IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.
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CRIMINAL APPLICATION (ABA) NO. 905 / 2022

1) Vishnu Pandurang Dalvi & others .. Applicants
versus

The State of Maharashtra
Th: Its Economic Crime Branch
PSO Awdhutwadi Dist. Yavatmal ..Respondent

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Mr.A.D. Hazare, Advocate for the applicants
Mr. S.S.Doifode, APP for Respondent

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CORAM: ANIL L. PANSARE, J.
DATED : 17th March, 2023.

PC:

The applicants are apprehending their arrest in Crime No. 516/2022 registered with Police Station Awadhutwadi, Dist. Yavatmal, for the offences punishable under sections 406,409,420 read with Section 34 of the Indian Penal Code and Sections 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999.

2. Briefly stated the case of the prosecution is that the applicant Nos. 1 to 3 are the Directors whereas the applicants 4 to 7 are the Agents of the Kalkaam Real Infra (I) Ltd. One of the Agents, namely, Suresh Chavan (ori. accused no.9) introduced himself to be the agent/representative of the said Company and lured the informant to invest amounts in the Fixed Deposits/ Recurring Deposits with an assurance of high interest rates. The investment plans were explained to him. Accordingly, the informant has invested Rs.2,000/- per month for a tenure of three years in his name, whereas his wife Pratibha opened a FD a/c. of Rs. 30,000/- for a tenure of three years. The informant has deposited the amount for about 20 months. The informant

thereafter suspected the affairs of the company and, therefore, did not deposit the remaining amount. The informant then requested for refund of the deposited amount with Agent Suresh, so also the applicants, but they did not return the same. Later on, the informant learnt that the Company has deceived many persons by assuring lucrative returns. Accordingly, the FIR came to be lodged.

3. The learned APP submits that the amount duped in the present case is about Rs. 6 crores. The applicants have deceived 791 depositors. That apart, the learned APP has drawn my attention to the crime chart against the applicants. The applicant nos.1 to 3 are accused of similar such offences. The learned APP submits that the applicants have not obtained permission from the Reserve Bank of India as regards acceptance of deposits from the investors as required under section 45 of the RBI Act, 1935 and, as such, they could not have accepted such deposits. He further submits that the memorandum of association and articles of association of the Company indicates that the object of the Company is property dealing.

4. The learned counsel for the applicants submits that during the COVID-19 pandemic, the financial position of the Company was precarious and the Company was not in a position to satisfy the claim of the investors. The applicants have all intentions to pay the amount. The applicants could not pay the amount in compelling circumstances and, therefore, cannot be blamed. The applicants are ready to deposit the amount of Rs. 6 crores within three months.

5. It is worth mentioning here that the applicants in ABA No. 707/2022 vide order dated 08.12.2022, where similar accusation is made, have obtained the relief on the assurance of depositing the amount but are said to have not honoured their words. Therefore, on this count, the relief cannot be granted.

6. One of the grounds put forth by the applicants is that they could not pay the amount because of financial losses caused during Covid-19 pandemic. However, one of the crimes against accused no.1 has been registered in the year 2018, the period when the pandemic was not prevalent. Thus, the allegations of cheating are levelled against the applicant no.1 even prior to the pandemic.

7. Nonetheless, the stand taken by the applicants could very well be considered by the Investigating Officer. The allegations however are serious. The applicants have duped about 791 gullible persons, the amount involved is huge. The custodial interrogation of the applicants may be required so as to investigate the manner in which the amount has been utilized by the Company. Financial fraud is a serious offence.

8. In view of the above and considering the submissions made by the learned APP, in my view, this is not a case wherein anticipatory bail should be granted. Hence, the Criminal Application is rejected.

(ANIL L.PANSARE,J)

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