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

CRIMINAL APPLICATION (ABA) NO.321/2023
Pankaj s/o Ramesh Kolhe
..vs..
State of Mah., thr.PSO PS Sitabuldi, Nagpur

Office Notes, Office Memoranda of Coram, appearances, Court orders or directions and Registrar's orders	Court's or Judge's Order

Shri D.V.Chauhan, Counsel for the Applicant.
Shri A.M.Kadukar, Additional Public Prosecutor for the State.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 04/08/2023
PRONOUNCED ON : 23/08/2023

1. This application under Section 438 of the Code of Criminal Procedure is for grant of anticipatory bail.

2. The applicant apprehends his arrest in connection with Crime No.464/2020 registered with the non-applicant police station for offences punishable under Sections 406, 409, and 420 read with 34 of the Indian Penal Code and 3 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

3. Nagendrasingh Babusingh Thakur, resident of Betul, Madhya Pradesh, lodged a report with the Sitabuldi Police Station, Nagpur against the applicant. As per his report, he retired from Forest Department (Madhya Pradesh) on 15.6.2015 and received Rs.27.00 lacs as retiral benefits which he

deposited in different banks. In the year 2018, he came across certain advertisements through digital screen installed on vehicles which promised attractive returns on investment in AGM Corporation Company (the said company). He further learnt that the said company would be conducting a seminar at Hotel Rasoi on 1.4.2018. He attended the said seminar and learnt that the said company, which is Nagpur based, assures attractive returns on investment. Co-accused Sushil Kolhe, is Managing Director, the applicant is proprietor, and other co-accused is Manager. It is alleged that the applicant assured annual returns of Rs.84.00 lacs on investment of Rs.15.00 lacs a year. The details and *modus operandi* are mentioned in detail in the report. Thus, it is contention of the informant that on assurance of the applicant and other co-accused, he has deposited substantial amount in the said company and sister companies. However, he has not received any returns.

4. Heard learned counsel Shri D.V.Chauhan for the applicant and learned Additional Public Prosecutor Shri A.M.Kadukar for the State.

5. Learned counsel for the applicant submitted that initially, the applicant was promoter of the said company. However, he executed Power of Attorney in favour of his brother

Sushil Kolhe. Now, he is not concerned with the said company. In fact, he received appointment letter on 5.1.2018 from Hotel Hill View at Saputara and, therefore, he joined the said hotel as Assistant Manager. Now, he is neither promoter nor director of the said company. In fact, during the relevant period, as narrated by the informant, he was neither proprietor nor the director of the said company. Moreover, now investigation is completed. The co-accused are already released on bail. Custodial interrogation of the applicant is not required and he be protected by granting anticipatory bail.

6. Learned Additional Public Prosecutor Shri A.M.Kadukar for the State strongly opposed the application on the ground that during investigation, it revealed that the said company was run by the applicant as well as the other co-accused. During investigation, it revealed that the said company has cheated public at large and abruptly Rs.30.00 crores to Rs.35 crores were misappropriated and siphoned by the applicant as well as other co-accused. There is a *prima facie* material against the applicant. He pointed out that the applicant as well as other co-accused played a vital role in the commission of the crime and innocent depositors are duped by making representations by way of advertisement, hoardings, seminars, and distribution of brouchers that on investing

amounts, investors would get attractive returns. In fact, none of investors have received returns after investment of amounts. It is clear from statements of various persons that they have invested their hard earned monies on assurance of the directors of the said company. At the same time, it is necessary to see role of the applicant. Hence, the application deserves to be rejected.

7. It is well settled that at the stage of consideration of applications for grant of bail, it is to be seen whether there is *prima facie* material against accused or not.

8. The company master data shows that the applicant was the director on 1.10.2018 of the said company. Subsequently, he executed Power of Attorney in favour of his brother. During the investigation, the statement of his brother Sushil Kolhe, who is co-accused, was recorded and it revealed from the said statement that he was looking after the entire transaction of the said company. It further reveals from the documents that on 5.1.2018 the applicant received appointment letter from from Hotel Hill View mentioning that he is appointed as an Assistant Manager at Saputara Hotel, taluka Ahwa, district Dang. The salary slips filed on record shows that he received the salary from months of February to November 2018. As far

as role of the applicant is concerned, from statements of various witnesses, it reveals that he was also present in the seminars and he assured about attractive returns.

9. It is alleged that the applicant and other co-accused accepted the investments and, thereafter, not acted upon their assurance. The said company is a proprietary concern of Sushil Kolhe, the co- accused, in AGM Digital Private Limited consists of eight shareholders and three directors and the Jan Sewa Mutual Benefits Nidhi Limited which again is a company with a similar structure. The material available in the chargesheet reveals that he is of one directors. However, his share was of Rs.1/-. Whereas, co-accused Sushil Kolhe holds 9993 shares.

10. Learned counsel for the applicant invites my attention to order dated 20.9.2021 passed by this court in Criminal Application (BA) No.551/2021, which was filed by the co-accused, wherein this court observed that it was Sushil Kolhe and the applicant, who were authorized to operate the accounts. It is observed on the basis of instructions received from investigating officer. The statements of some of investors disclose role of the applicant that the applicant played a part in inducing them to invest in the tainted concerns and it would be erroneous to assume that the applicant was aware about the

same. The documents on record show that the applicant was serving in one hotel at the relevant time and there is nothing on record to show that the applicant was authorized to operate the account. Even, the statements of the witnesses only attribute role to the applicant that he was present in various seminars and played a part in inducing the informant and other investors to invest amounts. There is no material on record to show other role of the applicant.

11. Now, the investigation is completed and chargesheet is filed against the co-accused. Even, if it is assumed that the applicant has induced some investors to deposit amounts and, as per the assurance, has not given the returns, at the most the act of the applicant covers under Section 406 and not under Section 409 of the Indian Penal Code.

12. Since the investigation is completed and chargesheet is filed against the co-accused and considering the role of the applicant that the applicant only induced various investors to invest the money, I find that nothing is to be recovered from the applicant. The Investigating Officer has already recorded statements of investors. The other co-accused are already released on bail.

13. In view of the above, the application deserves to be

allowed by imposing certain conditions. Hence, I pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) In the event of arrest of applicant Pankaj s/o Ramesh Kolhe, in connection with Crime No.464/2020 registered with the non-applicant police station for offences punishable under Sections 406, 409, and 420 read with 34 of the Indian Penal Code and 3 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, he be released on bail on he executing a P.R.Bond in the sum of Rs.50,000/- with one solvent surety of the like amount.

(3) The applicant shall attend the police station thrice a week i.e. Monday, Wednesday, and Friday from 11:00 am to 2:00, till filing of chargesheet.

(4) The applicant shall also attend the police station as and when his presence is required by the Investigating Officer for interrogation into the crime.

(5) The applicant shall not directly or indirectly make any inducement and threat or promise to any person acquainted with the facts of the present case.

(6) Needless to mention that the observations made in this order are purely *prima facie* for deciding the present application for grant of anticipatory bail only and learned Judge before whom the trial will be conducted shall not get influenced by the said observations.

The criminal application stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

!! BrWankhede !!