IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO.3437 OF 2023

Rahul Balasaheb Chavan ... Applicant
versus
The State of Maharashtra ... Respondent

Mr. Kuldeep Nikam, for Applicant.
Mr. S.H.Yadav, APP for State.

CORAM: N.J.JAMADAR, J.

DATE : 11 DECEMBER 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.585 of 2023 registered with Vishrambaug Police Station for the offences punishable under Sections 406, 420 read with Section 34 of the Indian Penal Code.

3. The first informant alleged that accused No.1 Naresh had represented to him that Arscenture was a Singapore based company. Arms International, Pune was its franchise in India. The said company was dealing in foreign exchange trade. If the amount was invested in the forex trade through the said company, the first informant would get double return, under 10 months. The first informant claimed to have initially decided to invest Rs.50,000/-. The applicant had visited the house of the first informant. The applicant also made a representation like accused No.1 Naresh, and opened an ID of the first informant and gave a password as well. The applicant further

represented to him that if the first informant solicited members to invest in the said company, 5% commission would be added on the first informant's account. Eventually, the first informant claimed to have invested a sum of Rs.2,14,87,200/- through net banking, UPI and in cash. A sum of Rs.67,59,648/- was returned till 1 December 2022. When the first informant approached the applicant and the co-accused, they bought time on one or the other pretext. Hence, the report.

4. Mr. Nikam, learned Counsel for the applicant submitted that the role of the applicant was limited to the opening ID for the investment to be made by the first informant. He had not made any false representation for inducing the first informant to invest the amount. Even the amount which the first informant claimed to have paid or transferred to the account of the applicant were, in turn, transferred to the company's account. The applicant was not at all the beneficiary of the fraud. Attention of the Court was invited to the snapchat and whatsapp conversation between the parties to bolster up a case that the applicant was a mere go between.

5. Learned APP, on the other hand, submitted that out of the total amount of Rs.2,14,87,200/-, a sum of Rs.1,18,48,515/- was paid to the applicant. There is material to indicate that the first informant and his wife and son were deceived in a systematic manner. Therefore, the applicant does not deserve exercise of the discretion on the premise that he had no role in the alleged transaction and was merely an agent of the co-accused.

6. I find substance in the submission of the learned APP. There are allegations in the FIR to the effect that the applicant had also made representations repetitively and induced the first informant and his family members to invest the amount. The prosecution alleges, a sum of Rs.1,18,48,515/- was paid or transferred to the applicant. There are documents which indicate that the amounts were credited to the account of the applicant. At this juncture, the submission on behalf of the applicant that the said amount was, in turn, transferred by the applicant to the company's account, or for that matter co-accused, does not merit consideration as it would be audacious to draw an inference that the applicant was not a privy to the alleged offences.

7. Prima facie, the material on record indicates that the applicant had played an active role in inducing the first informant and his family members to part with the amount and had also accepted a substantial amount from them.

8. In the circumstances, to unearth the fraud in all its facets, have money trail and also unmask the identity of the persons involved in the fraud, custodial interrogation of the applicant appears indispensable. It is not a case where discretion to grant pre-arrest bail can be exercised without jeopardising the interest of fair and complete investigation as well as the interest of the victims.

9. The application, therefore, deserves to be rejected.

10. Hence, the following order :

ORDER

(i) The application stands rejected.

(ii) It is, however, clarified that the observations are confined to the consideration of entitlement for pre-arrest bail and the trial Court shall not be influenced by any of the observations in further proceedings.

(N.J.JAMADAR, J.)