IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 585 OF 2023

Arif Akbar Shaikh,
Age 28 years, Occ: Labour,
R/o. Pargaon (Jogeshwari),
Tq. Ashti, District Beed. **...Applicant**

Versus

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Ashti,
Tq. Ashti, Dist. Beed.

2. The District Superintendent of
Police, Beed **...Respondents**

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Mr. S. S. Thombre, Advocate for Applicant.
Mr. V. S. Badakh, APP for Respondent – State.
Mr. A. T. Jadhavar, Asst. to P.P.

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CORAM : R.M. JOSHI, J.

RESERVED ON : JUNE 20, 2023
PRONOUNCED ON : JUNE 23, 2023

ORDER

1. Applicants apprehend arrest in connection with C. R. No. 108 of 2023 registered with Ashti Police Station, Tq. Ashti, Dist Beed for the offences punishable under Sections 406, 408, 420 of Indian Penal Code and Sections 66(C) & (D) of the Information Technology Act, 2008.

2. Informant in his report stated that he is in the business of gas agency in the name and style "Bharat Gas Agency" since 2011. It is further stated that amongst other employees, Applicant was employed as Manager for last five years. He is responsible for distribution of gas cylinders and maintaining accounts. It is stated that since 2020 informant took Paytm App for his business. It is claimed that the cash amount received from the distributors and online payment used to be transferred in the account of the Agency. It is stated that after obtaining said App, it was found that agency is sustaining losses. In January, 2023, when the officers of Bharat Petroleum Ltd visited Agency they instructed him to look into the online transactions of the Agency. After verifying the messages on Paytm App, it was found that Applicant, after transfer of the amount to the account of the agency before completion of 12 hours settlement period, used to transfer the amount received towards refund into his own account. Thus, according to informant, from August, 2022 to January, 2023 Applicant has transferred a sum of Rs. 22,31,139/-. It is stated that from 19th January, 2023, he stopped reporting to work and thereafter, his father

was contacted by the informant. It is claimed that father of the Applicant had informed that since they were in the need of money Applicant had taken Rs. 90,000/- and agreed to return Rs. 20,000/- forthwith and the balance amount was agreed to be repaid within 8 days. It is stated that since then, Applicant never came or contacted informant and has also switched off his phone. On these amongst other contentions, report came to be lodged.

3. Learned Counsel for the Applicant, at the outset, states that there is delay in lodging FIR and having regard to the fact that the messages in respect of the bank transaction are routinely received by the informant, however, since August, 2022 no complaint is lodged in this regard. It is submitted that in fact it was the informant who had asked the Applicant to transfer the said amount in his account and thereafter he was called upon to withdraw the amount and hand it over to him. According to the counsel for the Applicant this was done to avoid income tax. It is argued that having regard to nature of offence and documents involved therein custodial interrogation of the

Applicant is not necessary.

4. Learned APP and learned Counsel for the Informant opposed the application with the contention that investigation conducted till date shows that the amount from the account of agency was transferred by the Applicant into his personal account. It is submitted that the *modus oprendi* for this crime is that during the settlement period of 12 hours, the refund used to be claimed and by transfer thereof to account of applicant said money is siphoned. Thus, according to the prosecution, there was no reason for the informant to know about it unless he verifies the account. It is submitted that considering the complex nature of offence, custodial interrogation of the Applicant is necessary in order to ascertain the manner in which the crime in question is committed.

5. No doubt, the informant claims that there was misappropriation of the amount from August, 2022 till January, 2023, however, the first information report is lodged on 23rd March, 2023. It is trite law that in each case delay in lodging FIR would not become fatal to the case of prosecution nor on that count itself the

statement of the informant can be discarded. Perusal of the first information report itself sufficiently demonstrates that work of receipt of money and its accounting was done by the Applicant. It is only after the instructions given by the officers of Bharat Petroleum Ltd informant had a look to Paytm app and messages and thereafter it was revealed that Applicant has misappropriated the funds. In this regard, informant approached to the father of Applicant. This conduct of the informant is natural in view of the fact that the Applicant was working with him for the long period of five years. Thus, merely on the ground that no immediate FIR is lodged, it does not became the ground to release Applicant on anticipatory bail.

6. *Prima facie* perusal of the first information report and investigation carried till date, clearly indicates that number of transactions are seen of transferring amount from the account of agency to the various personal accounts of Applicant. It is pertinent to note that it is revealed to the investigating officer that number of accounts were opened by the Applicant and after entering into certain transactions

those accounts are closed and new accounts were opened. Apart from this, there is material to indicate that within the period of 12 hours of the transaction, the refund amount claimed was used to be transferred from the account of agency to the personal account of Applicant. In such situation, the entire amount received from customer would never reflected into the account of the agency. Thus, there was no reason for the informant to know about such misappropriation by transferring amount within settlement period.

7. *Prima facie* evidence on record clearly shows involvement of the Applicant in crime in question. As far as custodial interrogation of the Applicant is concerned, having regard to the complex nature of crime, the investigating agency should get an opportunity to interrogate the Applicant in order to ascertain as to the manner in which transfer of the amount is done, gadgets uses for that purpose as well as how Applicant has withdrawn money from his own account after transfer of the amounts from agency to his personal account.

8. Considering aforesaid facts, it is not the fit case for grant of anticipatory bail. Hence, Application stands dismissed. Pending application, if any, is also disposed of.

(R.M. JOSHI, J.)

Malani