IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.435 OF 2022

Pankaj Sheshrao Chavan ...Applicant

Versus

The State Of Maharashtra ...Respondent

Mr. A.S. Barlota, Advocate for the applicant.
Mr. V.S. Badakh, APP for respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 16th JANUARY, 2023

ORDER :

1. The applicant apprehends arrest in Crime No. 26/2022, registered with Bidkin Police Station, for offences punishable under sections 420, 406 read with 34 of the Indian Penal Code and under section 3 of the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999.

2. First Information Report is lodged by Daulat Rathod against (1) Krushna Eknath Rathod, (2) Pankaj Sheshrao Chavan and (3) Santosh alias Sachin Namdev Rathod, alleging that since last few years a scheme namely, 30-30 investment scheme was being operated in Bidkin town and adjoining area. In the said scheme he invested through his relative Krushna Rathod

(Accused No. 1). He was given assurance that handsome returns will be given to him on the said amount. Accordingly, from time to time he invested amounts in the said 30-30 scheme, in the account of Krushna Enterprises, owned by Accused No. 1-Krushna Rathod. Informant also invested Rs. 6,00,000/- by way of RTGS in the account of PS Enterprises and Multi Services, owned by the applicant, on 06.05.2021. Rupees 9,00,000/- was paid to the applicant at the house of informant which the applicant handed over to head of 30-30 scheme namely Santosh alias Sachin Rathod. Total amount of Rs. 15,00,000/- was invested by informant, in return he was to get Rs. 50,000/- per month. However, no amount as assured was paid to informant. When the informant contacted Krushna Rathod and applicant, they told him that head of 30-30 scheme i.e. Santosh alias Sachin Rathod is not ready to return the amount of investors and therefore, informant should not ask them money.

3. After registration of crime investigation was conducted and charge sheet is filed against six accused persons, including present applicant, being Accused No. 2. Anticipatory bail application filed by the applicant after filing of charge sheet is rejected. Hence, the present application.

4. Heard the learned advocate for the applicant and learned Additional Public Prosecutor for respondent. Perused the investigation papers and charge sheet.

5. Learned advocate for the applicant strenuously submits that the applicant's accounts statement and other documents are seized by the police authorities. For verifying account details, presence of applicant is not necessary. By relying on ***Sushila Aggarwal and Others Vs. State (NCT of Delhi) and Another***, (2020) 5 SCC 1, he submits that the applicant can be interrogated while on interim anticipatory bail. Even he can be deemed to be in custody and recovery under section 27 of Evidence Act, can be effected from the applicant. By relying on ***Arnesh Kumar Vs. State of Bihar***, (2014) 8 SCC 273, he submits that maximum punishment for offence under section 420 of IPC is seven years and under section 3 of MPID Act, six years punishment is prescribed. Therefore, applicant deserves protection in terms of ratio in Arnesh Kumar (supra) and since charge sheet is filed applicant's custody is not necessary.

6. Learned Additional Public Prosecutor strenuously opposed the application contending that it is revealed during the investigation that there were six partners in 30-30 scheme and

the applicant is one of them. Poor people were duped by racket of the applicant and other partners for crores of rupees. They were induced to invest in 30-30 scheme with a false assurance of handsome returns. The applicant has opened a company by name PS Enterprises and Multi Services, which is not registered. There is no GST registration of the said company, so also there is no office address. Call Details Report shows that the applicant was in constant contact with Accused No. 1 as well as other partners. ICICI bank account statement of the applicant shows that applicant has done transactions of Rs. 28 Crore with Accused No. 1. The applicant has attended meeting arranged by Accused No. 1 in J.W. Marriott Hotel, at Kolkata.

7. After grant of interim protection, investigation officer went to the residence of the applicant and informed the inmates to send the applicant for interrogation, but the applicant has not attended the police station and has not co-operated in the investigation. Further submission is that the custody of the applicant is necessary to seize record in respect of PS Enterprises and Multi Services and to verify and ascertain as to whether applicant has other accounts in different banks. Since offence is registered under MPID Act, movable and immovable

properties of the applicant are required to be identified. He therefore, submits that the applicant does not deserve discretionary relief of anticipatory bail.

8. It appears from the record that arrested accused Sachin alias Santosh Namdev Rathod has deceived agriculturists and middle class depositors for crores of rupees in collusion with his partners including the applicant. From bank transactions between accused Sachin Rathod and present applicant and other partners it was found that total 126 depositors have deposited the amounts and statements of 35 witnesses/depositors are recorded, who had deposited total amount of Rs. 68,12,49,000-/. in the account of accused Sachin Rathod or applicant or accused Krushna Rathod, Shakil Khan, Suryakant Rathod and Sushil Yadav. Total amount of Rs. 28,36,35,665.35/- is deposited in the account of present applicant.

Accused persons in the present crime have lured agriculturists and middle class depositors to invest in their 30-30 scheme on false assurance of giving 30% return on the invested amount. Deposits in the account of applicant and withdrawal and transactions between applicant and accused Sachin Rathod prima facie, fortifies the prosecution case that applicant was partner in 30-30 scheme and he has played active role in the said scheme.

9. After grant of interim protection though investigation officer by going to the residence of the applicant informed that applicant's presence is necessary for investigation, applicant has failed to attend the police station and did not co-operate in the investigation.

10. Though charge sheet is filed in the present case, applicant is shown as absconding accused and charge sheet is filed against the applicant under section 299 of Cr.P.C. Thus, for effective investigation custody of the applicant is necessary.

11. There is substance in the contention of the prosecution that to seize record of PS Enterprises and Multi Services and to verify whether applicant has other accounts in different banks, applicant's custody is necessary. Since provisions of MPID Act are made applicable to the present crime, other movable and immovable properties of the applicant are required to be identified. For that purpose also custody of the applicant is necessary.

12. For the aforestated reasons, applicant is not entitled for discretionary relief of anticipatory bail. The application is therefore rejected.

13. At this stage, learned advocate for the applicant requests for continuation of interim protection granted in favour applicant. For the reasons stated in the order, request is rejected.

[NITIN B. SURYAWANSHI, J.]