2024:BHC-AUG:14665

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO. 1044 OF 2024

Aslambhai Saudagarbhai Shaikh ….Applicant

VERSUS

The Superintendent Of Police And Another …..Respondents

…..

Mr. Shaikh Mazhar A. Jahagirdar, Advocate for Applicant
Mr. B.B. Bhise, APP for State

....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 18th JULY, 2024

ORDER :

1. This is second anticipatory bail application filed by applicant under section 438 of Code of Criminal Procedure. Earlier Anticipatory Bail Application No. 1592/2023 filed by applicant along with co-accused was rejected by this Court by a reasoned order dated 29.01.2024.

2. Learned advocate for applicant submits that there is change in circumstance as in the remand report submitted by the investigating agency in respect of accused No. 1, there are transactions in the name of Naaz traders to which applicant has no concern. He submits that this is purely a civil dispute, which is tried to be converted into criminal offence by informant. By

relying on the ledger sheet of the informant, he submits that informant had business transactions with Naaz traders since 8th June, 2022, therefore, there was no question of applicant persuading informant to transfer amounts in the account of Naaz Traders. A total false FIR is registered against the applicant and hence he may be protected.

3. Learned APP, on the other hand, by relying on investigation papers and the report of investigating officer submits that these are not only transactions with Naaz Traders, however, there are transactions in the fake accounts which are created by accused persons, wherein amounts were transferred by informant.

4. While rejecting anticipatory bail application of the applicant, this Court has observed:

> *"5. The intention of applicants to deceive informant appears to be there since inception. After gaining confidence of informant, applicants assured informant to supply scrap material and made him deposit total amount of Rs. 7,23,72,710/- in seven bank accounts i.e. Ambika Enterprises, Greenarch Logistics, Evergreen International, Safan Traders, Mahadev Enterprises, Luck Enterprises and Naaz Traders. After receipt of said amount applicants did not send scrap and refused to return the amount. Investigating agency has freezed amount of Rs.*

2,72,42,516/- from these seven accounts, so also amounts in other accounts standing in the name of Sambodhan Bras Pvt. Ltd., Shivamit Suppliers Pvt. Ltd., Palanhar Scrap Pvt. Ltd., Royal Enterprises, Mahammad Afsar, Dariya Times, Universal Trading, Safan Traders, Arshad Mohammad Nijam, Quick Database, Vats Multi Trading and Nijam Jahid Khan. However, till trail of Rs. 4,51,30,194/- is to be ascertained from applicants.

6. Though, applicants were called by issuing notice under section 41 Cr.P.C., they have not appeared before the investigating officer. Thereafter, Sessions Court granted ad-interim protection to applicants during the period 02.08.2023 to 17.08.2023. However, during this period also applicants have failed to attend the concerned police station and co-operate in the investigation. In spite of notice, proprietors of firms in whose accounts informant transferred amounts as per say of applicants have failed to appear before investigating officer. It therefore prima facie appears that, there is strong possibility that applicants have created these fictitious firms/companies and diverted funds in those accounts, and siphoned of the amounts. Cell phone numbers given by applicants to informant claiming them to be their numbers are found to be standing in the name of other persons. However, from the said numbers applicants have been in contact with informant and whatsapp chats were exchanged between applicants and informant.

7. Investigation papers, prima facie, show involvement of applicants in serious offence. Possibility cannot be ruled out that applicants have taken help of others in commission of crime. Only applicants can provide necessary information required by the investigating officer. Custodial interrogation of applicants, in the facts of the present case, is

> *necessary for effective investigation. Applicants, therefore, do no deserve discretionary relief of anticipatory bail. Application is therefore rejected."*

5. Investigation has further revealed that applicant was in constant contact with informant on cell phone and there were exchanges of WhatsApp chats between applicant and informant. Custody of applicant is necessary for effective investigation. No change in circumstance is made out by applicant to grant discretionary relief of anticipatory bail. Anticipatory Bail Application No. 1044 of 2024 is therefore rejected.

[NITIN B. SURYAWANSHI, J.]