Sayali Upasani

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 706 OF 2022

Roshan Asgar Ali Shah and Others ...Applicants
Versus
State of Maharashtra ...Respondent

WITH
INTERIM APPLICATION NO. 967 OF 2022

Mr. Satish Muley with Mosin Naik with Sajid Qureshi i/b Mr. S. A. Sayed, for Applicants.
Mrs. Ashwini A. Takalkar, APP for State.
Ms. Mahalakshmi Ganpathy with Vedanshi Shah, for Original Complainant/Applicant in IA/967/2022.
Mr. Atul Navale, PSI, Manikpur Police Station, Present.

CORAM:- N. J. JAMADAR, J.
DATED:- 26th SEPTEMBER, 2023

ORDER.:-

1) The father - son duo have preferred this application for pre-arrest bail in connection with C.R. No. 21 of 2022, registered with Manikpur Police Station, for an offence punishable under Section 420 read with Section 34 of Indian Penal Code, 1860 ("the Penal Code").

2) The gravamen of indictment against the applicants is that the applicants and co-accused Sandeep Kumar Lohchab operated a travel agency under the name of 'Safari Travels'. Smt. Snehal Prabhu, the first informant operates as a tours and travel agent. She used to arrange tours and travel bookings through various travel agencies including Safari Travels. She had sent more than 250 tourists to various destinations through Safari Travels.

3) In the months commencing from January, 2021, the first informant had booked travel plans for about 165 tourists with Safari Travels and paid a sum of Rs.43,64,000/-through banking channels. The amounts were credited to the accounts of Safari Travels maintained with Yes Bank, Canara Bank, and ICICI Bank. However, as the dates of travel approached the applicants and the co-accused switched off their phones. When the first informant visited the office of Safari travels at Andheri, it was found shut. Having realized the fraud and cheating, the first informant lodged the report.

4) Apprehending arrest the applicants approached the Court of Session. In the meanwhile, Sandeep Kumar, the co-accused came to be arrested. The learned Sessions Judge declined to exercise discretion in favour of the applicants. Hence, this Application.

5) On 6th June, 2022, this Court was persuaded to grant interim protection to the applicants as the applicants deposited 25% of the amount mentioned in the FIR of which the first informant has allegedly been defrauded.

6) I have heard Mr. Satish Muley, the learned Counsel for the applicants, Mrs. Ashwini Takalkar, the learned APP for the State and Ms. Mahalakshmi Ganpathy, the learned Counsel for the first informant – applicant in IA No. 967 of 2022.

7) Mr. Muley advanced a two-pronged submission. First it was submitted that the applicant No. 2 Asgar Ali Shah, who is the father of the applicant No. 1 Roshan Asgar Ali Shah, no concern whatsoever with Safari Travels. Applicant No. 1 Roshan is the proprietor thereof. Applicant No 2 Asgar has been falsely roped in to exert pressure on applicant No. 1 Roshan. Second, though applicant No. 1 Roshan is the proprietor of Safari Travels, according to Mr. Mule, applicant No. 1 was a nominal proprietor and it was the accused No. 3 Sandeep Kumar, who ran the show. All the transactions were entered into by the first informant and other persons with Sandeep Kumar, bank accounts were operated by Sandeep

Kumar. Even the first informant had credited amounts to the personal account of accused No. 3 Sandeep Kumar.

8) Mr. Muley would urge that applicant No. 1 Roshan is the victim of fraudulent acts of accused No. 3 Sandeep Kumar and had lodged the complaints against accused No. 3. Yet to show the bonafide, the applicants have deposited 25% of the amount mentioned in the FIR. The applicants have also co-operated with the investigation to date and, therefore, they deserve the exercise of discretion.

9) The learned APP and the learned Counsel for the first informant stoutly resisted the prayers for pre-arrest bail. The learned APP tendered the copies of extracts of account of Safari Travels maintained with Yes Bank, Canara Bank, and ICICI Bank into which the first informant had credited the amounts. It was, thus, urged that endeavour of the applicants to show that they had no concern with the transactions cannot be countenanced.

10) Ms. Ganpathy submitted that apart from the first informant, other persons/tourists have also been deceived in a similar fashion. Therefore, the custodial interrogation of the applicants, particularly the applicant No. 1 Roshan, is warranted.

11) Mr. Muley joined the issue by canvassing a submission that the all the amounts that were credited to the account of Safari travels do not represent the defrauded amount, Safari Travels had provided services for the same. An endeavour was made by Mr. Muley to show the transfer of the amount from the account of Safari Travel to co-accused Sandeep Kumar allegedly fraudulently.

12) At the outset, it is imperative to note that applicant No. 2 Asgar Ali does not appear to be the proprietor of Safari travels. In the complaint which preceded the report by the first informant, applicant No. 1 Roshan and accused No. 3 Sandeep Kumar were stated to be the persons, who operated Safari travels. Ms. Ganpathy fairly submitted that having regard to the material on record and the age of applicant No. 2 - Asgar, the Court may exercise the discretion in favour of applicant No. 2.

13) Prima facie, the material on record does not establish the nexus between applicant No. 2 and the alleged offences. I am, thus, persuaded to grant pre-areest bail to applicant No. 2 - Asgar Ali.

14) I find it rather difficult to accede to the submission of Mr. Muley that applicant No. 1 Roshan also had no role to play in the alleged fraud. Indisputably, applicant No. 1 Roshan is the proprietor of the Safari travels. There is material to indicate that the amounts were credited to the accounts of the Safari travels. Endeavour on the part of applicant No. 1 to wriggle out of the situation by alleging that it was accused No. 3 Sandeep Kumar, who committed the fraud, prima facie, does not merit acceptance. Being the proprietor of Safari Travels, applicant No. 1 Roshan cannot disown the transactions over a period of time. As many as 165 tourists, who had booked through the first informant Snehal Prabhu, were deceived. In addition, there is material to indicate that identical reports were lodged against applicant No. 1 at Sakinaka police station, Mulund police station, and Bandra police station. Prima facie, it appears that numerous persons were duped by inducing them to book the travel plans through Safari travels.

15) In view of the aforesaid nature of the accusation and the material on record which points to a large-scale fraud, custodial interrogation of applicant No. 1 Roshan is indispensable for an effective and complete investigation. Such custodial interrogation would throw light on the modus operendi, the persons who are privy to the systematic cheating and the money trail.

16) In the aforesaid view of the matter, the fact that the applicant No. 1 has deposited 25 % of the amount of which the first informant has allegedly been defrauded, cannot be a circumstance to insulate the applicant No. 1 for all purposes. The fact that the reports of fraud and cheating have been lodged against the applicant No. 1 at other police stations also dissuades the Court from exercising the discretion in favour of applicant No. 1. The Court can not be oblivious of the hardship and trauma caused to unsuspecting travelers whose plans came to a naught abruptly.

17) For the foregoing reasons, I am inclined to partly allow the application. Thus, the following order.

ORDER

I) In the event of arrest of the applicant No. 2 Asgar Ali Shah in connection with C.R. No. 21 of 2022, registered with Manikpur Police Station, for an offence punishable under Section 420 read with Section 34 of Indian Penal Code, 1860, the applicant be released on bail on executing a PR Bond in the sum of Rs.30,000/- with one or two sureties in the like amount.

II) The applicant No. 2 shall co-operate with the investigation and attend Manikpur Police Station, on every alternate Saturday in between 10.00 am to 1.00 pm for a period of two months or till filing charge-sheet, whichever is earlier.

III) The applicant No. 2 shall not tamper with the prosecution evidence and/or give threat or inducement to the first informant or any of the persons acquainted with the facts of the case.

IV) The application stands rejected qua the applicant No. 1 Roshan Asgar Ali Shah.

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

VI) In view of dismissal of the Anticipatory Bail Application, the Interim Application also stands disposed.

[N. J. JAMADAR, J.]