IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

ANTICIPATORY BAIL APPLICATION NO. 2127 OF 2023

Parag Jitendra Solanki .... Applicant
v/s.
The State of Maharashtra .... Respondent

Mr. Ashok Vardhan Purohit for the Applicant.
Mr. S.V. Gavand, APP for the State.
Mr. Murtuza Machiswala, Complainant/first informant present.
Mr. Vilas Datir, PI, Parksite police station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 28th JULY, 2023.

P. C. :-

. The Applicant apprehends his arrest in C.R.No.08/2022 registered at Park Site Police Station, Mumbai for offences punishable under sections 406, 420, 465, 468, 471, 475 r/w. 34 of the Indian Penal Code.

2. Heard learned counsel for the Applicant and learned APP for the State. I have perused the records and considered the submissions advanced by the learned counsel for the respective parties.

3. The aforesaid crime was registered pursuant to the FIR lodged by Murtuza Machiswala. It is the case of the first informant that in the

year 2017, he got acquainted with the Applicant. In the year 2019, the Applicant informed him about the company 'PRI GOLD' and told him that the said company was of his friend – Naresh and that one Sushil Kumar was the CEO of the said company. The Applicant induced the first informant to invest money in PRI GOLD on an assurance that he would get good returns almost at the rate of 20% to 30% of the amount invested. It is stated that from 12/02/2019 to 02/01/2021, the first informant and his wife invested an amount of Rs.2,53,81,760/-. The first informant has stated that in the year 2020, the Applicant told him that the repayment of the amount would be delayed because of the lockdown declared due to the outbreak of Covid-19 pandemic.

4. In September, 2020, the Applicant informed him that PRI GOLD has credited an amount of Rs.7,73,00,500/- into the account of his Company called Matchwell. The first informant did not receive any message from the bank and when he contacted the Applicant and inquired about the deposit, he gave him some evasive replies. Some days later, the Applicant informed him that the account of PRI GOLD was freezed by the Enforcement Directorate. The first informant was informed by the office of the Enforcement Directorate that none of the

accounts of PRI GOLD was freezed. The first informant thereafter contacted the Applicant, his wife and son and requested to refund the amount. The Applicant told the first informant that he would return the money by mortgaging the property with one Jitendra Sagvekar. The Applicant did not refund the money despite such assurance. The first informant contacted said Jitendra Sagvekar and he was shown a letter on the letter head of L&T Construction Co. addressed to Jitendra Sagvekar and Jagdish Soni, CEO of the said Company stating that the money of the Applicant was withheld by L&T Company. The first informant visited the office of L&T Company along with Jitendra Sagvekar and tried to contact CEO-Jagdish Soni and learnt that Jagdish Soni was a fictitious person. They were informed that the letter given to Jitendra Sagvekar was forged.

5. The first informant has stated that the Applicant had also taken Rs.40,00,000/- from M/s. Yashoda Tarnath Ucchil, his mother-in-law, on an assurance that he would make her a member of Board Committee of L&T Comapny. The first informant therefore lodged a complaint against the Applicant and his wife and son for cheating him for an amount of Rs.2,53,81,760/- in addition for having cheated his mother-in-law Yashoda Tarnath Ucchil for an amount of

Rs.40,00,000/-. Based on these allegations, the aforesaid crime came to be registered against the Applicant.

6. Learned counsel for the Applicant contends that the MoU between the first informant and the Applicant and his wife which was entered even prior to filing of the FIR reveals that the wife of the Applicant had given to the first informant an amount of Rs.2,50,00,000/- as friendly loan. He submits that infact the first informant owes an amount of Rs.2,50,00,000/- to the Applicant and his wife.

7. Learned APP has produced before me a copy of the letter dated 14/01/2020 signed by the Applicant and his wife which reads thus :-

> *" This is in reference to our deal for investment in Gold Business/Gold Bond an Amount of Rs.2,53,81,760/- (Two Crores Fifty Three Lakhs Eighty One Thousand Seven Hundred and Sixty Only). We will be getting an Amount of Rs.7,73,00,900/- (Seven Crore Seventy Three Lakhs and Nine Hundred Only) and We will be transferring the money directly to your Account. To safeguard you against any query from the Income Tax Department for the excess amount transferred. We request you to enter into a Memorandum of Understanding where We will show that We had given you a loan of Rs.2,50,00,000/- (Two Crore Fifty Lakhs Only.) which will clear all doubts of any Authorities. So as discuss on Phone please come to our Mulund residence, where my Lawyer's office is*

nearby, so that we all can sign the Memorandum of Understanding. "

8. A perusal of the said letter prima facie indicates that the MoU dated 16/01/2020 is a sham document. It is to be noted that wife and son of the Applicant had also filed Anticipatory Bail Application No.1922/2022 which was dismissed by order dated 21/03/2023. In the said application, learned counsel for the co-accused i.e., wife and son of the Applicant herein had conceded that there is no bank entry to show that they had paid to the first informant an amount of Rs.2,50,00,000/-. It was held that in the absence of any such material, it is difficult to accept that the Applicant and the co-accused would give cash of Rs.2,50,00,000/- as friendly loan. It was also observed that the receipt annexed to the MoU states that an amount of Rs.2,50,00,000/- was transferred by RTGS without giving any bank transaction and that the said receipt falsifies the contention of the learned counsel for the Applicant that the amount was paid in cash.

9. The Applicant now contends that an amount of Rs.2,50,00,000/- was paid in cash. He has produced receipts which are at page nos.367 to 392. The first informant who is present before the Court disputes his signature on the said receipts. Furthermore, prima facie, the

signatures on the receipt do not tally with the signature on the MoU. It is also pertinent to note that these receipts were not produced by the co-accused either before the Sessions Court or before this Court in Anticipatory Bail Application No.1922/2022. Learned APP has also drawn my attention to the complaint to the Commissioner of Police dated 14/12/2022 lodged by the first informant against the Investigating Officer wherein the Applicant has given narration of the entire transaction. There is no reference to these receipts in the said complaint. The Applicant had also given notice to the first informant for invoking arbitration and appointment of arbitrator. Though the detail facts are narrated, there is no reference to these receipts even in the said notice. In such circumstances, I am not inclined to rely upon the said receipts. Even otherwise, as observed by this Court in the previous order that it is difficult to accept the contention of the Applicant that he has given friendly loan of Rs.2,50,00,000/- in cash. The records reveal that the first informant had transferred a total amount of Rs.1,99,48,460/- in the account of the Company by way of bank transaction and in addition he had paid cash of Rs.49,91,000/- in respect of which the Applicant has issued receipts. Bank records reveal that only an amount of Rs.1,24,75,690/- has been returned.

10. The records prima facie reveal that the Applicant had induced the first informant to invest money on an assurance that the said amount would be repaid with interest at the rate of 20% to 30%. All that they repaid is Rs.1,24,75,690/- which is less than the principal amount invested by the first informant. The MoU coupled with letter dated 14/01/2020 as well as the false whatsapp message sent to the first informant indicating that an amount of Rs.7 Crores was credited in the bank account would prima facie suggest that the Applicant and the co-accused who are the beneficiaries of the said transaction, had an intention to deceive the first informant right from the inception.

11. Considering the above facts and circumstances, particularly the nature of the accusations levelled against the Applicant and the material in support thereof, this is not a fit case to exercise discretion under section 438 of Cr.P.C. in favour of the Applicant. Hence, the Application is dismissed.

(SMT. ANUJA PRABHUDESSAI, J.)

PREETI HEERO JAYANI

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