IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 940 OF 2022

Salman Shiraj Shaikh @ Yash Shetty ..Applicant

v/s.

The State of Maharashtra . ..Respondents

Mr. Rammani G. Upadhyay for the Applicant.
Mrs. S.S.Kaushik, APP for the State.

CORAM : ANUJA PRABHUDESSAI,J.
DATED : 26th APRIL, 2022.

P.C.

1. This is an application under Section 438 Cr.P.C. for pre-arrest bail in C.R.No. 757 of 2021 registered with Malad Police Station for offences under Section 420, 406, 465, 468, 471, 504 r/w. 34 of Indian Penal Code and Section 66(c) and 66(d) of Information & Technology Act.

2. Mr. Upadhyay, learned Counsel for the Applicant states that the Applicant was an employee of the Accused No.1 and that he was paid Rs.1,00,000/- per month as salary. He submits that whatever money he has received from the Accused No.1 has been utilized for payment of salaries of the other employees and to meet the other office expenses. He submits that there is absolutely no material on record to prove that the Applicant is involved in commission of the said crime.

3. Per contra, Mrs. Kaushik, learned APP, states that amount of

Rs.11,00,000/- has been transferred from the account of the Accused No.1 to the account of the Applicant. She submits that the statements of the employees have been recorded and the employees have stated that they have not been paid their salaries. She submits that there is direct nexus between the Applicant and the main accused. She submits that in the course of investigation, it is revealed that apart from the two accounts, the main Accused Nisha has other account numbers and that several other victims are coming forward with a grievance that they have been cheated.

4. I have perused the records and considered the submissions advanced by the learned Counsel for the respective parties .

5. The aforesaid crime was registered pursuant to the FIR lodged by Rajeshkumar Pawade. A perusal of the FIR prima facie reveals that a friend of the Complainant by name Sarthar Qasim Abdul Wahab, a resident of Tamil Nadu has his jewellry shop at his native place. Sometime, in the month of August, one Prabhat Pujari, informed the Complainant that one lady by name Nisha is in the business of sale of gold at a rate which is 20% lower than the market rate. The purchaser was required to pay only 1% of the sale price and the balance amount was to be paid on receipt of gold, for which a bill would be issued.

6. The Complainant and his friend visited to the office of Nisha. The first information report reveals that the accused was present in the office and that co-accused Nisha had introduced him as her partner in the

business of sale of gold. The Complainant decided to buy gold worth Rs.40,00,000/- for his friend Sarthar Abdul Kasim Wahab. The Accused No.1 gave him the account number, and accordingly the Complainant transferred an amount of Rs.4,00,000/- being 1% of the sale price. The co-accused Nisha assured him that the gold would be delivered within a period of three days, but the gold was not delivered. The co-accused Yash Shetty, as well as the Applicant herein assured the Complainant that he would receive the gold. Subsequently, the co-accused agreed to refund the money and sent a screen shot to the Complainant stating that Rs.4,00,000/- had been transferred to his account, but due to some reasons the amount was not being credited. The Complainant having realized that he was cheated, filed the FIR.

7. The records prima facie indicate that the Complainant has transferred money in the account of the main accused Nisha. Nisha, had assured to sell gold to the Complainant. She has neither sold the gold nor refunded the money. On the contrary, she had sent false and fabricated screen shot indicating that the money was transferred to the account of the Complainant. The statement of the Complainant prima facie reveals that the co-accused had introduced the Applicant as her partner in the business of sale of gold. The records also prima facie indicate that total sum of Rs.11,00,000/- has been transferred from the account of the main accused Nisha to the account of the Applicant. Though the Applicant claims that he was an employee of Nisha, and that

he was paid salary of Rs.1,00,000/- per month, he has not produced any such material to substantiate the said claim. Though the Applicant has stated that the amount received by him from the Accused No.1, was utilized for payment of salaries of the other employees, the statements of the employees prima facie reveal that they have not received their salary and that the Applicant has not paid to them any such amount. Prima facie, there is nexus between the Applicant and the co-accused Nisha. Apart from the Complainant, some other customers have also been duped. The crime needs thorough investigation. Considering the nature of accusation and the role of the Applicant, in my considered view, this is not a fit case for grant of pre-arrest bail. Hence the Application is dismissed.

(ANUJA PRABHUDESSAI, J.)

PRASANNA P SALGAONKAR

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