Ashwini V

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 1298 OF 2023

Sumit Sharashchandra Padhye … Applicant
V/s.
The State of Maharashtra … Respondent

WITH
INTERIM APPLICATION NO. 2046 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO. 1298 OF 2023

Bhagwan Kerba Patil & Anr … Applicants
IN THE MATTER BETWEEN
Sumit Sharashchandra Padhye … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Amol Jagtap a/w Ms. Chandni Sachode, for the Applicant in ABA/1298/2023.

Mr. Rahul P. Kasbekar, for the Applicants/Intervenors in IA/2046/2023.IA

Mr. Pandurang H. Gaikwad, APP, for the Respondent-State.

CORAM : AMIT BORKAR, J.

DATED : JULY 4, 2023

P.C.:

1. Apprehending arrest in connection with CR. No.0277 of 2023 registered with Shahupuri Polilce Station, Kolhapur, for the offences punishable under Section 406, 409 and 420 read with 34 of the Indian Penal Code, 1860 (“IPC”), the applicant has filed present anticipatory bail application seeking relief of pre-arrest bail under Section 438 of the Criminal Procedure Code, 1973 (“Cr.P.C.”).

2. According to prosecution, the informant was in need of loan for purchase of Bulldozer. Based on the information that the Bank shall grant loan without considering CIBIL score, the informant along with another person met the Applicant and Assistant Branch Manager. The Applicant directed informant to open savings account and called upon informant to deposit Rs.15,000/- for loan process. Accordingly, informant deposited Rs.15,000/-. After completion of documentation process, the informant was informed that loan of Rs.20 lakh has been sanctioned and he was further called upon to deposit Rs.10,000/- towards search report, Rs.3,500/- towards agreement and Rs.50,000/- towards commission. The informant paid additional amount of Rs.2,000/- towards visit charges and Rs.40,000/- towards mortgage. According to informant, he deposited Rs.1,05,500/- with the Applicant and Assistant Manager. However, loan was not disbursed to the Applicant. He, therefore, lodged report on 17th January 2023.

3. According to the Applicant, he is working as direct selling agent of H.H.B.S.M.H. India Nidhi Ltd (“HHBS”). The HHBS has appointed the Applicant on 15th December 2021. According to him, except amount of Rs.15,000/- the Applicant has not accepted any other amount. Amount of Rs.15,000/- has been deposited with HHBS for which the Applicant is nowhere concerned. According to him, informant's loan was sanctioned by the company, however, the amount was not disbursed and for such lapse, the Applicant is not responsible. The Applicant is acting only as a service provider and nothing beyond that.

4. Per contra, learned Advocate for the victim and learned APP submitted that reports of similar nature are filed by six other victims alleging similar role played by the Applicant. They invited my attention to the advertisement published by the Applicant in newspaper thereby giving an impression to needy borrowers that despite they being otherwise ineligible, loan shall be sanctioned to them based on mortgage of property. According to prosecution, therefore, custodial interrogation of the Applicant is necessary to unearth similar exploitation of borrowers.

5. Having perused the material on record, it appears that the appointment of Applicant by HHBS confirms him as direct selling agent. The appointment letter contemplates remuneration to be paid by HHBS after sanctioning of loan depending on total disbursement of loan and fixed deposit made through the Applicant. From the said document, it is prima facie clear that the Applicant was acting in his capacity as an agent of HHBS. The Applicant had no independent authority to accept any amount from the borrowers. Despite scope of authority having been prescribed by the company owner, it prima facie appears at this stage that the Applicant has accepted at least Rs.15,000/- by way of receipt. For the purpose of ascertaining payment of remaining amount by the Applicant and to ascertain the *modus operandi* of the Applicant in the context of advertisement, custodial interrogation of the Applicant is necessary.

6. On prima facie perusal of advertisement issued by the Applicant, I am of the opinion that the advertisement is misleading. The advertisement exploits needy borrowers who are otherwise ineligible to get loan from Nationalized Banks. Such misleading advertisement create hope of financial assistance and for that purpose such persons who are already in economic distress part with various amounts as required by persons like Applicant for availing such services. It needs to be noted that the criteria and parameters of sanctioning of loan are regulated by the directions issued by the Reserve Bank of India from time-to-time. Such directions are binding on the Banks which are regulated under the provisions of the Banking Regulation Act, 1949. Since HHBS is a non-banking financial company, it is regulated by the Ministry of Corporate Affairs. As observed earlier publishing of such misleading advertisement creating false hope and exploiting them to pay amount to agents like the Applicant needs to be deprecated.

7. Since according to Investigating Agency, multiple instances have been surfaced against the Applicant, custodial interrogation of the Applicant is necessary.

8. Application is therefore rejected.

9. Since there was ad-interim relief granted earlier, same shall continue for a period of two weeks from today.

(AMIT BORKAR, J.)