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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1123 OF 2023

Hanumant S/o Jagannath Nazirkar ... Applicant
V/s.
The State of Maharashtra ... Respondent

Mr. Nitin Gaware Patil i/by Mr. Anandmaya Dhorde for the applicant.
Ms. Veera Shinde, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : AUGUST 8, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.128 of 2023 dated 5th March 2023 registered with Baramati Police Station, Pune Rural for offences punishable under sections 420, 467, 468, 471 read with section 34 of the Indian Penal Code, 1860, the applicant is seeking relief of pre-arrest bail under section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution, from January 2023 to 22nd February 2023, the applicant and his wife impersonated using forged Pan Card and executed a power of attorney in favour of accused No.3 and accused No.4 and in connivance with accused Nos.5 to 9 and other unknown persons executed sale deed of Gat No.269 in favour of the informant. The informant paid amount of

Rs.25,00,000/- towards part consideration in cash and amount of Rs.62,30,000/- towards part consideration by bank transaction. Amount of Rs.62,30,000/- was transferred through RTGS in the account of applicant's wife. According to the informant, therefore, the applicant and his wife in connivance with remaining accused cheated him with fraudulent and dishonest intention.

3. According to the prosecution, in the investigation it was revealed that the Apex Court by order dated 15th September 2022, directed the applicant to be released on bail on such terms and conditions as may be deemed fit and appropriate by the trail Court. Accordingly, the trial Court by order dated 17th September 2022 directed release of applicant on the conditions stated in the said order. Condition No.3 of the said order reads as under:

> "3] The applicant directly or indirectly shall not mortgage, pledge, transfer of and rent out of any movable or immovable property described in the charge-sheet as disproportionate to known source of the accused."

4. According to the prosecution, therefore, to get over such condition, the applicant in connivance with remaining accused sold property to the informant. Accused Nos.5 to 8 acted as mediator. According to the prosecution, material on record indicates that the amount to be paid through bank transaction was agreed to be lessor as the applicant was in need of cash and, therefore, amount of Rs.2,75,00,000/- was paid in cash and only amount of Rs.62,30,000/- was paid through bank transaction. The informant, therefore, lodged a report.

5. The applicant applied for relief under section 438 before the

Sessions Judge which came to be rejected by order dated 5th April 2023. The applicant has, therefore, filed present anticipatory bail application.

6. Learned advocate for the applicant submitted that amount of Rs.62,30,000/- was deposited in the account of applicant's wife without her consent. Therefore, the applicant immediately lodged a complaint with the bank that the deposit of amount was without her permission. He submitted that the applicant is falsely implicated in the crime. According to him, there are some forces which intend to frame the applicant in false prosecution. He submitted that accused Nos.5 to 7 were knowing the applicant and they had helping the applicant in execution of leave and licence agreement of another property in favour of another person. Therefore, WhatsApp Calls between the co-accused and the applicant are in the context of said transaction. According to learned advocate for the applicant, the applicant is ready to cooperate with the investigation and, therefore, custodial interrogation of the applicant is not necessary.

7. Per contra, learned APP placed on record investigation papers which include statements of arrested co-accused. According to her, statements of arrested co-accused indicate that the applicant was in the constant touch with them. The transcript of messages with the co-accused revealed transfer of bank account information of the applicant's wife. The transcript indicates co-accused asking applicant about deposit of amount in applicant's wife's account which the applicant answered in affirmative. She invited my attention to the police case diary and in particular entry of 25th April 2023, which indicates that the applicant was asked to submit his mobile phone, however, the applicant failed to deposit his mobile with the investigating officer. According to her, therefore, the applicant is not cooperating with the investigation. Mere presence in the police station is not sufficient to indicate cooperation with the investigation. According to her, therefore, apart from satisfaction of prima facie case, in view of non-cooperation with the investigation, the anticipatory bail application deserves to be rejected.

8. On perusal of the case papers including statements of accused Nos.5 to 7 who according to the prosecution acted as mediator for completion of transaction, it appears that the applicant was in constant touch with them. According to the prosecution, the power of attorney was not executed by the applicant's wife. Even the person executing sale deed was fake.

9. Entire transaction needs to be scrutinized in the context of condition No.3 of the order dated 17th September 2022, which restrained the applicant from creating mortgage, pledge, transfer of and rent out of any movable or immovable property described in the charge-sheet. Gat No.269 is the property described in the charge-sheet. Prima facie, the statement of co-accused which is supported by transcript of WhatsApp between applicant and accused No.7 indicates transfer of account information of wife by the applicant. The transcript produced on record indicates that on 12th December 2022, bank details of the applicant's wife were sent by the applicant to accused No.7. On 9th January 2023, accused No.7 asked the applicant about deposit of amount in the account which the applicant answered in the affirmative. Accordingly, in the month of February, 2023 amount of Rs.62.30,000/- was transferred in the applicant's wife's account. Therefore, in my opinion, the prosecution has made out a prima facie case against the applicant.

10. Moreover, another aspect of the matter which requires serious consideration is the concept of cooperation with the investigation. It appears that general impression carried by the accused persons is that only physical presence and making statement before the investigating officer satisfies cooperation with investigation. However, it needs to be clarified that cooperation with investigation contemplates willingness and active participation of individual or entities in providing information, assistance and support to the investigating agencies during process of investigation of a potential crime, violation or wrong doing. Whenever a person is asked to cooperate with the investigation, this includes sharing of relevant facts, documents, records and other evidence that might aid the investigation. A person may be asked to provide statement, testimony or their perspective of a situation on being investigated. Cooperation involves assistance to the investigating officer in collecting evidence, recording statements and performing other activities that would help the investigating agency to build a comprehensive understanding of the situation. The requirement of cooperation with investigation includes providing accurate and complete information, full disclosure and transparency which are crucial aspects of cooperation as withholding or manipulating information can prejudicially affect the investigation process. Cooperation with the investigation is a significant factor in determining outcome of a crucial trial. Lack of cooperation or partial cooperation may lead to reduction in punishment at the end of trial.

11. In the facts of the present case, on 25th April 2023, the applicant was called upon to deposit his cell phone which he failed to deposit. In the facts of the case where there are allegations of impersonation and active role played by the applicant in impersonating the vendor, statements of co-accused which indicate transfer of crucial material through cell phone necessary for the purpose of trail. The statements of co-accused indicate mutual transfer of information using cell phone which would unearth real culprit/culprits. Hence, submission of cell phone to investigating officer was absolutely necessary. In the facts of the case, mere presence and recording of statement would not amount to cooperation with the investigation. Therefore, in my opinion, I have no hesitation to hold that the applicant has failed to cooperate with the investigation.

12. According to prosecution, even during pendency of present investigation one more crime is registered against the applicant. According to learned advocate for the applicant, the applicant has been falsely implicated in the said offence.

13. Therefore, in my opinion, since the prosecution has made out a prima facie case and there is failure on the part of applicant to cooperate with the investigation, no relief under section 438 of the Criminal Procedure Code, 1973, which is discretionary power can be granted in favour of the applicant.

14. The anticipatory bail application is, therefore, rejected.

15. At this stage, the applicant has prayed for continuation of ad-interim relief granted on 18th April 2023. On perusal of the order, it appears that this Court specifically directed the applicant to cooperate with the investigation; however, the applicant has failed to abide by the condition of the interim order. Therefore, the applicant does not deserve to be entitled for continuation of ad-interim relief.

16. I, therefore, reject the request for continuation of ad-interim relief.

(AMIT BORKAR, J.)