IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 3404 OF 2023

Jyoti Kirtikumar Gaikwad ...Applicant

Vs.

The State of Maharashtra ...Respondent

Mr. Aniket Nikam i/b Amit Icham, for Applicant.
Mr. S. H. Yadav, APP for State.

CORAM:- N. J. JAMADAR, J.
DATED:- 18th DECEMBER, 2023

ORDER:-

1) Heard the learned Counsel for the applicant and the learned APP for the State.

2) This application is preferred for pre-arrest bail in connection with C.R. No.213 of 2023, registered with Vijapur Naka Police Station, Solapur, for the offences punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

3) The first informant deals in the business of Cosmetics. In the year 2017, the first informant became acquainted with accused No. 1- Jyoti Gaikwad in connection with a transaction of a hand loan of Rs.1,50,000/-, which the first informant had advanced to Jyoti and the latter failed to repay, as promised.

4) The first informant claimed to have become acquainted with Ganesh Tambat – accused No. 2, the husband of Jyoti – the applicant. They allegedly represented to the first informant that the applicant's brother – Yogesh Ayyer – accused No. 3, was working in the Customs Department and they procure gold at concessional rates. The first informant alleged that the applicant induced the first informant to part with a sum of Rs.1,60,50,000/-, which the first informant had availed from her relatives and friends, by making false representations of delivering gold. To cover the said amount, the applicant had drawn various cheques aggregating to an amount of Rs.1,55,65,000/-.

5) Like the first informant, and other persons had also paid various amounts to the applicant. The applicant and the co-accused No.2 initially bought time on one or the other pretext by claiming that Yogesh was arrested by police. Few of the cheques drawn by the applicant were dishonoured on presentment. The first informant thus realised that she was deceived.

6) Mr. Nikam, the learned Counsel for the applicant submitted that the alleged transaction took place during the period December, 2017 to January, 2021. There is an inordinate delay in lodging the FIR. The entire amount was allegedly paid in cash, which according to Mr. Nikam, does not appear to be probable. As regards, the allegations that the applicant had drawn cheques to cover the amount, which the first informant had paid, Mr. Nikam attempted to salvage the position by asserting that there was a distinct transaction between the applicant and the first informant in connection with which those cheques were drawn. It was further submitted that no notice under Section 41-A was given to the applicant.

7) The learned APP resisted the application by forcefully submitting that there are grave allegations against the applicant. The first informant was induced to part with a huge amount. There are witnesses, who have also been induced to part with the amount, by the applicant. There was no reason for the applicant to issue the cheques for such a huge amount, if there was no transaction between the applicant and the first informant.

8) The learned APP countered the submissions of Mr. Nikam that notice under Section 41-A was not issued. It was submitted that efforts were made to serve the applicant, however, she was not found at her residence. The applicant has made herself scarce. Therefore, the applicant does not deserve the exercise of discretion.

9) Ordinarily, where the allegations of payment of huge amounts in cash are made, they are required to be scrutinized with care and caution. In the case at hand also, indeed the first informant and the witnesses claimed to have paid the amount in cash. However, the fact that the applicant had drawn cheques for an aggregate amount of Rs.1,52,15,000/- cannot be said to be inconsequential. Those cheques, few of which were dishonoured on presentment, lend prima facie support to the claim of the first informant. The endeavour on the part of the applicant to explain away the issue of the cheques by simply asserting that there was a distinct transaction without specifying the nature thereof, at this stage, does not merit countenance as the cheques were drawn for a huge amount which matches the amount the first informant was allegedly induced to part with.

10) In addition, the allegations in the FIR and the statements of the relatives of the first informant, there are statements of witnesses, who were also induced to part with huge amounts.

11) I am, therefore, persuaded to hold that there is a strong prima facie case against the applicant. Though the co-accused Nos. 2 and 3 are arrested yet, having regard to the role attributed to the applicant, custodial interrogation of the applicant seems indispensable for a complete and effective investigation. It is not a case where discretion can be exercised without jeopardising the interest of a fair and effective investigation.

12) Before parting, it must be noted that there is material to show that efforts were made to serve the applicant with notice under Section 41-A and she could be found at her address.

13) Resultantly, the application deserves to be rejected.

14) Hence, the following order.

ORDER

I) The application stands rejected.

II) It is clarified that these *prima facie* observations are confined to determine the entitlement to pre-arrest bail only.

[N. J. JAMADAR, J.]