IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 37 OF 2022

Shri Sameer s/o Ramaji Tonpe, aged about 31 years, Occ. : Business, R/o Ayoddhya Nagar, Nagpur.

... APPLICANT

VERSUS

1. State of Maharashtra, through Police Station Officer, Police Station, Dhantoli, Nagpur.

2. Dr. Abhay s/o Yashwantrao Bhalme, aged about 64 years, Occu. Medical Practitioner, R/o Plot No.39, Karim Layout, State Bank Colony, Nagpur.

... NON-APPLICANTS

Shri A.S. Manohar, Advocate for the applicant.
Shri N.R. Rode, A.P.P. for non-applicant no.1/State.
Smt. Renuka Sirpurkar, Advocate for non-applicant no.2.

CORAM : VINAY JOSHI AND BHARAT P. DESHPANDE, JJ.
CLOSED FOR JUDGMENT ON : 20/04/2023.
JUDGMENT PRONOUNCED ON : 03/05/2023.

JUDGMENT : (Per : Vinay Joshi, J.)

Heard. **ADMIT**.

2. The matter is taken up for final hearing by consent of learned Counsel appearing for the respective parties.

3. Registration of First Information Report (FIR) in crime No.100 of 2021 with the Dhantoli Police Station, Nagpur City for the offence punishable under Sections 420, 409 read with Section 34 of the Indian Penal Code led the applicant to approach this Court for quashing of the FIR under extra-ordinary jurisdiction of this Court.

4. The facts in brief are that the informant Dr. Bhalme is a Medical Practitioner of Nagpur. The informant’s son Adwait appeared in National Eligibility cum Entrance Test (NEET) examination for securing medical admission however Adwait did not get requisite marks to secure the admission. The informant’s acquaintance Aashish Dubey, has introduced co-accused Devendra Tavale and a person namely Swapnil Deshmukh stating that they would manage the admission despite low marks in NEET. Both of them assured the informant for securing admission of his son in the postgraduate course in consideration of huge sum. Accordingly, both of them kept on assuring the informant to secure admission and accepted huge sum from the informant. Finally, it was revealed that the informant’s son could not get admission in the Post Graduate Degree Course, and thus, the offence of cheating.

5. Initially, the informant has filed the application dated 20.01.2020 to the Police against co-accused Devendra Tavale and one Swapnil Deshmukh alleging the fraudulent activities. He stated that with the intervention of Aashish Dubey, the informant happened to meet Devendra and his accomplice during the period in between 07.02.2019 to 09.02.2019. They have assured to secure admission to the informant's son in CPS college, Nanavati Hospital, Mumbai for sum of Rs.68 lakhs. The informant has paid Rs.38 lakhs however, both of them kept assuring but unable to secure the admission.

6. It was followed by second application to the Police dated 19.12.2020, wherein the allegations are against co-accused Devendra Tavale, applicant Sameer Tonpe, and Swapnil Deshmukh. The informant has detailed entire episode as to how co-accused Devendra and applicant Sameer time to time met, gave assurances for securing admission and accepted the money. It is alleged that there was total demand of Rs.25 lakhs for securing admission out of which the informant has paid near-about Rs.11,37,000/-. It was followed by lodging of report dated 14.03.2021 raising similar grievance as stated in the complaint dated 19.12.2020. On the basis of said information, the Police have registered aforesaid crime and commenced the investigation.

7. Learned Counsel for the applicant would submit that the informant gave two different versions in his various reports. Particularly, it is submitted that in the first complaint dated 20.01.2020, the grievance was against co-accused Devendra and one Swapnil Deshmukh. At that time, there was no grievance against the applicant Sameer Tonpe. It is submitted that however in second complaint dated 19.12.2020, the name of applicant Sameer Tonpe has been added. Moreover, it is pointed out that in first complaint the allegation was of demand of Rs.65 lakhs and acceptance of Rs.38 lakhs, whilst in second complaint, the demand was stated of Rs.25 lakhs out of which Rs.11,37,000/- have been paid.

8. It is primely argued that since there is variance on material aspect in both complaints the story is improbable. According to the applicant, in initial report dated 20.01.2020, he was not added as a culprit and therefore his involvement is doubtful. It is submitted that as per various complaints, the entire amount was paid to co-accused Devendra, meaning thereby the applicant has no role. With this contention, the applicant prayed for quashing of FIR on account of absence of material making him to put on the trial.

9. Learned Counsel appearing for the informant as well as

learned A.P.P. appearing for the non-applicant/State resisted this application. It is submitted that since inception the applicant played role in the entire episode. He was companion of main accused Devendra. The applicant has accompanied Devendra all the time while accepting money and gave assurances. It is explained that initially co-accused Devendra has introduced the applicant as Swapnil Deshmukh, therefore, in first complaint the applicant's name was not mentioned. It is submitted that the contents of the police report makes out a *prima facie* case of cognizable offence. Moreover, learned Counsel appearing for the informant has invited our attention to paragraph 2 ground No. (VIII) of the application, wherein the applicant has admitted that he has once accompanied co-accused while meeting with the informant. Moreover, it is submitted that the investigation is at initial stage, and therefore, it is not a fit case to quash the FIR.

10. Learned Counsel for the informant by placing reliance on the decision of the Supreme Court in cases of ***Rajesh Bajaj vs. State NCT of Delhi and ors. (1999) 3 SCC 259 and State of Madhya Pradesh vs. Yogendra Singh Jadon and anr. (2020) 12 SCC 588*** would submit that the powers under Section 482 of the Code of Criminal Procedure (the Code) cannot be exercised where *prima facie* case stands established and allegations are required to be proved in court of law. So

also, FIR cannot be quashed merely because one or two ingredients of the offence have not been stated in the FIR. Moreover, learned Counsel for the informant by placing reliance on the decision of the Supreme Court in case of ***State of Bihar and anr. vs. Md. Khalique and anr. (2002) 1 SCC 652*** would submit that the inherent powers should be exercised sparingly in rarest of rare cases.

11. As against this, learned Counsel for the applicant by relying on the decision of the Supreme Court in case of ***Hasmukhlal D. Vora and anr. vs. State of Tamil Nadu 2022 SCC OnLine SC 1732*** would submit that the Court shall exercise the powers for advancement of justice and if any attempt is made to abuse the authority or to prevent the abuse of the Court. He has also relied on the decision of the Supreme Court in case of ***Madhavrao Jiwajirao Scindia and ors. vs. Sambhajirao Chamdrojirao Angre and ors. (1988) 1 SCC 692*** to contend that at initial stage the Court must apply test whether the uncontroverted allegations *prima facie* makes out an offence. Besides that both learned Counsel have relied on the parameters laid down by the Supreme Court in case of ***M/s Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and ors.*** in respect of exercise of powers under Section 482 of the Code.

12. We have examined the entire material as well as appreciated the rival submissions. No doubt, there is a variance in first complaint dated 20.01.2020 with second complaint dated 19.12.2020 followed by the Police report dated 14.03.2021. There appears to be difference in the amount demanded and paid. However, the allegations as regards to co-accused Devendra and his associate assuring the applicant to get admission for Post Graduate Degree course and acceptance of money, are intact. The informant in his reply affidavit has explained that in first meeting co-accused Devendra has introduced the applicant Sameer Tonpe as Swapnil Deshmukh, therefore, in first complaint the name of the applicant has not been mentioned. It is stated that during investigation, it was transpired that, co-accused Devendra was using sim card of Swapnil Deshmukh, and probably that may be the reason for introducing the applicant Sameer Tonpe as Swapnil Deshmukh. In the subsequent complaint and Police report, there are specific allegations that co-accused Devendra and applicant, both frequently met the informant, gave assurances and time to time money was siphoned. Though it is stated that time to time money was paid to Devendra, however *prima facie* it reveals that the applicant was associate of Devendra, who accompanied him in the meetings.

13. Learned A.P.P. has submitted that co-accused Devendra, who

played key role is still absconding therefore, the investigation is stand still. Certainly, after interrogating Devendra the money trail and other transactions would be uncovered. *Prima facie,* the applicant's role has been speltout. Some variances cannot be capitalized to strangulate the process of investigation, which is at embryo stage. It is settled law that at this initial stage, the Court cannot embark upon the detailed inquiry or to assess the reliability or genuineness of the allegations. Moreover, the applicant has pleaded about his association with co-accused and meeting with the informant, which assumes significance. Interference at this initial stage would lead the miscarriage of justice. After completion of investigation, a call can be taken whether there exists material to put the applicant on full fledged trial. Therefore, this is not a fit case to exercise extra-ordinary jurisdiction of this Court, resultantly, the application stands dismissed.

(BHARAT P. DESHPANDE, J.) **(VINAY JOSHI, J.)**

Trupti

TRUPTI SANTOSHJI AGRAWAL

04.05.2023 17:39