

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

ANTICIPATORY BAIL APPLICATION NO.1052 OF 2023

Hasmukh Ganesh Bhai Kheni	... Applicant
V/s.	
The State of Maharashtra	... Respondent

**WITH
INTERIM APPLICATION NO.1376 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1052 OF 2023**

Vishal Jagdish Agarwal	... Applicant
In the matter between	
Hasmukhbhai Ganesh Bhai Kheni	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Mr. Shripad P. Hushing for the applicant in ABA.

Mr. Ganesh Bhujbal with Mr. Jayant Bardeskar for the applicants in IA.

Mr. Pandurang H. Gaikwad, APP for the respondent/ State.

CORAM : AMIT BORKAR, J.

DATED : JUNE 15, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.483 of 2021 registered with Yerawada Police Station for offences punishable under sections 406, 420, 464, 465, 468, 471 read with section 34 of the Indian Penal Code, 1860 and sections 21 and 23 of the

Banning of the Unregulated Deposits Act, 2019, the applicant is seeking relief under section 438 of the Criminal Procedure Code, 1973.

2. According to prosecution, the applicant along with other co-accused lured the complainant to make investment of Rs.1,25,59,562/-, which consists of online investment as well as cash investment. However, in return they paid an amount of Rs.22,75,000/-. The co-accused got executed sale deed in respect of four shops for consideration of Rs.64,00,000/- and one flat for consideration of Rs.40,00,000/-, but did not pay the amount of consideration. Resultantly, the applicant along with other co-accused cheated complainant to the tune of Rs.2,03,24,562/-.

3. The applicant, therefore, filed an application under section 438 of the Criminal Procedure Code, 1973 before the learned Sessions Judge, which has been rejected by order dated 27th November 2021. Aggrieved thereby, the applicant has filed present anticipatory bail application.

4. Learned advocate for the applicant submitted that in Special Suit Nos.705 of 2021 and 715 of 2021 filed by the informant against the co-accused, Dharmesh Desai and Jignesh Sanghvi, have been compromised. He placed reliance on the memorandum of understanding dated 18th January 2022 arrived at between the accused and the complainant. Therefore, according to him, the question remains is that of compliance of terms of memorandum of understanding and the compromise decree. He states that nothing remains to be investigated as the charge sheet is filed

against the other accused. Other co-accused are released on bail.

5. Per contra, learned advocate for the informant submits that the terms of compromise and memorandum of understanding have not been complied with by the applicant. According to him, considering the serious allegations, the applicant has not deserve any relief under section 438 of the Criminal Procedure Code, 1973. According to him, custodial interrogation of the applicant is necessary. Learned APP for the State supported the contentions of the informant.

6. Having perused the material on record and the case diary produced by the learned APP, it appears that except allegation that the applicant also called upon the informant to invest with the co-accused, there is no other privity between the informant and the applicant. The material on record shows that the informant paid the amount to accused No.1, which got transferred in the name of co-accused Sagar and Sagar transferred the amount in favour of the accused. The terms of settlement in the form of memorandum of understanding and compromise decree passed by the Civil Court resolves part of the dispute. For enforcement of unfulfilled obligations, it will always be open for the informant to execute it in accordance with law. For that purpose, custodial interrogation of the applicant is not necessary. Hence following order:

- a) In the event of arrest of the applicant in connection with C.R. No.483 of 2021 registered with Yerawada Police Station for offences punishable under sections 406, 420, 464, 465, 468, 471 read with section 34 of the Indian Penal Code,

1860 and sections 21 and 23 of the Banning of the Unregulated Deposits Act, 2019, he shall be released on bail on furnishing PR Bond in the sum of Rs.50,000/- with one or two sureties in the like amount;

b) The applicant shall cooperate with the investigation and make himself available for interrogation whenever required;

c) The applicant shall not directly or indirectly make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;

d) The applicant shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

e) The applicant shall, at the time of execution of the bond, furnish his address and mobile number to the investigating officer, and the court concerned, and shall not change the residence till the final disposal of the case;

7. The anticipatory bail application stands disposed of in above terms.

8. In view of disposal of the anticipatory bail application, nothing remains to be adjudicated in the interim application. The same is disposed of.

(AMIT BORKAR, J.)