

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1815 OF 2023

Mohamed Ibrahim A.

Applicant

Versus

The State of Maharashtra

Respondent

Mr. Mahesh Subramaniam, Advocate for the applicant.

Mr. N. B. Patil, APP for the State.

CORAM : R. M. JOSHI, J.

DATE : 28th NOVEMBER, 2023.

PER COURT :

1. Applicant apprehends arrest in connection with Crime No. 40/2022, registered with Beed City Police Station, District Beed for the offences punishable under Sections 419, 420, 464, 468, 471 read with Section 34 of Indian Penal Code and Sections 66, 66(C) & 66(D) of the Information Technology Act.

2. Mohd. Fahimoddin, a teacher by profession lodged report with the police about he being duped for sum of Rs. 1,80,000/-. It was posed to him that he has won a lottery of Rs. 25,00,000/- as well as a car. A mobile number was given in order to contact for realising the said lottery amount. He was instructed to deposit amount from

time to time for various reasons for said realisation. He claims that though amounts were transferred from time to time, finally it was realised that he is being cheated.

3. Learned counsel for applicant submits that applicant is not an accused nor he is referred in the First Information Report. It is submitted that applicant was working in Saudi Arabia and owing to the transaction in respect of the goods in which he trades, some amounts are received. He claims that the said entries in his bank account can be explained by him to Investigators. According to him, he is cooperating in the investigation. By relying upon order of the Hon'ble Apex Court in case of Sunita Devi and another vs. The State of Haryana, (2023) 1 Supreme Court Cases 178, it is submitted that since the applicant is cooperating in investigation, he is entitled for anticipatory bail. He has also relied upon judgment of Apex Court in case of Md. Asfak Alam vs. The Staet of Jharkhand and another, (2023) 8 Supreme Court Cases 632, to support his submissions. Bail is also sought on the ground that applicant is not physically fit as he has sustained fracture to his leg.

4. Learned APP opposed the application by referring to the transaction in question which indicates that the amount which was received in this crime from the informant as well as other victims is transferred to the account of present applicant. According to him, there is sufficient evidence to connect application with this crime.

5. Applicant claims himself to be innocent person however, he is unable to explain entries in his bank account. It is pertinent to note that this Court had an occasion to decide writ petition filed by present applicant bearing Criminal Writ Petition No. 1018/2023 filed for challenging order of Trial Court refusing to defreeze his bank account. Therein also the applicant was called upon to explain source of income covered by these entries, which he failed to do. Even after lapse of period since then, even today, he is unable to explain those entries. As against this, perusal of investigation papers indicates that the amounts generated from crime are transferred by the co-accused into account of present applicant. This is not a case where there is only one victim of the crime. As observed by Trial Court while rejecting application for defreezing of account of applicant, it is a case of online fraud. There is substance in the contention of the Investigating Agency that considering the volume

and nature of crime, it may not be possible to conclude investigation in short period of time.

6. Prima accused are still not into the net of Investigating Agency. At this stage, there is prima facie material to indicate that the money received from the crime has been diverted through the account of the present applicant and that he is beneficiary of crime. Moreover, it is not a case that isolated transaction is found into account of applicant. The applicant, on the other hand, is unable to explain the genuineness of the transaction and source of income. Having regard to these facts, prima facie involvement of the applicant is seen in this crime. It would be matter of investigation as to the role played by the applicant in connivance with the prime accused. For that purpose, as rightly contended by learned prosecutor, custodial interrogation of applicant would be required. Hence, application is rejected.

(R. M. JOSHI)
Judge