amounts of deposits so made to test the bonafide of the applicant. The applicant has filed an undertaking indicating that he is ready and willing to deposit the amount of Rs. 31,47,835/- within a period of one (1) year from the date of undertaking i.e. December 23, 2021.

9. Learned APP having gone through the undertaking and on instructions, submits that the amount that needs to be secured is Rs.43,00,472/-, as it is to the extent of this amount that the membership has not been availed of.

10. Learned counsel for the applicant disputes this. Nonetheless, on instructions of the applicant, learned counsel for the applicant indicated his willingness to secure the amount of Rs.43,00,472/- but requests for time to deposit this amount.

11. Learned counsel appearing on behalf of the interveners which opposing the application submitted that the members have been duped of their hard earned money. In any case, she submits that the amount of Rs.43,00,472/- must be secured at the earliest. She submits that the

applicant does not deserve to be granted one (1) year's time to deposit the amount as it will seriously prejudice the members.

12. In the order dated December 10, 2021, it is already recorded that an amount of Rs.11,52,637/- is lying in the bank account of the applicant which is since freezed. Furthermore, the services to the extent of Rs.29,68,079/- by and large have been provided to the members under the membership scheme. The applicant has been granted interim protection by this Court since January 27, 2020.

13. Learned counsel for the applicant, on instructions, agrees that the figure in the undertaking dated December 23, 2021 of Rs.31,47,835/- be read as Rs.43,00,472/- in view of the objection of learned APP. Learned counsel submits that the installments mentioned in paragraph 1 will now undergo a change. On instructions, learned counsel for the applicant undertakes on behalf of the applicant that a sum of Rs.43,00,472/- will be deposited with learned Judicial Magistrate First Class, Vashi Court, within a period of one (1) year from December 23, 2021. The said amount shall be deposited in the following manner:

(i) First installment of Rs. 21,50,236/- to be deposited on or before June 23, 2022.

(ii) Second installment of Rs.10,75,118/- to be deposited on or before September, 2022.

(iii) Third installment of Rs.10,75,118/- to be deposited on or before December, 2022.

14. The undertaking of the applicant given to this Court that the amount of Rs.43,00,472/- to be deposited in the manner indicated above as per the time schedule stipulated, is accepted.

15. Learned APP, on instructions of the investigating officer who is present in the Court submits that the applicant has co-operated with the investigation but there are some documents which applicant has not yet produced. Learned counsel for the applicant submits that whatever documents are required by the investigating officer, will be furnished and that he will continue to co-operate with the investigation.

16. The case mainly rests on documentary evidence. The applicant is co-operating with the investigation. In this view of the matter, in my opinion, the custodial interrogation of the applicant is not necessary. Hence the following order.

ORDER

(i) The application is allowed.

(ii) The interim protection granted by this Court on January 27, 2020 is confirmed.

(iii) In the event of arrest of the applicant in connection with Crime No. 45/2018 registered with APMC Police Station, Navi Mumbai, District-Thane, the applicant shall be released on his executing PR bond in the sum of Rs.25,000/- with one or more sureties in the like amount.

(iv) The applicant to abide by the undertaking given to this Court in terms of what is set out in paragraph 13 of this order. The deposit so made shall abide by the orders of the trial Court.

(v) The applicant to surrender his passport to the investigating officer forthwith. It is open for the applicant to apply for release of passport to the trial Court upon compliance with the undertaking.

(vi) The applicant to co-operate with the investigation and report to the investigating officer as and when called.

(vii) The applicant shall not tamper with the evidence or attempt to influence or contact the complainant, witnesses or any person concerned with the case.

(viii) In the event of breach of the undertaking, it will be open for learned APP and/or the interveners to apply for cancellation of pre-arrest bail.

(ix) The anticipatory bail application and interim application are disposed of.

(M.S.KARNIK, J.)