IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 374 OF 2023

AMOL POPATRAO METE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

Mr. A. A. Yadkikar, Advocate for the applicant
Mr. S. N. Morampalle, APP for the respondent/State

CORAM	:	**R. M. JOSHI, J.**
RESERVED ON	:	**22/06/2023**
PRONOUNCED ON	:	**30/06/2023**

ORDER :-

1. Applicant apprehends arrest in connection with Crime No. 09/2023 registered with Tophakhana Police Station, Tal. And Dist. Ahmednagar for the offences punishable under Sections 420, 406 read with 34 of IPC.

2. It is the contention of the informant that friend of her husband told to them about a company at Pune which provides machine of extracting of oil for Rs.3 lakhs and it also provides raw material and against the extraction of oil company pays Rs.25,000/- per month apart from bearing electricity bill. It is stated that Saket Patil approached to the husband of informant and apprised him about the scheme. Thereafter he received phone call from Bandu Wagh and that time informant and her husband were called. In person they were explained

scheme and had also shown the previous agreement between Bandu Wagha and present applicant in partnership firm. Since it was corona pandemic time informant thought it is as a source of income working from home. She, therefore, entered into the agreement with the partnership firm as per the scheme and at that time Neeta Patil and Nilima Khatekar were also present. Bandu Wagh had asked informant to send Rs.3 lakhs on the account of the company and thereafter the said machine was delivered to her. Thereafter after about 5 to 6 days groundnuts were sent and it was assured that oil extracted from the said groundnut shall be purchased by company. Initially, for first two months informant received Rs.25,000/- per month, however thereafter the company has stopped supplying raw material on the pretext of non availability of the same. When they were questioned about it, false excuses were given and it was reveled to the informant that she has been cheated. On the basis of these allegations, offence came to be registered against present applicant and others.

3. Learned counsel for the applicant states that though the applicant was initially partner of the said unregistered partnership firm however he has retired from the partnership vide agreement dated 24/02/2022. It is submitted that thereafter he was not concern with the same said business of the partnership and is not a responsible for acts done by the other partners, if any. Without prejudice to this submission,

it is further contended that there is no dispute about the fact the machine which was agreed to be sold is already delivered and therefore case of even breach of contract can not be made out. It is further submitted that the informant is trying to give criminal colour to the transaction, which is purely civil in nature and therefore, applicant is entitled for anticipatory bail. He also placed reliance on Section 32 of the Partnership Act and according to him in view of the said provision there is no liability of applicant in respect of the business of the partnership firm.

4. Learned APP opposed the application with submission that the agreement between the parties clearly shows that it was not transaction of sale of machine but it was a scheme of investment for the period of 24 months as stated in the said agreement. It is contended that there is inducement caused by the applicant and co-accused to the informant to purchase the machine of Rs.3 lakhs with assurance that for 24 months there would be supply of raw material and per month Rs.25,000/- would be received for extraction of oil. He submitted that it is a scam wherein number of other persons are cheated in similar manner. Thus, according to him, having regard to need of custodial interrogation applicant is not entitled to seek anticipatory bail.

5. *Prima facie* perusal of the first information report indicates that though the present applicant has never personally met the

informant but First Information report indicates about present applicant being projected as partner of the company. It is not in dispute that the applicant was partner of Biolife Agro and Family Wellness at the relevant time, since agreement in question was executed on 26/06/2021 and the amount was transferred by the informant to the account of partnership firm on 07/07/2021.

6. It is pertinent to note that even before execution an agreement with informant, she was shown various agreements executed by the partnership firm in order to convince her for the said transaction. Investigation papers indicate that there are number of agreements with other person to whom similar assurance was given of providing regular monthly income. Even though there is no specific statement in the first information report about applicant No.1 falsely inducing the informant for purchase of the said machine however being partner of the said firm applicant is beneficiary of the said transaction. Section 32(3) of Partnership Act, provides that notwithstanding retirement of partner from firm, he and partners continues to be liable as partners to third parties for any act done by any of them before retirement, until public notice is given of the retirement. There is nothing on record to indicate any public notice being given by applicant in this regard. Proviso to this section also does not make such partner liable if third party deals with firm without knowledge that he was a partner. From first information

report however it is clear that informant had knowledge that applicant is partner of firm. Merely because applicants subsequently got himself retired from the firm, he is not discharged from liability towards third party arising out of transaction with firm.

7. Apparently, present case is not case of pure sale of machine against receipt of the consideration. As indicated by the agreement it was a scheme with assuring to the purchaser of the said machine of regular income at least for a period of 24 months. Thus, this appears to be a case of investment scheme rather than case of sale of machine as sought to be made out by the counsel for the applicant. This is not an isolated transaction in which the machine is sold on apparent false assurance of regular income and applicant is cheated but material collected during investigation shows that other persons are also cheated in similar way. For the purpose of proper investigation of this crime and to unearth the entire scam and to ascertain other victims, the custodial interrogation of the applicant would be necessary. He is also required to be questioned about manner in which benefit of scheme is obtained by him with money trail.

8. In aforestated circumstances, applicant is not entitled for anticipatory bail. Hence the application stands dismissed.

(R. M. JOSHI, J.)

LATER ON:

1. After pronouncement, learned learned Counsel for the applicant seeks extension of ad-interim protection for a period of two weeks.

2. Learned APP opposed the said request.

3. Since protection was continuing for last two months, it is extended by two weeks.

(R. M. JOSHI, J.)

ssp