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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO.2005 OF 2023

Vishakha Avinash Rathod … Applicant
V/s.
The State of Maharashtra … Respondent

Mr. Aashutosh Srivastava, for the Applicant.

Mr. Amit A. Palkar, APP for the State-Respondent.

Mr. Sahilesh U Gaikwad, API, EOW, Pune City police station.

CORAM : AMIT BORKAR, J.

DATED : JULY 17, 2023

P.C.:

1. Apprehending arrest in connection with C.R.No.281 of 2023 for the offences punishable under Sections 420, 406, 409 r/w 34 of the Indian Penal Code, 1860 (for short ‘IPC’) and Section 3 and 4 of Maharashtra Protection of Interest of Depositors Act (for short ‘MPID Act’), the applicant is seeking relief of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 (for short ‘Cr.P.C.’).

2. According to prosecution, the informant first information report (F.I.R.) against the applicant and her husband alleging that the applicant’s husband is running an investment firm APS Wealth Venture LLP which accepts deposit in the form of investment and pays 5% of invested amount every month. In the result investors would get doubled amount in 20 months. Based on such promise, the informant invested amount with the investment firm. According to informant, several other investors invested amount with the firm of accused No.1. The amount of Rs.300 crore were invested by investors with the said firm. Accordingly, informant invested Rs.6 lakh on 27 November 2021 in the name of his sister and agreement was entered into between them promising that there will be 5% profit and 5% principal on the said investment will be returned per month. Initially, the informant received promised returns till month of May. Thereafter, amount was not paid, which resulted in filing of F.I.R. against the accused persons including applicant/accused.

3. The applicant, therefore, filed application under Section 438 of Cr.P.C. before learned Sessions Judge which came to be rejected by order dated 30 May 2023. Aggrieved thereby, the applicant has filed the present anticipatory bail application.

4. According to learned Advocate for the applicant, the applicant is no way connected with her husband's business. The investment by the informant is with the firm of which her husband is partner. Remaining partners are not made accused. She is not named in the F.I.R. nor any role is attributed to her. She is neither partner nor connected with the firm of accused No.1. Accused No.1 had already initiated proceedings before National Company Law Tribunal (NCLT). She has no criminal antecedents. In the absence of allegations against the applicant, relief under Section 438 of Cr.P.C. needs to be granted.

5. *Per contra* learned APP placed on record case diary, according to him, accused No.1 being partner and the applicant along with other partners of APS Wealth Venture LLP have has conspiracy with each other to attract investors under the pretext of getting attractive returns. The said firm had cheated innocent investors in the tune of amount of Rs.15,45,24,000/- and misappropriated the amount for their own benefit. The investigating agency has taken search of APS Wealth Venture LLP and has been seized a computer hard disc. The investigating agency has recorded statement of witnesses. It has found that there were 9 bank accounts in the name of said firm which has been freeze. Learned APP further submitted that despite issuance of notice under Section 41 of Cr.P.C., the applicant is not co-operating with the investigating agency. According to prosecution, the statements of witnesses indicate presence of applicant during meetings and luring them to invest with the said firm/company. The applicant is partner of another firm, had received various amounts from the investors through accused No.1. He submitted that there is every possibility of destroying of documentary evidence which connects applicant with the said firm. It is also alleged that the applicant along with her husband have disposed of the property purchased from crime money.

6. I have perused the case diary produced on record by the investigating agency. From the investigation papers, it *prima facie* appears that the applicant had received amounts from APS Wealth Venture LLP, the reason for receipt of such amount is the matter of investigation. The statements of witnesses indicate that the applicant was present during the meetings when the accused No.1

promised extra profit on returns. The applicant *prima facie* actively participated in such meetings luring the investors to invest with various amounts. *Prima facie* receipt of amount by the applicant in various capacities is borne out of record produced by the investigating agency. According to prosecution, the amount of investment by investors is to the tune of Rs.77,27,20,000/-. Therefore, custodial interrogation of the applicant is necessary to unearth relationship of the applicant with APS Wealth Venture LLP company.

7. The necessity of custodial interrogation has been laid down in paragraph 6 by the Apex Court in the case of **State represented by CBI v. Anil Sharma** reported in (1997) 7 SCC 187 as under:

> "**6.** We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation oriented than questioning a suspect who is well ensconded with a favorable order under Section 438 of the code. In a case like this effective interrogation of suspected person is of tremendous advantage in disintering many useful informations and also materials which would have been concealed. Succession such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail during the time he interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The court has to presume that responsible Police Officers would conduct themselves in task of disinterring offences would not conduct themselves as offenders."

8. At this stage, I am satisfied that the custodial interrogation of the applicants is necessary to unearth a larger racket of such persons to lure innocent investors by promising them handsome returns. The nature of the offence is grave and serious; it forms a separate class from other offences, as has been held by the Apex Court in the case of **Y. S. Jagan Mohan Reddy v/s Central Bureau of India** decided on 9 May 2013, reported in SSC Online (2013) 7 SCC, in paragraph 34 and 35 have observed as under:

> "**34.** Economic offences constitute a class apart and need to be visited with a different approach in bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing a serious threat to the financial health of the country.
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> **35.** While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations."

9. The learned APP submitted that the applicant is outside India. She has not co-operated with the investigation, despite issuance of notice under Section 41 of Cr.P.C.

10. Learned Advocate for the applicant stated that the applicant is ready to return to India, if this Court protects her by interim relief. If, she returns to India she will co-operate with investigation. The applicant being citizen of India, the application under Section

438 of Cr.P.C. can be said to be maintainable. However, there is conceptual difference between maintainability of application and entertainability of application.

11. This Court while exercising discretionary power can be always refuse to entertain application though such application is legally maintainable. Entertainability of the applicant by exercising discretionary jurisdiction can be based on various factors including conduct of applicant, nature of allegations and seriousness of allegations etc. In the facts of the present case, considering the allegations made, material on record produced by the investigating agency and conduct of the applicant, who has not remained present before the investigating agency, despite issuance of notice under Section 41 of Cr.P.C. and considering the nature and gravity of the offence and the effect on society, in my opinion, the applicant is not entitled to relief under Section 438 of Cr.P.C.

12. The anticipatory bail application is, therefore, rejected. No costs.

(AMIT BORKAR, J.)