IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.2454 OF 2021

Sandeep Pratap Sanap ... Applicant
versus
State of Maharashtra ... Respondent

Mr. Prasad Rakh with Mr. Amit Shinde, for Applicant.
Ms. Pallavi N. Dabholkar, APP for State.
Mr. Sachin Patre, API Mahatma Phule Chowk police station present.

CORAM: N.J.JAMADAR, J.

DATE : 25 SEPTEMBER 2023

P.C.

1. Heard the learned Counsel for the parties.

2. This is an application for pre-arrest bail in connection with C.R.No.630 of 2020 registered with Mahatma Phule Chowk Police Station for the offences punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code and Section 3 of the Maharashtra Protection of Interest of Depositers (in Financial Establishments) Act, 1999.

3. The first informant lodged a report with the allegations that since the year 2014, the Shrikant Gangadhar Rao, accused No.1 induced her to invest amounts by representing that the Accused No.1 was operating the financial establishment – ATM Multitrade Services and if an amount of Rs.1 Lakh was invested, double the amount would be returned under 18 months. The accused No.1 further represented

that if the first informant brought the investors, she would get the commission of Rs.5000/- on an investment of Rs.1 Lakh. The first informant, her daughter, other relatives and acquaintances were, thus, induced to invest huge amount of Rs.45,95,000/- till September 2015. The accused No.1 did not return the amount, as promised.

4. The first informant further alleged that the accused No.1 made promises in writing and delivered post dated cheques. However, the accused No.1 instructed not to deposit the cheques lest the first informant and the investors would loose the amount. Subsequently, in the month of December 2015, the accused No.1 closed the establishment claiming that he had suffered loss. The accused No.1 represented that he would repay the amount of the first informant and other investors by raising loan on the property of the applicant.

5. There are allegations in the FIR that in a meeting between the applicant, Shrikant Gangadhar Rao (Accused No.1), Rekha Jadhav (Accused No.3) and Sunil Gangadhar Avhad (Accused No.4), the applicant represented that he would secure the loan for Accused No.1. However, he would require a sum of Rs.10 Lakhs towards processing. The first informant was made to mortgage the house and raise an amount of Rs.4 Lakhs thereon. The said amount was paid by the first informant to Accused No.1 Shrikant, who in turn, paid the same to the applicant. In a subsequent meeting, the applicant demanded the balance amount of Rs.6 Lakhs. The said amount was also

paid by the first informant and other investors.

6. In a similar fashion, the applicant and the co-accused induced the investors to part with the amount for the purpose of raising loan and repaying their amounts. The first informant lodged a report with the allegations that the applicant and the co-accused defrauded the first informant and the other women to the tune of Rs.1,72,93,000/-.

7. Apprehending arrest, the applicant approached the Court of Session. By an order dated 17 February 2021, the learned Additional Sessions Judge rejected the application for pre-arrest bail. The applicant preferred the second bail application for pre-arrest bail being ABA No.642 of 2021 before the Court of Session asserting that, in the intervening period, chargesheet had been filed against the co-accused. The said application was also rejected by an order dated 14 July 2021.

8. The learned Counsel for the Applicant would urge that the applicant had no concern with ATM Multitrade Services, the financial establishment of the accused No.1 – Shrikant Gangadhar Rao. The only role attributed to the applicant is that of accepting money to facilitate sanction of loan to accused No.1 – Shrikant Gangadhar Rao. It is not the case of the first informant and investors that they have invested any amount with the applicant. Therefore, the applicant deserves exercise of discretion.

9. The learned APP resisted the application. It was submitted that the applicant has been absconding and despite diligent efforts, the applicant could not be

arrested. According to the learned APP, on this count alone, the application deserves to be rejected. It was further submitted that there is material to show that the amounts were credited to the account of the applicant. Moreover, there are documents to indicate that a MOU and a Promissory Note were executed indicating the inter se arrangement between the applicant and Shrikant Gangadhar Rao – accused No.1. Therefore, the custodial interrogation of the applicant is warranted.

10. The aspects of the delay and conduct of the applicant deserve consideration. FIR was registered on 17 December 2020. The first bail application was rejected by the learned Additional Sessions Judge on 17 February, 2021. The second application seeking bail was also rejected on 14 July 2021. After about two years, the record indicates, the applicant has moved this application for pre-arrest bail.

11. The submission on behalf of the prosectuion that the applicant had been avoiding arrest, is required to be appreciated in the light of this time lag. A person who had made himself scarce and kept himself away from the police to frustrate investigation cannot be permitted to take undue advantage of the situation where the chargesheet is filed against the co-accused. In the peculiar facts of the case, the time factor dissuades the court from readily exercising the discretion in favour of the applicant.

12. On the merits of the matter, the statement of account of Shrikant Gangadhar Rao, accused No.1, indicates that, as alleged in the FIR, a sum of Rs.10

Lakhs came to be transferred to the applicant. The learned Counsel for the applicant attempted to wriggle out of the situation by submitting that the said amount was credited in respect of a totally different transaction between the applicant and accused No.1 evidenced by MOU dated 8 February 2016.

13. I have perused the said MOU. It is as vague as possible. It is in the nature of expression of interest to work together and nothing beyond that. It does not refer to the property which was to be monetized. It is imperative to note that there is another document in the nature of promissory note (Vachan Chithi)), which prima facie establishes the nexus of the applicant with the alleged fraudulent transactions by the co-accused. The Applicant purportedly acknowledges therein that he had undertaken to facilitate the loan of Rs.3 Crores to applicant No.1 and, resultantly, the latter could not pay the amount to the women investors. After acknowledging the repeated defaults, the applicant, prima facie, admits the liability to accused No.1 and the women investors.

14. It seems that the amount of which the women investors were defrauded were invested in the project of the applicant. Thus, there is material to indicate that a portion of the defrauded amount got credited to the account of the applicant and the investments were also made in the project of the applicant. The allegations in the FIR are required to be considered through this prism. The allegations of inducement to part with money in connivance with the co-accused, if so considered, warrant

investigation. I am, therefore, not inclined to exercise the discretion in favour of the applicant, both on the count of the conduct of the applicant in making himself scarce for more than three years and also on the merit of the matter.

15. Resultantly, the application deserves to be rejected.

16. Hence, the following order :

ORDER

(i) The Application stands rejected.

(ii) It is clarified that these prima facie observations are confined to determine the entitlement to pre-arrest bail only.

(N.J.JAMADAR, J.)