IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.
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CRIMINAL APPLICATION (BA) NO. 1432/2022

Ritesh s/o Govind Goyal .. Applicant
versus
The State of Maharashtra
Th: PSO PS Amabazari, Nagpur ..Respondent
....

Mr. D.V Chauhan, Advocate for the applicant
Mr. I.J.Damle, APP for Respondent-State
Mr. R.S. Kalangiwale, Advocate (assist to prosecution/informant)
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CORAM: ANIL L. PANSARE, J.
DATED : 28th April, 2023.

PC:

This is an application under Section 439 of the Code of Criminal Procedure,1973. The applicant has been arrested on 05.02.2021 in Crime No.30/2021 registered with Police Station, Ambazari, Nagpur, for the offences punishable under Sections 467, 468, 471, 406, 420 read with Section 34 of the Indian Penal Code.

2. Briefly stated, the case of the prosecution is that the applicant, in connivance with the co-accused-Devendra who is elder brother of the applicant, has duped the informant, to the tune of Rs. 49 lakhs. The informant has lodged the report stating that he is a businessman. The applicant and the co-accused were residing in the same locality where the informant resides. These people were acquainted with each other. In the report, the informant has blamed as many as six persons of the Goyal family which includes the father of the applicant. However, charge-sheet has been filed against the applicant and his elder

brother only. The informant further stated that the father of the applicant and his family members have informed him that they were running the business in the name "Shree Travelling" and "Shree Holidays" and provide services which includes international traveling, bookings and foreign currency exchange etc. They have represented the informant that they possesses license to carry on the business. He further stated that Govind Goyal and his family members have lured the family of the informant to invest in the above-stated business by assuring handsome returns. The accused persons have shown the remittance license issued by the Reserve Bank of India (RBI) to the informant, in order to gain confidence for investment. In the year 2016, the informant invested an amount of Rs. 49 lakhs, 30 lakhs, Rs.20 lakhs and again Rs. 20 lakhs, totalling to Rs. 1.19 crores. The applicant's family have repaid in the year 2016 itself, an amount of Rs.20 lakhs, Rs.29 lakhs, Rs. 20 lakhs, Rs.30 lakhs and Rs. 20 lakhs. The applicant and his brother have then stated before the informant that the profit will be calculated by the wife of Devendra (elder brother) and will be paid later on. The investment thereafter continued in the years 2017 and 2018. Later on, the informant came to know that the applicant and his family members have duped some persons. The informant, therefore, sought his money back to which he was threatened that if he proceeds against them in accordance with law, he will not get his money back. The brother of the applicant has even threatened the informant on phone. The son of the informant too, was threatened by some unknown persons while he was traveling in his car. It appears that two persons have knocked the window of his car by showing knife. NC report to that effect has been filed. It is the case of the informant that Mr. Goyal and his family have duped the informant to the tune of Rs. 49 lakhs. As stated earlier, the investigation has revealed that the applicant and his elder brother are responsible for this offences.

3. At the outset, my attention has been invited by the learned counsel for the applicant, to the order dated 22.08.2022 passed by this Court in Criminal Application (BA) No. 657/2022. In the said BA, the present applicant had faced similar charges at the hands of different informant. A separate case has been registered against him vide Crime No.126/2021. The amount of fraud in the said crime is to the tune of 1.13 crores (approximately). The allegations are identical. This Court took cognizance of the alleged remittance license issued by the RBI in the name of Shree Holidays and further took cognizance of the fact that the remittance license was shown to the informant therein. This remittance license is said to be a forged license. The Court took cognizance of the fact that the statement of witnesses also indicate that the applicant has shown him the remittance certificate while promising huge returns out of the investment and, accordingly, found *prima facie* case against the applicant and rejected the application.

4. The present case is no exception. However, the learned counsel for the applicant has vehemently argued that remittance license has not been recovered from the applicant and that the investigation is silent on the point as to who has forged the remittance license. In addition, he submits that the father of the applicant has now lodged a report with Ambazari Police Station stating therein that the remittance license under question has been forged by the informant himself. The learned APP, however, countered the aforesaid contention by inviting attention to the additional reply filed today by the prosecution stating

therein that the investigation so far carried out reveals that there is no substance in the report so lodged by the father of the applicant and that the report has been lodged in order to gain sympathy of the Court.

5. Considering the fact that the father of the applicant thought it proper to belatedly file the report *viz.* in the year 2023 coupled with the reply filed by the prosecution, the conduct would only indicate that the applicant and his family members are making futile attempt to suppress or prevent true fact to emerge by diverting the attention of the Court and the investigating agency. This inference could be drawn for the reasons enumerated herein-below.

6. The FIR itself indicates that the informant was threatened by the applicant's family and later by the applicant's elder brother. The informant's son was also threatened by some unknown persons for which the informant has reason to believe that the applicant and his family members are behind such happening. One of the allegations is that informant received threats from some unknown number. The statement of the owner of that unknown number Mr. Rahul Mishra would support the prosecution's version. He states that when he was consuming liquor, the brother of the applicant came there, took his mobile and threatened someone and that therefore the witness took back his phone. Since the informant has given mobile number from which he received threats, the owner of the mobile could be traced and his statement came to be recorded. His statement reveals that the brother of the applicant had made an attempt to threaten the informant.

7. There is another such statement. This statement is of the employee, namely Sandeep Mishra, which has been recorded on 18.02.2021. He stated before the police that Mr.Goyal, the father of the applicant, has called him on phone and informed him that the police officials from Crime Branch will call him and that he should meet him (Mr. Goyal) before attending the Crime branch. Mr.Goyal instructed that he (the witness) will state only those facts as instructed by Mr.Goyal and nothing else. Mr. Goyal then threatened him by saying that his sons are in jail and the moment they are released he will see him (the witness).

8. Thus, it appears that hectic efforts were made to either prevent the witnesses to disclose the truth, or the informant to keep himself away from the proceedings.

9. These unsuccessful attempts appear to have resulted into lodging the report as stated above, which pertains to forgery of remittance certificate at the hands of the informant. However the Investigating Officer, *prima facie,* finds no substance in the aforesaid report.

10. At this stage, it will be worth mentioning that there is ample evidence in the form of statement of witnesses that the accused persons have shown remittance certificate to the informant and the persons like him to gain their confidence, for investing the amount. Thus, *prima facie* there is evidence to indicate that the applicant and his brother possessed remittance certificate. If the said remittance certificate was indeed genuine, in normal circumstance, the person possessing genuine remittance certificate would produce it before the investigating agency.

Non-production of the genuine certificate would itself indicate that there is substance in the allegations that the certificate is forged.

11. Thus, *prima facie*, the applicant and co-accused have lured informant and other persons by showing forged remittance certificate. The father of the applicant so also his elder brother have threatened the informant and others of dire consequences if they lodge a report or pursue the criminal proceedings.

12. One of the contentions of the applicant is that the capital amount having been returned, the allegation that the applicant has duped the informant or similarly placed persons, is incorrect.

13. However, the report and statement of witnesses indicate otherwise. It appears that some amount has been repaid to the informant, but then the informant stated that the amount was returned to gain further confidence and ultimately the informant has been put to loss. Not only the informant, but other persons have also suffered such losses and that therefore, *prima facie,* the accusation made against the applicant appears to be supported by the evidence.

14. The learned APP has rightly submitted that the applicant has committed similar such offences in another crime and his bail application has been rejected by this Court. The applicant knocked the doors of the Hon'ble Apex Court, which was pleased to dismiss the SLP and that therefore, the finding rendered by this Court has attained finality and therefore I find no reason to take a different view, when the facts and allegations in both the cases are absolutely identical.

15. The sum and substance of the above discussion is that there is overwhelming evidence against the applicant and that if released on bail, the applicant is likely to pressurize the informant and the prosecution witnesses. Therefore, no case is made out for releasing the applicant on bail. The Application is rejected.

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[ANIL L. PANSARE, J.]

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