2024:BHC-AUG:7145

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 131 OF 2024

Pradip Vidhyadhar Shukla ....Applicant

VERSUS

The State Of Maharashtra & Another ....Respondents

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Mr. Chirag Upadhyay h/f. Mr. S.V. Suryawanshi, Advocate for Applicant
Mr. A.R. Kale, APP for Respondent.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 02nd APRIL, 2024

ORDER :

1. Applicant apprehends arrest in C.R. No. 301 of 2023, registered with Dondaicha Police Station, Dist. Dhule, for offences punishable under sections 409, 406, 420, 120-B r/w 34 of Indian Penal Code, under section 3 of Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act and under section 4, 5, and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978.

2. FIR is lodged by Ravindra Nimba Nerkar alleging that in the year 2019 accused Mangesh Narayan Patil came to his shop and gave information about firms from Surat namely Shukul Wealth Advisory, Shukul Wealth Creator and Money

Founder Adviser. He told the names of directors of said firms as Pradip Shukla alias Munna (applicant), Devesh Tiwari, Dhananjay Barad and Sandipkumar Manubhai Patel. He also told that aforesaid directors and their staff used to invest amount in share market and distribute the profit amongst investors and investors get assured return of 8% to 9% on the invested amount. He induced informant to invest money in the schemes of aforesaid firms, by telling that he is representative of firms for State of Maharashtra and his son Akash is working with the firms. After 2 to 3 days Akash son ofs Mangesh Patil came to informant and gave information about working of firms and told that he is Chief Business Officer of Shukul Wealth Advisory. He also told that investor can purchase unit of the company worth Rs. 10,000/- for investment and processing fee is Rs. 300/-. Informant since was impressed with the information given by Mangesh Patil and Akash Patil started investing amounts with the said firm. Initially, he made transfer of Rs. 10,300/- from Hasti Bank, Dondaicha to ICICI Bank account bearing No. 239905500453, Althan Branch, Surat. The amount was transferred by RTGS and receipt of the same was received. Directors of said firms used to arrange seminars and used to call film personalities for promotion of their schemes and to lure the investors. Informant from time to time invested an amount of Rs. 16,69,000/- in his name and Rs. 8,76,000/- in the name of his wife Vidya. In the FIR details of 36 investors are given, who have invested total amount of Rs. 1,79,85,700/-. Initially, investors received returns of Rs. 39,35,192/-. However, amount of Rs. 1,40,50,508/- was due to the investors from the said company.

After three to four months, informant and others did not receive any returns. Therefore, from time to time they contacted Mangesh Patil and Akash Patil, who took them to company office at Surat. There they came to know that SEBI has freezed bank accounts of various firms including said company. Applicant assured that SEBI registration would be made soon and bank accounts would be defreezed. He also disclosed that company have produced some movies namely Rado, Chashni, Nadidosh etc. and assured repayment of the amount of investors from the profit of aforesaid movies. However, informant and other investors never received assured returns.

3. Heard learned advocate for applicant and learned APP for State. Perused the investigation papers.

4. Learned advocate for applicant submits that since SEBI had freezed bank accounts of applicant, it was not possible

to repay the amounts to investors. He submits that thereafter by passing reasoned order SEBI has defreezed the accounts, so as to return the amount to investors. Accordingly, an advertisement was issued by applicant and other board of directors calling upon investors to get their amounts through SEBI. Some of the investors have already received their invested amount through SEBI. According to him, payment of Rs. 20,72,68,657/- is so far made from ICICI Bank account of Shukul Wealth Advisory and Shukul infra. He submits that for return of invested amount, applicant has to approach SEBI and lodge his claim. He submits that the amount of informant is lying with SEBI and applicant has nothing to do with the same. Applicant cannot pay the amount of informant in cash. By pointing out the order passed by Securities Appellate Tribunal, Mumbai, he submits that clarification of e-mail sent by Tribunal dated 18.04.2022 was sought from said Tribunal. The Tribunal has held that since final order dated 13.08.2021 has not been challenged by appellant (applicant) we are unable to modify or provide any kind of clarification to the said order and hence, appeal was dismissed. He submits that because of registration of FIR in question, final order could not be challenged by applicant. He submits that investment of investors is secured and there is no misappropriation, cheating or criminal breach of trust committed by applicant.

In support of application, reliance is placed on ***Jay Shri & Another vs. State of Rajasthan***, 2024 ALL SCR (ONLINE) 40. It is submitted that no material is collected during investigation to show that since beginning of investments, applicant had fraudulent and dishonest intention. Hence, he prays for anticipatory bail.

5. Learned APP, on the other hand, strenuously opposed the application. He submits that applicant is the main accused in the present crime, who has cheated the depositors. Applicant's companies were not registered with SEBI. One more company i.e. Shukul Showbiz is created by applicant and amounts invested by depositors were diverted to this Shukul Showbiz and same is used for producing the films. It is therefore clear that applicant has used depositors money for personal use. Huge amounts invested by depositors were withdrawn by way of cash withdrawal. There are other offences/cases registered against applicant and one FIR is registered at Gujarat, in which anticipatory bail application filed by applicant is withdrawn by him before Gujarat High Court. He therefore submits that,

considering the extent of misappropriation and complicity of applicant, his custodial interrogation is necessary. Hence, the application may be rejected.

6. It is revealed during investigation that applicant is founder director of Shukul Group of Companies. Shukul Showbiz Company is sister concern of Shukul Group of companies. Shukul Showbiz Company is in the business of financing and producing films. It had no capital. The amounts invested by depositors in Shukul Wealth Advisory and Shukul Creator was used for producing Gujarathi films namely Rado, Nadidosh, Chashni, Colorful etc. Applicant had assured the depositors that from the profit of said films he will pay the depositors. However, applicant has absconded saying that all the films were flopped. Since registration of crime i.e. on 13.10.2022, applicant is absconding.

Shukul Wealth Advisory Company, Money Founder and Daily Get firms are not registered with SEBI. Without prior permission of SEBI, applicant and co-accused have lured the investors by offering them higher rate of interest and have accepted deposits from them and misappropriated the money of depositors.

7. It appears that SEBI on complaint conducted

examination in relation to affairs of Shukul Wealth Advisory, a partnership firm with partner Mr. Pradip Shukla (applicant) and Mr. Dhananjay Barad, Shukul Wealth Creator LLP, a limited liability partnership (LLP) firm with designated partners Mr. Pradip Shukla (applicant) and Mr. Sandeepukumar Patel, Mr. Devesh Surendra Tiwari, who was the erstwhile designated partner. It was found that both these firms and applicant, Dhananjay Barad, Devesh Tiwari and Sandeepukumar Patel are not registered with SEBI in any capacity. SEBI, *prima facie*, found that the companies and their partners have violated the provisions of SEBI Act and without registration they are carrying activities of mutual funds. SEBI therefore freezed ICICI bank account of Shukul Wealth Advisory and Shukul Wealth Creator. Depositories were directed to ensure that till further direction they should neither permit any debit nor any credit in the demat accounts held by Shukul Wealth Advisory, Shukul Wealth Creator LLP, Mr. Pradip Shukla, Mr. Dhananjay Barad, Mr. Sandeepkumar Patel and Mr. Devesh Tiwari.

Final order was passed by SEBI on 13.08.2021, thereby directing Shukul Wealth Advisory and its partners, also Shukul Wealth Creator and its partners to refund the money collected under various schemes to the investors, jointly and severally, to the tune of INR 87,33,17,200/- (outstanding dues as per the CA Report) along with interest of 12% from the date of receipt of funds from the investors, within a period of six months from the date of this order. The banks were directed not to allow debits from the bank accounts (joint or otherwise), except for the purposes of compliance with the direction at sub-paragraph (v). Credits however, if any, into the accounts of the aforementioned noticees may be allowed. The depositories shall not allow debits from the demat accounts (joint or otherwise) of Notice No. 1 to 5, except for the purpose of compliance with the direction at sub-paragraph (v) above. Noticee Nos. 1, 2, 3, 4, and 5 are prevented from disposing of /alienating any of their properties or assets, except for the purposes of compliance with the direction at sub-paragraph (v), till the completion of refund to investors. Noticee No. 6 being the current designated partner in Shukul Wealth Creator LLP shall ensure that the direction at sub-paragraph (v) is complied with.

8. It appears from the record that applicant is the mastermind and kingpin, in connivance with co-accused he has systematically committed misappropriation of amounts invested by depositors. Accused persons in connivance have

systematically siphoned of amount of investors by withdrawing it in cash and/or by transferring it to Shukul Showbiz and have used the said amount for producing films.

It is *prima facie*, disclosed during investigation that applicant and co-accused have committed cheating and criminal breach of trust. Registration of SEBI is necessary for company to make investments in the mutual funds. Companies of applicant are not registered with SEBI. Therefore, *prima facie*, since beginning while accepting investments of depositors, dishonest intention on the part of applicant and co-accused appears to be there.

9. Special Case No. 195/2022, 46/2023 and 60/2023 arising out of present crime are pending against applicant and other co-accused. FIR No. 11210015230030 of 2023 is registered against applicant and co-accused at Surat, Gujarat, on similar allegations, wherein, since Gujarat High Court was not inclined to grant anticipatory bail, applicant has withdrawn the application.

10. In Jay Shri (supra), it is held that, "*Prima facie, in our opinion, mere breach of contract does not amount to an offence under Section 420 or Section 406 of the Indian Penal*

Code, unless fraudulent or dishonest intention is shown right at the beginning of the transaction."

In the present case dishonest intention on the part of applicant and co-accused is clear from the fact that though companies of applicant were not registered with SEBI, still applicant and co-accused have accepted amounts from investors to be invested in the mutual funds and without making such investments, said amounts were diverted and utilized for personal use or for producing films etc. Hence, this decision is of no assistance to applicant's case.

11. Considering the magnitude of misappropriation and the fact that 218 investors are duped by accused persons for amount of Rs. 57,40,48,543/-, and the complicity of applicant in the present crime, applicant does not deserve discretionary relief of anticipatory bail. Since provisions of Section 3 of MPID Act is made applicable, for effective investigation and to ascertain assets of applicant his custodial interrogation is necessary.

12. For the aforestated reasons, application is rejected.

[NITIN B. SURYAWANSHI, J.]

Bhagyawant Punde