2023:BHC-AUG:26277

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1963 OF 2023

1. Suyash Avinash Ghan
2. Shweta Suyash Ghan

VERSUS

The State Of Maharashtra

Mr. A. S. Barlota, Advocate for the applicants
Mr. M. K. Goyanka, APP for the respondent/State
Mr. C. V. Thombre, Advocate for the informant

CORAM : R. M. JOSHI, J.
DATE : 13th DECEMBER, 2023

P.C. :-

1. Applicants apprehend arrest in connection with Crime No 286/2023 registered with Satara Police Station, District Aurangabad for the offences punishable under Sections 406, 420 r/w 34 of IPC.

2. First informant is close relative of the applicants. It is alleged by him in the first informant that his son had been to Germany for higher qualification and that purpose he has obtained loan of Rs.55 lakhs. Due to Corona pandemic his son was required to come back to India. Informant was unable to repay the loan. It is alleged that in 2021 applicants introduced him with co-accused and assured him that he will get the loan of Rs.1 crore from trade funds. They further told him that

co-accused without any failed commission and processing fee and hence amount of Rs.5 lakhs paid in cash to the co-accused. It is alleged that on the say of the applicants informant had paid a sum of Rs.32,50,000/- to co-accused. It is specifically avered in the first information report that when he demanded the said money back from the applicants they issued cheques of Rs.20 lakhs. It is contended that there was no sufficient money into their account. Thereafter the applicants went absconding.

3. Learned counsel for the applicants submits that the applicants had lodged complaint with the Police Commissioner on 14th July, 2023 claiming that present applicants had asked him to invest a sum of Rs. 20 lakhs for raising capital up to Rs.10 crores. It is claimed that accordingly a sum of Rs. 9,18,5008/- was paid by bank transfer and remaining amount came to be paid in cash. He further argues that as per the said complaint four cheques were given, however, the said four cheques were not given in the name of the informant but in the name of the son of the informant. It is also contended that no action under Section 138 of N.I. Act has been initiated in respect of the dishonour of the said cheques. It is stated that altogether different version is sought to be given in the first information report with a view to pressurize the present applicants to pay amount.

4. Learned counsel for the informant submits that though there is

some difference in the statements of the informant in the earlier complaint as well as first information report however, it cannot be said that all together different complaint has been lodged now. He drew attention of the Court to the complaint made with the Police Commissioner wherein the transaction showing the applicants having received amount is reflected. He also drew attention of the Court to the cheques issued by the applicants. It is his contention that nothing was due and payable there are no question of applicant issuing cheques to the informant. It is submitted that the informant has been due for sum of Rs.32,50,000/- and hence, it is not a fit case for grant of anticipatory bail.

5. Learned APP also opposed the application by contending that the investigation papers show that there are entries into the account applicants showing receipt of money from informant. He also drew attention of the Court to the statement of the Aakash Chavhan who has stated on the line of the complaint made by the report lodged by the first informant. It is submitted that this witness claims to have paid Rs. 8 lakhs to the informant for its further payment to applicants.

6. The applicants and informants are close relatives. There is no dispute made by the informant about lodging of complaint dated 14th July, 2023. Perusal of the said complaint shows that all together different

allegations are made against the present applicants. It is claimed that he was called upon to invest Rs.20 lakhs for the purpose of getting the capital to the extent of Rs. 10 crores and for this purpose it is claimed that he has transferred a sum of Rs. 9,18,500/- through bank and also paid Rs.11 lakh in cash. As against in the first information report in question there is no statement made by the informant about any money being paid to the applicants. On the contrary what is being claimed is that as the instance of applicants he paid Rs. 5 lakhs in cash to the co-accused. So also from time to time sum of Rs. 32,50,000/- came to be paid to them. It is further stated therein that when he asked for the return of the said money cheques for Rs. 20 lakhs were issued. *Prima facie* this Court finds material inconsistencies in the statements made in complaint dated 14th July, 2023 and first information report.

7. Once the Court finds that it could be a case of false implication, the Court has to be on guard while accepting contention of the informant. It is pertinent to note that the first informant never claims in the first information report about paying any money to the applicants. Whereas he claims payment of Rs. 9,18,500/- through bank to the applicants in complaint dated 14th July, 2023. Apart from the fact that there are inconsistencies in the statement of the complainant in the first information report as well as the previous complaint, it is pertinent to

note that there is absolutely no evidence at this stage to indicate that the applicants have received any money from the co-accused in order to hold that they are the beneficiaries of the crime in question.

8. This statement relied upon of Akash Chavhan shows that he has paid Rs. 8 lakhs in cash to the informant. Surprisingly the Investigating Officer is satisfied with the statement and does not find it necessary to further investigate in to it to find out whether this witness was really having such amount for its payment to the informant. The statement therefore is of no use for the prosecution at this stage. Since *prima facie* this could be a case of false implication and as there is no evidence to show that applicants received any money from the crime alleged in the report, it is a fit case of grant of anticipatory bail. Hence the application is allowed. Hence the following order:

ORDER

(i) In the event of arrest of applicants in connection with Crime No. 286/2023, registered with Satara Police Station, Dist. Aurangabad for the offences punishable under Sections 406, 420 r/w 34 of IPC, they shall be released on bail on furnishing PR Bond of Rs.15,000/- (Rupees Fifteen Thousand only) each with one surety in the like amount.

(ii) They shall attend the concerned police station till filing of the charge-sheet.

(iii) They shall not contact the witnesses directly or indirectly.

(iv) They shall not interfere with the evidence in any manner whatsoever.

(v) They are further directed to cooperate the investigating agency for further investigation.

(vi) Learned APP to communicate this order to concerned Police Station.

(R. M. JOSHI, J.)

ssp