

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 820 OF 2023

Paulina w/o Ricardo Gomes
@ Paulina d/o Ignace Khess

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. A. J. Patil, Advocate for the applicant.
Mr. S. P. Sonpawale, APP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 20th JUNE, 2023.
PRONOUNCED ON : 28th JUNE, 2023.

ORDER :

1. Applicant is apprehending arrest in connection with Crime No. 8/2023 registered with Cyber Police Station, Dist. Jalgaon, for the offences punishable under Sections 409, 420 read with Section 34 of the Indian Penal Code and Section 66(D) of Information Technology, Act.

2. Informant reported to the police that he along with others were intending to go for tour and online they came across Thinktrip Travels. He, therefore, contacted Satish Kaushik and

Imran Alam on the mobile phone given online. They were informed to deposit amounts from time to time. Accordingly, sum of Rs. 7,20,000/- was deposited. Thereafter, said tour was cancelled due to death of Satish Kaushik in road accident. Informant and others therefore sought refund of the amount. Initially, though it was assured to them that the amount would be paid within a period of one and half month, however, thereafter, payment was avoided and hence First Information Report is lodged.

3. Learned counsel for applicant states that applicant is a lady and though she is the Director of the said company, she is not into the active participation of day to day affairs thereof. It is claimed that applicant has no concern with the business activities which were look after by her husband. It is further contended that merely because the tour was cancelled and there is allegation of non-refund of amount, it does not become a criminal offence as there is absence of intention of cheating since inception. It is also contended that custodial interrogation of the applicant is not necessary. In support of his contentions, he placed reliance on judgment in the case of International Advanced Reserach Centre for Powder Metallurgy and

New Materials (ARCI) & others vs. Nimra Cerglass Technics (P) Ltd. & another, 2015 (3) ACR 3482.

4. Learned APP opposed the said submission by referring to the investigation carried out till date. WhatsApp chat between the present applicant and customers can be seen wherein she has solicited them to pay the said amount. Thus, it is not a case where there is no involvement of the applicant in the crime. It is also submitted that this is not the only incident wherein a tour is cancelled but ten different offences are registered against the applicant and her husband.

5. Merely because applicant is a lady, she cannot be enlarged on bail if her involvement in the serious crime is found. Prima facie, there is substance in the contention of learned APP that the present applicant was actively participating in the business transaction of the said company. This aspect is demonstrated from the WhatsApp chat from the mobile phone standing in the name of the applicant. It is thus clear that applicant was also instrumental in inducting the customers to pay amount for the purpose of tour. Perusal of First Information Report as well as record indicates that

though initially WhatsApp message was sent to the informant about air booking, however, when it was verified the said booking was found to have been cancelled. It is thus clear that prima facie there is material to indicate that there was intention to cheat since inception of the transaction. Merely because civil proceeding can be initiated for recovery of the amount due, when prima facie material is there on record to indicate involvement of the applicant in the offence punishable under Indian Penal Code, she cannot seek anticipatory bail. Perusal of the judgment cited supra shows that it was a pure case of breach of contract. This is not so in the present case. Hence, said judgment has no application to the present case.

6. As far as custodial interrogation of the applicant is concerned, it is necessary for the investigating agency to ascertain how the amount obtained from the informant and others were withdrawn and utilised. It also needs to be ascertained as to how there was message sent to the informant about booking flight tickets which was found to have been cancelled. Furthermore, this is not an isolated incident in which inducement is caused and the issue of refund of amount involves. There are number of similar offences registered against the applicant. Considering all these facts, this is

not a fit case for grant of anticipatory bail. Hence, application stands dismissed.

(R. M. JOSHI)
Judge

dyb