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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.1664 OF 2023

Supriya Mangesh Patil ... Applicant
V/s.
The State of Maharashtra ... Respondent

WITH
INTERIM APPLICATION NO.2201 OF 2023
IN
ANTICIPATORY BAIL APPLICATION NO.1664 OF 2023

Girish Ghanshyam Mhatre ... Applicant
In the matter between
Supriya Mangesh Patil ... Applicant
V/s.
The State of Maharashtra & Anr. ... Respondent

Mr. Niranjan Mundargi i/by Mr. Veerdhawal Deshmukh for the applicant in ABA.

Mr. Saurabh D. Butala for the applicant in IA.

Ms. Veera Shinde, APP for the respondent/State.

Mr. Parag Sonawane, Senior Police Inspector, is present.

CORAM : AMIT BORKAR, J.

DATED : JUNE 21, 2023

P.C.:

1. Apprehending arrest in connection with C.R. No.119 of 2023 dated 30th May 2023, registered with Uran Police Station, Raigad, for offences punishable under sections 420, 406 read with section

34 of the Indian Penal Code, 1860 and section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 and sections 3, 4 and 5 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, the applicant is seeking protection under section 438 of the Criminal Procedure Code, 1973.

2. According to the prosecution case, one Gannath Thakur (co-accused) is the informant's friend. On 1st January 2023, Gannath Thakur informed the informant that the present applicant runs a chit fund scheme, and if the informant invests Rs.32,000/- for 30 days, he will get Rs.50,000/-returns. Accordingly, the informant decided to invest in the scheme and handed over an amount of Rs.3,20,000/-. Thereafter, he invested an amount of Rs.6,40,000/-. Accordingly, a message was sent on the cell phone of the informant. The informant gave information about the scheme to his friends and relatives. According to the prosecution, the informant's friends and relatives invested in the scheme amount of Rs.14,00,00,000/-. The applicant did not return the amount. The office of the chit fund was found to be closed.

3. The applicant, therefore, applied section 438 of the Criminal Procedure Code, 1973, which came to be rejected by an order dated 9th June 2023.

4. According to the learned advocate for the informant, the applicant is falsely implicated. The applicant has no connection with the amounts enumerated in the report. She is unaware of the transactions alleged in the report. She did not receive any amount from any investors.

5. Per contra, the learned APP for the State and the learned advocate for the victim submitted that Gannath Thakur (co-accused) was acting as an agent of the applicant. The messages sent to the investors by the applicant acknowledge receipt of the amount. The co-accused Gannath Thakur has provided scheme details in his statement to the investigating agency. Therefore, they submitted that an applicant's custodial interrogation is necessary to unearth an enormous scam.

6. On perusal of the case diary and the statements of witnesses and the co-accused, it prima facie appears that the investor was required to purchase a coin having a notional value of Rs.32,000/-. They were promised to repay the amount of Rs.70,000/- within 30 days. The commission agent was paid Rs.20,000/- per coin. The WhatsApp chat, which affirms part of the case diary between the applicant (The cell Phone number stands in the name of the applicant's husband), prima facie reveals the acceptance of the amount from the victim. The diary seized from the co-accused shows a transaction of 552 Coins. Based on the diary seized from Gannath Thakur, the total number of coins is 17280, worth Rs.55,29,60,000/-. The investigating agency has recorded statements of at least 22 persons who have invested an amount of Rs.12,97,00,000/-. According to the prosecution, as of now, the total amount which is part of the scam is Rs.68,26,60,000/-.

7. Considering the astronomical returns promised by the applicant on the date of such promise, it was impossible to return such high returns when bank interest rates are around 7% to 8%.

8. There is an increase in the registration of complaints alleging such high returns, the legislature felt a need to regulate such an illegal scheme, and for that purpose, a special Act was the Banning of Unregulated Deposit Schemes Act, 2019.

9. Such kind of economic offences has been held to be an independent class in a judgment in the case **P. Chidambaram vs. CBI** reported in (2019) 9 SCC 24, wherein the Apex Court in paragraphs 76 to 78 observed as under:

> "**76.** Power under Section 438 Cr.P.C. is an extraordinary remedy, and has to be exercised sparingly, more so in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In Directorate of Enforcement v. Ashok Kumar Jain **(1998) 2 SCC 105**, it was held that in economic offences, the accused is not entitled to anticipatory bail.
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> **77.** The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other, and PMLA being a special enactment applicable to the offence of money laundering, is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering is an economic offence committed with much planning, and deliberate design poses a serious threat to the nation's economy and financial integrity, and in order to unearth the laundering and trail of money, custodial interrogation of the appellant is necessary.
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> **78.** Observing that economic offence is committed with deliberate design with an eye on personal profit regardless of the consequence to the community, in State of Gujarat v. Mohanlal Jitamalji Porwal and others **(1987) 2 SCC 364**, it was held as under:-

> "5. ....The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of the moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

10. The apex Court held that while considering application under section 438 of the Criminal Procedure Code, 1973, the power needs to exercise in exceptional cases involved wherein the offences alleged are economic offences.

11. Considering the material in the form of statements of the witnesses, the extracts of the diary recovered from the co-accused and the transcript of the Whats App chat of the investors, it cannot be accepted that the applicant has been falsely implicated. The finding recorded by learned Sessions Judge is that the total amount misappropriated is to the extent of Rs.64,00,00,000/-. The offence alleged is an economic offence which is serious in nature. Apart from the need for custodial interrogation, a prima facie case is made out against the applicant. The Apex Court, in the case of **Sumitha Pradeep vs. Arun Kumar** reported in 2022 SCC OnLine SC 1529, has held that custodial interrogation of the applicant is not the only relevant factor to adjudicate application under section 438 of the Criminal Procedure Code, 1973. The Court is first required to consider prima facie cases, then the need for custodial interrogation and the severity of punishment are relevant factors.

12. On an overall consideration of the material on record, at this stage, the prima facie case is made out against the applicant. Custodial interrogation is also necessary to recover the amount. Hence, the anticipatory bail application is rejected.

(AMIT BORKAR, J.)