IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.239 OF 2022

Ratna Anil Tare .... Applicant
Versus
The State of Maharashtra .... Respondent

…..
WITH
INTERIM APPLICATION NO.368 OF 2022
IN
ANTICIPATORY BAIL APPLICATION NO.239 OF 2022

Mukta Krishna Dev …. Applicant
IN THE MATTER BETWEEN
Ratna Anil Tare .... Applicant
Versus
The State of Maharashtra .... Respondent

Mr. Ghanshyam Upadhyay, Advocate i/b. Law Juris for the Applicant in ABA/239/2022.

Smt. J.S. Lohokare, APP for the Respondent-State.

Mr. Rajas Naik, Advocate for the Intervener in IA/368/2022.

CORAM : SARANG V. KOTWAL, J.

DATE : 1st FEBRUARY, 2022
[Through Video Conferencing]

P.C. :

1. The applicant is seeking anticipatory bail in connection with C.R.No.283/2021 registered at Palghar Police Station on 21.12.2021 under Sections 406, 420, 465, 467, 468, 471, 474 read with 34 of the Indian Penal Code and under Sections 3 and 4 of the Maharashtra Protection Of Interest Of Depositors (In Financial Establishments) Act, 1999.

2. Heard Shri Ghanshyam Upadhyay, learned counsel for the applicant and Smt. J.S. Lohokare, learned APP for the State.

3. The FIR is lodged by one Mukta Dev. She has stated that she was residing with her family. Her husband was retired and her son was in service. In August, 2020, the applicant and her husband along with their daughter Nikita approached the informant at her house. The informant was knowing the applicant from the childhood. The applicant told the informant that they had started one credit society by the name 'Ratnadeep

Co-operative Credit Society Ltd.' at M.V. Super-market. She told the informant that if the victim invested in that credit society, she would get interest @ 15% per annum. The informant accepted the proposal and believing the applicant, on 5.9.2020 opened an account with the applicant's daughter Nikita Tare and an account number was given to the informant. Initially she deposited Rs.7,020/- in cash in that account. Subsequently, more amount was deposited. The informant was given a pass-book of the credit society. The pass-book was signed by the clerk working in that credit society. The informant in good faith told her relatives and friends about the investments in the credit society and accordingly they also invested various amounts from time to time. The FIR mentions names as Nikhil Dev, Vilas Chavan, Ramesh Chavan, Milinda Vaiti, Hemant Dhanu etc.. The allegations are that, in all, they deposited Rs.22,64,740/- in Ratnadeep Co-operative Credit Society. They were to get 15% interest per annum as promised.

4. On one occasion the applicant, her husband and

daughter came to the informant's house and requested her to invest Rs.35 Lakhs with the credit society and assured that they would return that amount within two months. This amount was asked for as a financial help. The informant discussed this with others and gave Rs.33,34,250/- to the applicant. The FIR mentions the details of such payment. It is case of the informant that after receiving this further amount, the applicant and other family members did not contact the informant. When the informant questioned the applicant and her family, they assured the informant that since the lock-down was imposed that time, the amount would be returned after a few days. Subsequently, they avoided the subject. The informant tried to contact the applicant telephonically but most of the time the call was not taken. There are allegations that the informant and others went to their house, but, found that the house was locked. On enquiries with the neighbours, they came to know that all of them were not seen in their house. They were also not found in their other flat at Virar. The informant has stated that the applicant had blocked the telephone numbers of the investors mentioned in the FIR. The informant realized that she and others were cheated to the total amount of Rs.55,98,990/-. The amount was misappropriated. On these grounds, the FIR was lodged.

5. Shri Upadhyay, learned counsel for the applicant made following submissions:

i. The FIR suppresses the material facts.

ii. The applicant herself is a victim to the knowledge of the informant and other investors.

iii. The investors had taken possession of the applicant's daughter's flat forcibly. The tenant was removed. For that, the applicant's daughter had made complaint and had got possession of the flat back.

iv. The applicant had made a complaint to the Senior Inspector of Police, Borivali on 5.9.2021. The applicant's Advocate also had written a complaint to the Deputy Commissioner of Police, Zone-XI, Borivali, Mumbai on 19.10.2021. In those complaints, grievance was made against Ashok Kamble, Deepali Utekar, Rahul Kudiya, Jafar Khan, Shrikant Patil, Nitin Pote, Radhika Pote, Ajit Lad and Surendra Devrukhkar. It was case of the applicant that as per the suggestions of these persons, the applicant had given them the amount for depositing in different schemes. The amount given by the applicant was misappropriated by these persons and, thus, the applicant herself is the victim and she is not an offender.

v. The applicant's daughter Nikita had addressed complaints to various authorities making allegations against the investigating officer, particularly in respect of the incident dated 24.12.2021. In that complaint, it was alleged that the investigating officer and other police officers had visited her residence and had taken herself, her parents along with her three year old disabled child into his custody and had taken them to Borivali police station. They had entered the house and had taken charge of certain ornaments and cash amount without preparing any panchnama and all this could be verified from the CCTVs installed in the building.

vi. The investigating officer is acting in collusion with the complainant and other investors.

vii. Acceptance of the amount and not refunding that amount is not an offence. The FIR does not show or mention that there was any dishonest intention on her part; which was a pre-requisite for registering the offence.

viii. In any case the offence pertains to documentary evidence and bank entries; and, therefore, custodial interrogation of the applicant is not necessary.

6. Learned APP responded to these submissions. The investigating officer is also present in the Court. Learned APP made following submissions:

i. The applicant started Ratnadeep Co-operative Credit Society, but, it was not registered. She was in control of that credit society with the co-accused Dipali Utekar. At her instance, some of the investors also deposited amounts in the account of the credit society and some of the amount was deposited in her personal account.

ii. The money is lost. The investors have not got anything for their investments. There are other 2-3 investors who have similarly lost their investments.

iii. As far as the incident dated 24.12.2021 is concerned, the investigating officer had taken permission from the superior officers in the Zone. He had taken help of local police station; and after completing all the formalities had gone to the house of the applicant's daughter and, therefore, there was nothing illegal about it.

iv. She finally submitted that to trace money and to find out the *modus operandi,* the applicant's custodial interrogation is necessary.

7. Learned counsel for the intervener adopted the submissions advanced by learned APP and added that the investors have suffered monetary losses in respect of their hard-earned money.

8. I have considered these submissions. As far as the grievance against other accused made by the applicant is concerned, that is totally a different subject matter. The FIR in the present case is very specific. Inducement was made by the present applicant and investment was made by the informant and others on the inducement made by the applicant herself. There was no reference to other persons to whom the applicant has given money. The applicant had not mentioned that the investments taken from the informant and others would be further invested in different schemes of other accused against whom the applicant had grievance as noted in her complaint before the police officers. Therefore, that is a separate subject matter for which the applicant has remedy against those persons, if any offence is committed against her.

9. As far as the present informant and other investors are concerned, their grievance is reflected in the FIR. The FIR is quite elaborate. Inducement made by the applicant is mentioned. In the first part of the FIR, it is mentioned that the

amount was accepted as investment in the credit society for which even the pass-books were issued. In the later part of the FIR, there is a reference to the amount which was taken as a financial help on the promise of returning the same. On both these counts, the amount was not returned and dishonest intention was clear from the very inception. The offence is clearly made out.

10. As far as the incident dated 24.12.2021 is concerned, learned APP has pointed out that the investigating officer had obtained requisite permissions and there was no breach of any legal requirement. If the applicant has any grievance regarding the same, she can always take recourse to appropriate remedies. Today I am only considering the issue of grant of anticipatory bail and, therefore, I am not making any observation on the claim and counter-claim about the incident dated 24.12.2021.

11. As pointed out by learned APP, some amount has also gone to the personal account of the applicant and some

amount had gone to the credit society which was not even registered. The entire transaction is illegal. Therefore, the applicant's custodial interrogation to find out *modus operandi* and money trail is necessary. No case for grant of anticipatory bail is made out. The application is rejected. With disposal of this application, interim application for intervention also stands disposed of.

12. At this stage, learned counsel for the applicant prayed for stay of this order for a period of four weeks. However, considering the fact that the offence is serious and practically no investigation can proceed in the absence of custodial interrogation of the applicant, this prayer is rejected.

(SARANG V. KOTWAL, J.)

Deshmane (PS)