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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1473 OF 2023

Lohitsingh Darmasingh Subhedar … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO.2105 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1473 OF 2023

Rohit Sudhir Otari … Applicant
In the matter between
Lohitsingh Darmasing Subhedar ... Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Satyavrat Joshi i/by Ms. Shivani Kondekar for the applicant.

Mr. Hrishikesh Mundargi with Mr. Shriram Pingale with Ms. Shraddha Sawant for the applicant/intervener.

Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : JULY 25, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.917 of 2022 registered on 25th November 2022 at Shahupuri Police Station for offences punishable under sections 406, 420 read with section 34 of the Indian Penal Code, 1860 and sections 3 and 4 of the

Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, the applicant is seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. According to the Informant, accused No.9 called the informant to invest in the share market through companies [(i) A.S. Traders and Developers LLP; (ii) Tradewings Solution Ltd.]. He was called to a seminar attended by around 1000 to 1200 people. All accused persons were present in the seminar portraying themselves as either the directors of a company or persons authorised on behalf of the companies. In the said seminar, it was revealed that the companies had a cash-back plan of 36 months, and thereafter, the entire principal amount shall be returned. The second plan was the payment of Rs.30,000/- on investment of Rs.10 Lakh for 36 months, and thereafter, the entire principal amount shall be returned.

3. Additionally, foreign trips were promised on investment of various amounts. Sri Lanka tour for investment of Rs.2,50,000/-; Singapore tour for investment of Rs.5,00,000/-; Sri Lanka tour for two persons, Singapore tour for one person and Activa vehicle on an investment of Rs.7,00,000/-; Sri Lanka tour for six persons, Singapore tour for three persons and four wheeler car upto Rs.6 lakh for investment of Rs.16,00,000/-; Sri Lanka tour for ten persons, Singapore tour for five persons, and four wheeler vehicle upto Rs.10 lakh for investment of Rs.27,00,000/-; Sri Lanka tour for twenty persons, Singapore tour for ten persons and four wheeler car upto Rs.20 lakh for investment of Rs.54,00,000/-. Dubai tour, Thailand tour and Mumbai to Goa trip by Jalesh Cruise were also promised. A person investing Rs.10,00,000/- was promised one guntha plot at Shahuwadi.

4. Moreover, if an individual investor gets two more investors, the investor should get a fixed commission.

5. According to the plan, the invested amount shall not be returned before 36 months. The investors were called upon to invest by cash, cheque or RTGS. Persons investing in their company were promised a receipt, login ID, and Password. Believing in the promise made on behalf of aforesaid two companies, the informant invested Rs.25,00,000/- on 6th June 2019 by cheque and NEFT. Accused No.24 and Accused No.11 in May 2022 called the investors to inform them of the cash-back plan and to send invested persons to Dubai. Accordingly, three thousand investors invested an amount of Rs.35,05,000/- to Rs.60,00,000/- in A.S. Token Cryptocurrency Plan, and 3000 people were promised a trip to Dubai. It was told that the aforesaid two companies had ten more sister companies named in the report.

6. The informant invested an amount by taking a hand loan from his relatives as he was getting regular returns. On 5th January 2020, the informant paid Rs.24,50,000/- to Ravindra Desai, Sagar Patil and Nasir Mulla towards the old generation plan. The informant received regular returns from January 2019 to August 2022. However, the payments were made not from the A.S. Traders company account but from companies like Trexum Ventures LLP. The informant, in total, invested Rs.49,50,000/-. Due to newspaper reports of fraud committed by A.S. Traders, the informant inquired about the accused persons, and it was revealed that accused No.3 had absconded by cheating thousands of people for crores of rupees. On inquiry, it was revealed that the applicant floated twelve sister companies. The amount received from those companies was invested in gold, immovable properties, and luxury cars to make investors believe that the company was genuine. Around 150 to 200 people gathered to lodge a report against the accused persons.

7. Numerous investors lodged complaints. Based on their complaints, C.R. No.917 of 2022 was registered against all accused persons.

8. The applicant, therefore, applied to the learned Sessions Court. The Sessions Court rejected the applications. Aggrieved thereby, the applicant has filed a present anticipatory bail application.

9. According to the learned advocate for the applicant, he has refunded a substantial amount to the investors. Due to unforeseen circumstances, he is not in a position to return the amount. Mere non-payment of a refund does not give rise to an offence. He is ready to cooperate with the investigation and to abide by the terms and conditions; therefore, his custodial investigation is not necessary.

10. Per contra, learned APP for the State submitted that the applicant is the sole signing authority of A.S. Traders and Developer LLP. Considering his plans of astronomical returns, dishonest and fraudulent intention at the inception of the transaction is apparent. In connivance with the co-accused, the applicant formed bogus companies and arranged different seminars to promote their plans for more returns, foreign tours, flats and plots at lower prices. Such a promise was executed on stamp papers. Instead of depositing the amount in the share market for trading purposes, they deposited it in different banks in the name of different companies. Initially, to get investors' faith, they paid returns as promised; however, on getting more investment, they stopped giving returns. According to the prosecution, custodial interrogation of the applicant is necessary to find details of deposited amounts in different banks in the names of different companies. To obtain details regarding ID and Password and technical data to trace a number of investors, details of the website of companies and persons who created said website need to be investigated. Without custodial interrogation, such elicitation-oriented investigation is not possible. There is a possibility of siphoning off the amount in foreign countries. The applicant has siphoned off amounts of investments through share companies and by purchasing benami properties in his relatives' names. It is submitted that the whereabouts of the applicant is unknown. The applicant is absconding.

11. I have heard learned to advocate for applicant and victims. Before considering the material on record, it is necessary to delve into the parameters of Section 438 of Cr.P.C. in the context of economic offence and, in particular, offences under Section 406, 409, 420 r/w 120B.

12. The Supreme Court, in the case of **Narinderjit Singh Sahani & Anr. vs. Union of India and Ors.** reported in (2002) (2) SCC 210, has held that an accused facing a charge under Sections 406, 409, 420 and 120-B is ordinarily not entitled to invoke the provisions of Section 438 of the Criminal Procedure Code unless it is established that such criminal accusation is not a bona fide one.

13. In the case of **Ram Narayan Popli vs. Central Bureau of Investigation** reported in (2003) 3 SCC 641 in paragraph 382 has observed thus:

> "**382.** The cause of the community deserves better treatment at the hands of the court in the discharge of its judicial functions. The community or the State is not a persona non grata whose cause may be treated with disdain. The entire community is aggrieved if economic offenders who ruin the economy of the Sate are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye, unmindful of the damage done to the national economy and national interest, as was aptly stated in State of Gujrat v. Mohanlal Jitamalji Porwal."

14. The Supreme Court, in the case of **Himanshu Chandravadan Desai And Ors vs. State of Gujarat,** reported in (2005) 13 SCC 234 was considering a similar case where the applicant, along with other directors of a cooperative bank, siphoned off funds of the bank by bogus and fictitious documents. The Apex Court refused to grant regular bail under Section 439 of Cr.P.C. relying on Constitution Bench of the Supreme Court in the case of **Bihar Legal Support Society vs. Chief Justice of India And Anr.,** reported in 1986 (4) SCC 767, observing that the crime in which petitioners are involved is very serious, involving a conspiracy to cheat and the fraud public institutions for a systematic manner and punishment is likely to be severe in the event of a conviction.

15. The Supreme Court, in the case of **Gurbaksh Singh Sibbia etc. vs. State of Punjab,** reported in 1980 (2) SCC 565, delineated the parameters exercising powers under Section 438 of Cr.P.C. holding "the larger interest of public or State" is one of the relevant factors to be kept in mind by the Court while deciding the application for anticipatory bail.

16. In the case of **Nimmagadda Prasad vs. C.B.I.,** reported in **2013 (7) SCC 466**, the Apex Court, in paragraph 25, has observed as under:

> "**25.** Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

In **Delhi Development Authority v. Skipper Construction Co. (P) Ltd ,** (1996) 4 SCC 622, it was held:—

> "The concept of corporate entity was evolved to encourage and promote trade and commerce but not to

<u>commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned</u>....”

“We feel impelled to make a few observations. What happened in this case is illustrative of what is happening in our country on a fairly wide scale in diverse forms. Some persons in the upper strata (which means the rich and the influential class of the society) have made the ‘property career’ the sole aim of their life. The means have become irrelevant — in a land where its greatest son born in this century said “means are more important than the ends”. A sense of bravado prevails; everything can be managed; every authority and every institution can be managed. All it takes is to “tackle” or “manage” it in an appropriate manner. They have developed an utter disregard for law nay, a contempt for it; the feeling that law is meant for lesser mortals and not for them. The courts in the country have been trying to combat this trend, with some success as the recent events show. But how many matters can we handle. How many more of such matters are still there? The real question is how to swing the polity into action, a polity which has become indolent and soft in its vitals? Can the courts alone do it? Even so, to what extent, in the prevailing state of affairs? Not that we wish to launch upon a diatribe against anyone in particular but Judges of this Court are also permitted, we presume, to ask in anguish, "What have we made of our country in less than fifty years"? Where has the respect and regard for law gone? And who is responsible for it?”

17. Unfortunately, in the last few years, the exponential rise in white-collar crimes has affected the country's economic structure, which has serious repercussions on the development of the country as a whole. Apparently, financial scams have the origin of committing fraud with the public money running into crores and crores of rupees. The nation's economy is put in stagnation when such a massive amount is pocketed in by vested interests through fraudulent means leaving the poor citizen's hard-earned money, which he invested for his prosperity or to cater for the evenings of his life, for being siphoned off by a few culprits. Grant of anticipatory bail in a case of such huge magnitude is further likely to have an adverse effect on the case's progress and the trust reposed by the society in the judicial system.

18. Reverting back facts of the case, the applicant's prima facie dishonest and fraudulent intention is apparent as he promised impossible astronomical returns of 5% interest per month, return of the entire principal amount after 36 months, in addition to the bonus of foreign tours. The applicant is the director of A.S. Traders and Developers LLP and Tradewinds Solutions Ltd. The business of the company shown is agriculture, hunting and allied subjects. It is not the company's business to accept an amount from the investors. Prima Facie, it appears that applicant and co-accused persuaded the investors to invest in A.S. Traders and Developers LLP and Trade winds Solutions Ltd.

19. Prima facie, it appears that the applicant and co-accused have received Rupees 1417 crores from investors. At this stage of the investigation, it appears that the applicant has withdrawn huge amounts of cash from A.S. Traders and Developers LLP. The turnover of A.S. Traders and Developers LLP is as under:

A S TRADERS AND DEVELOPERS LLP Bank transactions of the company account

Sr. No.	Name of the Bank	Account Number	Total transactions in the account
1.	Federal	14960200012341	Rs. 306,09,73,418/- (306 Crore 9 Lakh 73 Thousand 418 Rs.)
2.	HDFC First	10066730606	Rs.68,99,75,468/- 68 Crore 99 Lakh 75 Thousand 468 Rs.)
3.	Axis	917020032905460	Rs.23,05,95,142/- (23 Crore 05 Lakh 95 Thousand 142 Rs.)
4.	AU Small Finance	2021237528130920	Rs.36,94,63,300/- (36 Crore 94 Lakh 63 Thousand 300 Rs.)
5.	RBL	409834124124	Rs.13,23,34,874/- (13 Crore 23 Lakh 34 Thousand 874 Rs.)
6.	HDFC	50200024471370	Rs.1,47,91,60,268.96 (147 Crore 91 Lakh 60 Thousand 268.96 Rs.)
		TOTAL :-	Rs.596,25,02,470.96/-

(596 Crore 25 Lakh 2 Thousand 470 Rs.)

20. The applicant had sole signing authority to operate all the bank accounts. At this stage of the investigation, it appears that towards payment of foreign tours of the investors, the amount of Rs.9,86,70,000/- has been paid to Kesari Travels and Rs.7,00,00,000/- paid to W. Holidays through A.S. Traders and Developers LLP and nine shell companies. Towards the promotion of the schemes of investment, astronomical amounts have been disbursed. The seized software of A.S. Traders and Developers LLP indicates 83,031 user IDs who have invested 1417 Crore rupees. The investors are not only from the State of Maharashtra but are also from the State of Karnataka.

21. During the investigation, the total turnover of shell companies as regards investors' amounts is as under:

(i) Gainero Ventures LLP bank account transaction of Rs.359,31,34,094/-; and cash deposit by 180 investors Rs.4,34,00,000/-.

(ii) Trexum Ventures LLP bank account transaction of Rs.28,56,09,013/-; and cash deposit by 84 investors Rs.1,55,20,000/-.

(iii) Comercio Vibrant LLP bank account transaction of Rs.254,93,45,896/-; and cash deposit by 67 investors Rs.1,08,30,000/-.

(iv) Trading Solutions Ltd. bank account transaction of

Rs.21,96,69,537/-.

(v) A.S. Traders Solutions Ltd. bank account transaction of Rs.12,07,97,259/-.

(vi) Capitus Ceker Traders And Developers LLP bank account transaction of Rs.310,64,12,530/-; and cash deposit by 314 investors Rs.7,20,90,000/-.

22. Therefore, prima facie, the applicant appears to be the kingpin of the entire financial scam. The total number of investors is 83,031. The total amount invested is 1417 crores. The applicant, being director of A.S. Traders and Developers LLP and Tradewinds Solutions Ltd connected with shell companies, has accepted cash amounts from investors and, through other co-accused, failed to repay it and utilized it for his own benefit. Therefore, elicitation-oriented custodial interrogation of the applicant is necessary to find out the preparation, commission and aftermath of the offences alleged against the applicant. According to the investigating agency, it is impossible to trace crime money without custodial interrogation of the applicant.

23. The importance of custodial interrogation has been emphasised in paragraph 6 by the Apex Court in the case of **State represented by CBI v. Anil Sharma** reported in (1997) 7 SCC 187 as under:

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of

> tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."

24. In the present case involving misappropriation of such enormous magnitude, elicitation-oriented interrogation is necessary as the investigating agency has the advantage of disinterring useful information and material that may have been concealed if the applicant is granted pre-arrest protection.

25. In a recent judgment in the case of **Sumitha Pradeep vs Arun Kumar**, reported in (2022) SCC OnLine SC 1529, the Apex Court was considering the validity of an order passed by the High Court releasing an accused on the ground that custodial interrogation is not necessary. The Apex Court held that custodial interrogation could be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked, and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into, along with the severity of the punishment. Custodial interrogation can be one of the grounds for declining custodial interrogation. However, even if custodial interrogation is not required or necessitated, that by itself cannot be a ground to grant anticipatory bail.

26. According to the investigating agency, there is every possibility of influencing the investors as statements to that effect have been recorded by the investigating agency, wherein it is stated that in a meeting held at Mahavir Garden, Nagala Park, Kolhapur, the investors were dissuaded from lodging complaints.

27. Considering the magnitude of the financial scam, the applicant does not deserve relief under section 438 of the Criminal Procedure Code, 1973. Hence, on overall consideration of aforesaid factors, the anticipatory bail applications deserve to be rejected.

28. The anticipatory bail application stands rejected.

29. In view of disposal of the anticipatory bail application, the interim application stands disposed of as infructuous.

VAIBHAV RAMESH JADHAV
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(AMIT BORKAR, J.)