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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

ANTICIPATORY BAIL APPLICATION NO.2062 OF 2023

Patel Azhar Sayyed

APPLICANT

VERSUS

The State of Maharashtra and Others

RESPONDENTS

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Mr. Shaikh Altamash Abdul L, Advocate for the applicant

Mr. S. B. Jadhav, APP for respondent - State

Mr. C. V. Thombre, Advocate for the informant

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th JANUARY, 2024

ORDER :

1. Applicant apprehends arrest in Crime No. 286 of 2023 registered with Satara Police Station, Aurangabad for offence punishable under sections 406, 420 read with 34 of the Indian Penal Code.

2. FIR is lodged by Atul Mangal Ghan, alleging that in the year 2019, he obtained loan of Rs.55,00,000/- from P. N. B. Housing Finance by mortgaging his house in order to enable his son to go to Germany for higher studies. However, due to Corona, his son was required to come back and informant was unable to repay the loan. In 2021, his close relatives Suyash Ghan (Accused No.1) and Shweta Ghan (Accused No.2) introduced him with co-accused Rahul Sable (Accused No.3) and

applicant (Accused No.4) and assured him that he will get loan of Rs.1 crore from Trade Fund. He was further informed that by way of commission an amount of Rs.5,00,000/- will have to be paid to Rahul Sable and applicant. Accordingly, Rs.5,00,000/- cash was paid to accused No.3 and 4 with the mediation of his nephew. Thereafter, on the say of accused No.1 and 2, he paid a sum of Rs.32,50,000/- to accused No.1 and 2 for paying the same to accused No.3 and 4. When the said amount was demanded back from accused No.1 and 2, they issued cheques of Rs.20,00,000/-, which were bounced. Thereafter accused No.1 and 2 went absconding.

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

4. This Court granted anticipatory bail to accused No.1 and 2 in Anticipatory Bail Application No. 1963 of 2023, observing that-

“6. The applicants and informants are close relatives. There is no dispute made by the informant about lodging of complaint dated 14th July, 2023. Perusal of the said complaint shows that all together different allegations are made against the present applicants. It is claimed that he was called upon to invest Rs.20 lakhs for the purpose of getting the capital to the extent of Rs.10 crores and for this purpose it is claimed that he has transferred a sum of Rs.9,18,500/- through bank and also paid Rs.11 lakh in cash. As against in the first information report in question there is no

statement made by the informant about any money being paid to the applicants. On the contrary what is being claimed is that as the instance of applicants he paid Rs.5 lakhs in cash to the co-accused. So also from time to time sum of Rs.32,50,000/- came to be paid to them. It is further stated therein that when he asked for the return of the said money cheques for Rs.20 lakhs were issued. Prima facie this Court finds material inconsistencies in the statements made in complaint dated 14th July, 2023 and first information report.

7. *Once the Court finds that it could be case of false implication, the Court has to be on guard while accepting contention of the informant. It is pertinent to note that the first informant never claims in the first information report about paying any money to the applicants. Whereas he claims payment of Rs.9,18,500/- through bank to the applicants in complaint dated 14th July, 2023. Apart from the fact that there are inconsistencies in the statement of the complaint in the first information report as well as the previous complaint, it is pertinent to note that there is absolutely no evidence at this stage to indicate that the applicants have received any money from the co-accused in order to hold that they are the beneficiaries of the crime in question.*

8. *This statement relied upon of Akash Chavhan shows that he has paid Rs.8 lakhs in cash to the informant. Surprisingly the Investigating Officer is satisfied with the statement and does not find it necessary to further investigate in to it to find out whether this witness was really having such amount for its payment to the informant. The statement therefore is of no use for the prosecution at this state. Since prima facie this could be a case of false implication and as there is no evidence to show that applicants received any money from the crime alleged in the report, it is a fit case of grant of anticipatory bail. Hence the application is allowed”*

5. Since accused No.1 and 2 are granted protection by this Court, on the ground of parity applicant deserves protection. In the FIR it is specific allegation of informant that he has paid entire amount to accused No.1 and 2 Suyash and Shweta, for paying the same to the co-accused Rahul and applicant. Considering these aspects and as there are no criminal antecedents, custodial interrogation of applicant is not warranted in the facts of the present case. Application is therefore allowed.

6. In the event of arrest of applicant Patel Azhar Sayyed, in Crime No. 286 of 2023 registered with Satara Police Station, Aurangabad, he be released on executing PB and SB of Rs.15,000/- with one surety in the like amount. Applicant shall attend the concerned police station from 15th to 20th January, 2024 everyday between 10.00 a.m. and 02.00 p.m. and shall co-operate in the investigation.

7. Thereafter, till filing of the charge sheet, applicant shall attend the concerned police station as and when called by the Investigating Officer. Applicant shall not influence prosecution witnesses and shall not tamper prosecution evidence.

[NITIN B. SURYAWANSHI]
JUDGE